

BILL NO. _____

ORDINANCE NO. _____

AN ORDINANCE AMENDING CHAPTER 8 OF THE CITY CODE OF THE CITY OF INDEPENDENCE BY ADDING REGULATIONS RELATED TO WAGE ENFORCEMENT ON CITY-SUPPORTED DEVELOPMENT PROJECTS.

WHEREAS, it is in the City's best interest that all City incentives support development that complies with local, state, and federal wage and payroll laws, thereby ensuring that workers receive proper compensation for their work; and,

WHEREAS, where there are potential violations of wage and payroll laws on City-supported developments, there should be regulations in place that obligate any parties involved in the development who know about the violations to report them, so they can be appropriately addressed.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF INDEPENDENCE, MISSOURI, AS FOLLOWS:

SECTION 1. Article 10, Wage Enforcement, is hereby added to Chapter 8, Finance, Taxation, and Business of the City, as follows:

Sec. 8.10.001. Legislative Intent and Purpose.

It is the purpose of this article to assure that City incentives support development that complies with local, state, and federal wage and payroll laws, thereby ensuring that workers receive proper compensation for their work. Where there are violations of those local, state, and federal wage and payroll laws on City-supported developments, this article obligates any parties involved in the development who know about the violations to report them. This article also communicates to parties receiving incentives from the City that if they or their Contractors or Subcontractors violate wage or payroll laws, the City intends to recoup its investment to the extent allowed by law.

Sec. 8.10.002. Definitions.

For the purpose of this article, the words and phrases defined in the sections hereunder shall have the meanings respectively ascribed to them, unless a different meaning is clearly indicated by the context.

Sec. 8.10.003. Adverse Determination.

"Adverse determination" means a determination that a Person, or any Contractor or Subcontractor working under an Agreement or on a Development Site, has committed Wage Theft or Payroll Fraud. Such a determination includes an administrative determination, arbitration award or decision, or civil judgment, including any determination made in or through an administrative hearing, any governmental body, or any industry-specific regulatory or investigative body.

Sec. 8.10.004. Agreement.

"Agreement" means any contract relating to construction or real estate development whereby the City provides an incentive or benefit that is projected to exceed \$25,000, including but not limited to the following:

- (a) Chapter 100 state sales tax exemptions;**
- (b) Chapter 353 property tax abatement;**
- (c) Community Improvement District (CID);**
- (d) Neighborhood Improvement District (NID);**
- (e) Transportation Development District (TDD); or**
- (e) Tax Increment Financing (TIF).**

The City's construction, expansion, or modification of a public infrastructure improvement benefiting a project shall not be included in calculating the total value of an economic incentive or benefit for purposes of this definition, but contracts in which the City provides compensation in excess of \$25,000 for the construction of public improvements are expressly included in this definition, notwithstanding whether such compensation involves the fair market value purchase of construction services and would not otherwise qualify as an incentive or benefit. For the purposes of this article, such compensation shall be deemed a benefit.

Sec. 8.10.005. Contractor.

"Contractor" means the individual, partnership, corporation, association, or other entity that is leading the construction or provision of goods or services on a Development Site on behalf of the Person.

Sec. 8.10.006. Complaint.

"Complaint" shall mean a report made to the City or any governmental agency having relevant jurisdiction that a Person, or any Contractor or Subcontractor working under an Agreement or on a Development Site, has committed Wage Theft or Payroll Fraud. A complaint may be such a report submitted to the U.S. Department of Labor, the Missouri Department of Labor and Industrial Relations, or another body with authority to investigate and adjudicate such reports, which comes to the attention of the City. If a report is made directly to the City and not to another agency, it must be submitted on a form prescribed by the Management Analyst, and include the following information in order to be considered a complaint:

- (a) The name of the Person, or the Contractor or Subcontractor working under an Agreement or on a Development Site, alleged to have committed the Wage Theft or Payroll Fraud;**
- (b) The project during which or the Agreement under which that Person, or the Contractor or Subcontractor working under an Agreement or on a Development Site, is alleged to have committed the Wage Theft or Payroll Fraud;**
- (c) A description of the Wage Theft or Payroll Fraud suspected to have been committed;**
- (d) The name of the complainant; and**

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- (e) The name of at least one witness or victim of the Wage Theft or Payroll Fraud, which person may be the complainant.

