



City of Quincy, Massachusetts

OFFICE OF THE COUNCIL

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To: All Members Quincy City Council Members

From: Councillor Brian Palmucci, Chairman

The Oversight Committee of the Quincy City Council will meet on Wednesday, November 16th at 6:30 pm in the City Hall Great Hall relative any and all matters pending in the Oversight Committee including, but not limited to:

- 2016 – 015 - An Order Related to the Underground Economy –
The Misclassification of Employees on Construction Sites
- 2016 – 74 - Amending Chapter 375 – Zoning – Section 9.4 Special Permit -
Adding Section 9.4.9 thru 9.4.11 Special Permit
- 2016 - 137 - Ordinance – Amending Title 15 to add a New Section, Section 15.28
Entitled Wage Theft Prevention

Copy to- All Councillors

Mayor Thomas P. Koch

Joseph P. Shea – City Clerk

James Timmons - Solicitor

Jay Duca – Inspectional Services

James Fatseas – Planning Director

Christopher Walker – Director of Policy and Information

Media

Quincy Access Television

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CITY CLERK'S OFFICE

2016 NOV 4 - 4 PM 4:10

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City Hall, 1305 Hancock Street, Quincy, MA, 02169-5102

INTRODUCED BY: **COUNCILLOR AT LARGE - JOSEPH G. FINN**
COUNCILLOR AT LARGE - NOEL T. DIBONA

CITY OF QUINCY
IN COUNCIL

ORDER NO. 2016 - 015

ORDERED:

January 19, 2016

An Order Related to the Underground Economy
The Misclassification of Employees on Construction Sites

WHEREAS, Quincy has long held community standards regarding responsible employment, just wages, health care and safety on the work site; and

WHEREAS, there is significant building construction occurring in Quincy; and

WHEREAS, construction costs can be artificially reduced as a result of a practice that is widespread in the construction industry: contractors illegally misclassifying their employees as “independent contractors.”; and

WHEREAS, by misclassifying employees as independent contractors, these contractors achieve very significant illegal savings in labor costs by avoiding employer payroll taxes, workers compensation premiums, and overtime obligations; and

WHEREAS, many contractors achieve the same illegal objectives simply by paying employees cash under the table or, in some cases, particularly with undocumented immigrant workers, just not paying them at all; and

WHEREAS, these practices within the “underground economy” amount to nothing other than tax and insurance fraud, and have been condemned as such by federal and state officials: and

WHEREAS, wholly apart from depriving workers of significant labor law protections, contractors operating in the underground economy deprive federal, state and local governments of substantial revenues, and achieve such substantial illegal cost savings that they make it impossible for honest contractors to compete.

NOW, THEREFORE BE IT ORDERED, that the Quincy City Council hold hearings as to the extent of such practices in Quincy projects past and present and that the City Council collect testimony from labor organizations, state and local officials, contractors and development companies both to the impact and cost of these practices. Also, that the City Council may forward recommendations for oversight that would both limit and discourage such practices in the City of Quincy.

CITY OF QUINCY
IN COUNCIL

ORDER NO. 2016-74

ORDERED:

March 21, 2016

BE IT ORDAINED by the City Council of the City of Quincy that Quincy Municipal Code Chapter 375 Zoning - Section 9.0 Administration, as amended, be further amended as follows:

Adding Section 9.4.9 - Minimum Mandatory Conditions, 9.4.10 – Remedies and 9.4.11 – Appeals to the Quincy Municipal Code

9.4 SPECIAL PERMITS

9.4.1 Special Permit Granting Authority. The City Council, Zoning Board of Appeals, or the Planning Board, where designated herein, shall serve as the special permit granting authority.

9.4.2 Criteria. Special permits shall be granted by the special permit granting authority, unless otherwise specified herein, only upon its written determination that the proposed use or structure(s) shall not cause substantial detriment to the neighborhood or the City, taking into

account the characteristics of the site and of the proposal in relation to that site. In addition to any specific factors that may be set forth in this Ordinance, such determination shall include consideration of each of the following:

1. Community needs served by the proposal;
2. Traffic and pedestrian flow and safety, including parking and loading;
3. Adequacy of utilities and other public services;
4. Neighborhood character and social structures;
5. Impacts on the natural environment; and
6. Potential fiscal impact, including impact on City services, tax base, and employment.

9.4.3 Procedures. Applications shall be filed in accordance with the rules and regulations of the special permit granting authority. An application shall not be deemed complete until all copies of required information and documentation have been filed with the special permit granting authority.

9.4.4 Conditions. Special permits may be granted with such reasonable conditions, safeguards, or limitations on time or use, including performance guarantees, as the special permit granting authority may deem necessary to serve the purposes of this Ordinance.

9.4.5 Plans. An applicant for a special permit shall submit a plan in substantial conformance with the requirements of Section 9.4, herein.

9.4.6 Lapse. Special permits shall lapse if a substantial use thereof or construction thereunder has not begun, except for good cause, within 24 months following the filing of the special permit approval (plus such time required to pursue or await the determination of an appeal referred to in G.L. c. 40A, s. 17, from the grant thereof) with the City Clerk.

9.4.7 Regulations. The special permit granting authority may adopt rules and regulations for the administration of this section.

9.4.8 Fees. The special permit granting authority may adopt reasonable administrative fees and technical review fees for applications for special permits.

9.4.9 Minimum Mandatory Conditions. In addition to any other conditions that may be required pursuant to Section 9.4.4, each special permit shall include the following set of mandatory special permit conditions:

“It shall be a material condition of this Special Permit that any construction manager, general contractor or other lead or prime contractor, or any entity functioning in any such capacity, and any other contractor or subcontractor of any tier or other person or entity that is engaged to perform the construction work on the property that is the subject of this Special Permit shall comply with the following qualifications and conditions at all times during their performance of work on the project:

(1) The firm has not been debarred or suspended from performing construction work by any federal, state or local government agency or authority in the past three years;

(2) The firm has not within the past three years been found in violation of any law applicable to its contracting business, including, but not limited to, licensing laws, tax laws, prompt payment laws, wage and hour laws, prevailing wage laws, environmental laws or others;

(3) The firm must maintain appropriate industrial accident insurance sufficient to provide coverage for all the employees on the project in accordance with G.L. c.152 and provide documentary proof of such coverage to the Building Inspector to be maintained in the Building Department as a public record;

(4) The firm must properly classify employees as employees rather than independent contractors and treat them accordingly for purposes of workers' compensation insurance coverage, unemployment taxes, social security taxes and state and federal income tax withholding. (G.L. c.149, §148B on employee classification);

(5) The firm must comply with G.L. c. 149, § 148 with respect to the payment of wages; and

(6) The firm must be in compliance with the health and hospitalization requirements of the Massachusetts Health Care Reform law established by Chapter 58 of the Acts of 2006, as amended, and regulations promulgated under that statute by the Commonwealth Health Insurance Connector Authority.

If any person or entity that is subject to the foregoing fails to comply with any of the qualifications and conditions with respect to work on the project, this Special Permit shall be deemed temporarily suspended and all construction work on the entire project shall cease immediately upon issuance of a stop work order by the Building Commissioner or his designee until further notice by the Building Commissioner.”

9.4.10 Remedies. In the event the special permit is granted, the applicant for the special permit shall be responsible for ensuring that all contractors performing construction work on the property comply with the Minimum Mandatory Conditions required by Section 9.4.9 for the duration of work on the project. If any person or entity that is subject to the Minimum Mandatory Conditions set forth in Section 9.4.9 fails to comply with any of the qualifications and conditions with respect to work on the project, and in addition to the Penalties set forth in Section 9.1.7, the Building Commissioner shall issue a stop work order with respect to all construction work on the entire project until the violation is remedied. Once the Building Commissioner or his designee determines that the violation has been remedied, he shall withdraw the stop work order and construction on the project may proceed.

9.4.11 Appeals. Any person aggrieved by a stop work order issued by the Building Commissioner or his designee pursuant to Section 9.4.10 shall have the appeal rights set forth in Section 9.1.6.

CITY OF QUINCY
IN COUNCIL

ORDER NO. 2016-137

ORDERED:

May 23, 2016

BE IT ORDAINED by the City Council of the City of Quincy Title 15, as amended be further amended to add a new section, Section 15.28 entitled Wage Theft Prevention:

I. Definitions

For the purpose of this Ordinance, the following definitions apply:

- A. “Employee” – a natural person who performs work for an employer operating within the geographic boundaries of Quincy, but shall not include any bona fide independent contractor as defined by G.L. c. 149 § 148B;
- B. “Employer” – any natural person or business, whether or not incorporated or unincorporated, who suffers or permits another to work (1) in the City of Quincy, (2) under a contract to which the City of Quincy or one of its Departments is signatory, or (3) who otherwise maintains a commercial presence in the City of Quincy. This definition excludes:
 - 1) The United States or a corporation wholly owned by the government of the United States; and
 - 2) The Commonwealth of Massachusetts, its subdivisions, and corporate bodies.
- C. “Employ,” including as used in the term “employment” – to suffer or permit to work.
- D. “Independent contractor” – as defined in G.L. c. 149, § 148B (“Massachusetts Independent Contractor Law”) and any applicable regulations or advisory guidance implementing that statute.

- E. “Minimum wage” – as defined in G.L. c. 151 § 1.
- F. “Overtime” – as defined in G.L. c. 151 § 1A.
- G. “Prevailing wage” – as defined in G.L. c. 149 §§ 26-27H.
- H. “Timely Payment of Wages” – as defined by G.L. c. 149 § 148.
- I. “Wage” – as defined by G.L. c. 149, §148.
- J. “Wage Theft” – any action by an Employer, his officers, agents, or employees causing Employer not to make a timely and /or complete payment of wages, prevailing wage, or overtime earned and owing to an employee.
- K. “Application” – an initial application or a renewal of a license or permit.
- L. “City Contractor” – an Employer who holds or seeks to hold a contract for goods, services, or labor with the City of Quincy.