Sec. 8.10.007. Development Site.

"Development site" means the property that is the subject of an Agreement or on which a contractual undertaking is to be performed.

Sec. 8.10.008. Payroll Fraud.

"Payroll fraud" shall mean any of the following:

- (a) Concealing an entity's true tax or other financial liability to a government agency from government licensing, regulatory, or taxing agencies through tax evasion or fraud;
- (b) Misclassification of employees;
- (c) The unreported or underreported payment of wages;
- (d) Paying a business transaction in cash without keeping appropriate records of reporting and withholding; or
- (e) Committing a violation of local, state, or federal wage or payroll laws by any other means.

Sec. 8.10.009. Person.

"Person" means any individual, partnership, corporation, firm, trust, association, or other entity that enters into an Agreement with the City, together with any entity that is the parent of, has a direct or indirect majority ownership interest in, or has direct or indirect management and control of, the signatory to an Agreement. For purposes of this article, the City may look beyond the signatory to the Agreement to the real party in interest or common owner when determining whether a Person has prior Adverse Determinations of Wage Theft or Payroll Fraud and when imposing sanctions or pursuing remedies for an Adverse Determination against the signatory to the Agreement.

Sec. 8.10.010. Subcontractor.

"Subcontractor" means any entity that enters into a contract with a Contractor to perform work on the Development Site or work pursuant to, related to, or in furtherance of an Agreement.

Sec. 8.10.011. Wage Theft.

"Wage Theft" means Payroll Fraud or a violation of the Missouri Public Prompt Payment Act, Sec. 34.057, RSMo.; Missouri Private Prompt Payment Act, Sec. 431.180, RSMo.; Chapter 290, RSMo., Wages, Hours, and Dismissal Rights; any federal statute or regulation comparable to the aforementioned Missouri statutes; any statute or regulation of another state that may apply to a particular Agreement; or any successor to any of these laws or regulations.

Sec. 8.10.012. Reporting Wage Theft and Payroll Fraud.

- (a) Any Person entering into an Agreement shall include provisions in solicitations and contracts regarding a Development Site that require all employers to provide that Person with a sworn

statement as to whether there has been any Adverse Determination against the employer within the preceding 3-year period for Wage Theft or Payroll Fraud.

- (b) Any Person entering into an Agreement shall require that any Contractor or Subcontractor performing work or proposing to perform work on a Development Site provide a sworn statement whether there has been an Adverse Determination rendered against that Contractor or Subcontractor in the preceding 3-year period for Wage Theft or Payroll Fraud.
- (c) Any Person entering an Agreement shall include provisions in solicitations and contracts regarding the Development Site that require all Contractors, Subcontractors, and employers to provide that Person with an updated sworn statement within 30 days of any Adverse Determination rendered or Complaint made against the employer for any Wage Theft or Payroll Fraud.
- (d) Any Person who has entered an Agreement with the City, the term of which is not expired, shall report to the City in a sworn statement any Complaint of Wage Theft or Payroll Fraud against the Person or any of its Contractors or Subcontractors.
- (e) All such sworn statements shall be submitted to the City within 30 days of receipt by the Person who entered into the Agreement.

Sec. 8.10.013. Contractor and Subcontractor Reporting.

- (a) Before any Contractor may begin work under an Agreement or on a Development Site, each Person entering into an Agreement shall submit to the Management Analyst for approval a Subcontractor utilization report, on a form prescribed by the Management Analyst, identifying each Contractor the Person intends to utilize to perform work under the Agreement or on the Development Site.
- (b) Before any Subcontractor may begin work under an Agreement or on a Development Site, each Person entering into an Agreement shall collect from each Contractor or Subcontractor that will be subcontracting any work, and shall submit to the Management Analyst for approval, a Subcontractor utilization report, on a form prescribed by the Management Analyst, identifying each Subcontractor the Person intends to utilize to perform work under the Agreement or on the Development Site.

Sec. 8.10.014. Contract or Agreement Provisions.