II. City Procurement, City Contracts And Debarment

A. RFP/Bid and Successful Bidder Requirements

1. Every RFP or bid issued by the Purchasing Agent or other City department shall include the certification and disclosure requirements required by this Ordinance.
2. Every RFP or bid issued by the Purchasing Agent or other City department shall notify bidders that they have an affirmative duty to report any criminal or civil judgment, administrative citation, final administrative determination, or debarment against the bidder or any of their subcontractors occurring while their bid is pending to the City, and, if they are the successful bidder, while their contract with the City is in effect, within five (5) business days of receipt. The RFP or bid will identify the City department and individual to whom this must be reported.
3. Every RFP or bid issued by the Purchasing Agent or other City department shall notify bidders that they may not contract with the City during any part of the debarment by the City of State if they have been debarred by the Commonwealth of Massachusetts or the City of Quincy, either voluntarily or

involuntarily, for the entire term of the debarment. Such RFPs or bids shall also notify bidders that they may not use any subcontractor who has been debarred by the City or the State during the period of that subcontractor's debarment.

4. Successful bidders must either:
 - a. Provide a certification of compliance as required by this Ordinance below. To the extent the bidder has been in business for less than three years, it shall provide a certification certifying compliance for the entire period of time for which the entity has been in existence.
 - b. To the extent a judgment, citation, or final administrative order has issued against a bidder within 3 years prior to its bid, provide a copy of the same, in addition to documentation demonstrating that all damages, fines, costs, and fees have been paid to all aggrieved complainants. In addition, the bidder must post a bond, to be maintained for the life of the contract, as specified below.
5. Successful bidders must agree to post the notice available at <http://www.mass.gov/ago/docs/workplace/wage/wagehourposter.pdf> in a conspicuous location accessible to all of their employees. To the extent not all employees would have reasonable access to the notice if posted in a single location by the successful bidder, the successful bidder must inform the Purchasing Agent or other City department of the number and location of postings in order to ensure that the successful bidder provides reasonable notice to all of their employees and agree to make those additional postings.

B. Certification And Disclosures

The Purchasing Agent and any other City department entering into contracts on behalf of the City shall adopt the attached certification and disclosure requirement for all applicants providing:

1. That an applicant certify to the Purchasing Agent or other City department that neither they nor any of their subcontractors have been subject to a Federal or State criminal or civil judgment, administrative citation, final administrative determination, or debarment resulting from a violation of G.L. c. 149, G.L. c. 151 or 29 U.S.C. 201 et seq. within three (3) years of their application;

2. In the alternative, the applicant shall disclose to the Purchasing Agent or other City department any such criminal or civil judgment, administrative citation, final administrative determination, or debarment and include a copy of the same in their applications.
3. Every City department issuing a Request for Proposals or bids shall notify applicants that they have an affirmative duty to report any criminal or civil judgment, administrative citation, final administrative determination, or debarment occurring while the contract is in effect to the department within five (5) business days of receipt.

C. Reporting and Notice Requirements during the Contract Term

1. Upon request by the Purchasing Agent or other City department, all City Contractors shall furnish their monthly certified payrolls to the City's Purchasing Agent for all employees working on City contracts.
2. To the extent a contract is for a term of one year or more, a City Contractor will provide the Purchasing Agent or other City department with a certification compliant with this Ordinance on the effective date of the contract and at each anniversary thereof until the contract expires.
3. All City Contractors will furnish to the Purchasing Agent or other City department any criminal or civil judgment, administrative citation, final administrative determination, or debarment issued during the term of their contract(s) with the City against the City Contractor or its sub-contractors within five (5) business days of receipt.
4. To the extent required as set forth below, all City Contractors shall maintain a wage bond for the term of the contract(s) with the City.

D. Wage Bonds

Any Successful Bidder or City Contractor admitting in writing to or determined by the Purchasing Agent to have committed a wage theft violation or subject to a criminal or civil judgment, administrative citation, final administrative determination or debarment as a result of a violation of G.L. c. 149, G.L. c. 151 or 29 U.S.C. 201 et seq. within the three (3) year period prior to the date of its bid to contract with the City, shall be required to obtain a wage bond or other form of suitable insurance in an amount equal to the aggregate of one year's gross wages, or for the term of the contract, whichever is less, for all employees, based on an average of its total labor costs for the past two years. Such bond must be maintained for the entire term of the contract(s) and for all contracts of one year or more, proof of maintenance must be provided annually or upon request of the Purchasing Agent or other City department.

E. Suspension or Revocation of Contract/Wage Theft as Material Breach as Conditions in RFP or Bid

If a City Contractor is found to be in violation of G.L. c. 149, G.L. c. 151 or 29 U.S.C. 201 et seq. or this Ordinance, and therefore in breach of its contract with the City, the City may take one or more of the following actions:

1. Revocation of City Contractor's contract with the City;
2. Suspension of the City Contractor's contract with the City;
3. Debarment from all City contracts for a period of up to three years;
4. Imposing conditions on any future contracts with the City, including but not limited to, the posting of a wage bond and other reasonable requirements.