All Agreements subject to this article shall contain all of the following provisions, or substantially similar language:

- (a) This contract is or may be subject to the Wage Enforcement provisions of the Independence City Code. These provisions require that any Person who has an Agreement with the City or with a Contractor or Subcontractor of that Person shall report all Complaints or Adverse Determinations of Wage Theft and Payroll Fraud (as each of those terms is defined in Chapter 8, Article 10, of the Independence City Code) against the Person, Contractor or Subcontractors to the Management Analyst's office within 30 days of notification of the Complaint or Adverse Determination.
- (b) If this contract is subject to the Wage Enforcement provisions of the Independence City Code, the Person entering into this contract is required to include provisions in solicitations and contracts regarding a Development Site that all employers, Contractors, or Subcontractors performing or proposing to perform work on a Development Site provide an initial sworn and notarized "Affidavit Regarding Wage Theft and Payroll Fraud" on a form prescribed by the

Management Analyst and, within 30 days of an Adverse Determination or Complaint of Wage Theft or Payroll Fraud, shall provide an "Amended Affidavit Regarding Wage Theft and Payroll Fraud" on a form prescribed by the Management Analyst.

- (c) If this contract is subject to the Wage Enforcement provisions of the Independence City Code, the Person entering into this contract is required to authorize, and does hereby specifically authorize, any local, state, or federal agency, court, administrative body, or other entity investigating a complaint of Wage Theft or Payroll Fraud against the Person (collectively "investigative bodies") to release to the City any and all evidence, findings, complaints, and determinations associated with the allegations of Wage Theft or Payroll Fraud upon the City's request, and further authorizes such investigative bodies to keep the City advised regarding the status of the investigation and ultimate determination. If the investigative bodies require the Person to provide additional authorization on a prescribed form or in another manner, the Person shall be required to provide such additional authorization within 14 days of a request by the City.
- (d) If this Agreement is subject to the Wage Enforcement provisions of the Independence City Code, the Person entering into this Agreement shall include in its contracts with all Contractors language that requires the Contractors to provide the authorizations set forth in subsection (c) above and that further requires each Contractor to include in its contracts with Subcontractors those same obligations for each Subcontractor and each lower tier Subcontractor.
- (e) If this Agreement is subject to the Wage Enforcement provisions of the Independence City Code, the Person entering into this Agreement shall post a conspicuous notice on the Development Site throughout the entire period work is being performed pursuant to the Agreement indicating that the work being performed is subject to Independence City Code Chapter 8, Article 10, Wage Enforcement. Such notice shall include contact information for the applicable City staff.
- (f) Under the Wage Enforcement provisions, the City shall have the authority, under appropriate circumstances, to terminate this contract or to reduce the incentives or subsidies to be provided under this contract and to seek other remedies, including debarment.

Sec. 8.10.015. Wage Theft Monitoring, Investigation and Compliance.

- (a) The Management Analyst shall develop rules and regulations for the following:
 - (1) Review of Agreements to ensure that language required by this article is included;
 - (2) Monitoring of Agreements to ensure compliance with this article, including reviewing Complaints, referring Complaints to an appropriate agency for investigation, and monitoring the outcome of Complaints, for any Complaints about the practices of any Person, Contractor, or Subcontractor relating to the provisions of this article; and
 - (3) Recommendations for the pursuit of remedies or imposition of sanctions in the event of an Adverse Determination.
- (b) Whenever the City becomes aware of any Complaint against a Person or the Person's Contractor or Subcontractor for Wage Theft or Payroll Fraud with respect to any work done on a Development Site:

- (1) The Management Analyst or his or her designee shall report the Complaint to the appropriate state or federal agency responsible for investigation and enforcement of a particular type of violation;
 - (2) The Management Analyst or his or her designee may investigate Wage Theft or Payroll Fraud complaints and take appropriate action;
 - (3) The City will provide a written notice to the Person stating that, if an Adverse Determination is rendered against the Person or the Person's Contractor or Subcontractor, the City will pursue any available legal, contractual, or equitable remedies, which may include without limitation any or all of the penalties listed in subsections (c) and (d) of this section. The notice also will state that the Person, Contractor, or Subcontractor may provide the City with information showing that the Adverse Determination is under review, contested, or appealed; and
 - (4) The City will attempt to take action as described in subsection (b)(1) of this section and, if appropriate, to initiate an investigation as described in subsection (b)(2) of this section, within 30 days of the City's receipt of the Complaint.
- (c) Whenever any Adverse Determination is rendered against a Person or the Person's Contractor for Wage Theft or Payroll Fraud with respect to any work done on a Development Site, or, if the Adverse Determination is appealed, then whenever the final decision on appeal confirms the Adverse Determination, the City will pursue any available legal, contractual, or equitable remedies, which may include without limitation any or all of the following remedies whether or not provided for in the Agreement:
- (1) Termination of the Agreement with the Person or unilateral reduction of the incentive or benefit to be provided under the Agreement by up to 100% of the yet to be paid or provided incentive or benefit;
 - (2) Deeming the Person or the Person's Contractor ineligible for future Agreements or other contracts with the City until all Wage Theft and Payroll Fraud penalties have been paid in full;
 - (3) Debarment of the Person or the Person's Contractor from future Agreements or other contracts with the City; and
 - (4) Informing the relevant City departments of the Adverse Determination in order to determine if further action is necessary.
- (d) Whenever any Adverse Determination is rendered against a Person's Subcontractor, if there is no resolution of the Wage Theft violation or Payroll Fraud satisfactory to the City within 30 days of the City's receipt of notification of the Adverse Determination or final decision of an appeal, the City will pursue any available legal, contractual, or equitable remedies, which may include without limitation the following remedies whether or not provided for in the Agreement:
- (1) Termination of the Agreement with the Person or unilateral reduction of the incentive or benefit to be provided under the Agreement by up to 100% of the yet to be paid or provided incentive or benefit;
 - (2) Deeming the Person, the Person's Contractor, and/or the Subcontractor ineligible for future Agreements or other contracts with the City until all Wage Theft and Payroll Fraud penalties have been paid in full;

- (3) Debarment of the Person, the Person's Contractor, and/or the Subcontractor from future Agreements or other contracts with the City; and
- (4) Informing the relevant City departments in order to determine if further action is necessary or available.
- (e) Any remedies available to the City under this section are in addition to, and not in replacement of, any remedies available to the City under an Agreement or otherwise; however, violations of this article shall not be prosecuted in Independence Municipal Court. The pursuit of any remedy or remedies by the City shall not exclude the City's pursuit of any other remedy or remedies.
- (f) The Management Analyst's office shall be the department with primary responsibility for investigation, recordkeeping, and enforcement of this article; however, if the Management Analyst position is vacant, then all roles, responsibilities, and duties assigned to the Management Analyst under this article shall be assigned to the City Manager's office.

Sec. 8.10.016. Application to New Contracts.

The provisions of this article shall apply to the following:

- (a) Agreements entered into after the effective date of this article;
- (b) Renewals and/or amendments to Agreements entered into after the effective date of this article which renewal or amendment alone meets the financial threshold requirement of this article.

Sec. 8.10.017. Severability.

Each section and each part of each section of this article is declared to be an independent section or part of a section, and notwithstanding any other evidence of legislative intent, it is declared to be the controlling legislative intent that if any section or part of a section or any provision thereof, or the application thereof to any Person or circumstances, is held to be invalid, the remaining sections or parts of sections and the application of such provision to any other Person or circumstances, other than those as to which it is held invalid, shall not be affected thereby. It is further declared to be the legislative intent that the other provisions of this Code would have been adopted independently of such section or parts of a section which are held to be invalid.

PASSED THIS _____ DAY OF _____, 2022, BY THE CITY COUNCIL OF THE CITY OF INDEPENDENCE, MISSOURI.

Presiding Officer of the City Council
of the City of Independence, Missouri

ATTEST:

City Clerk

APPROVED - FORM AND LEGALITY:

City Counselor

REVIEWED BY:

City Manager

NOTE: Words struck through and bolded are being removed by this ordinance and words underscored and bolded are being added by this ordinance.