

CITY OF CINCINNATI
WAGE ENFORCEMENT (CMC Chapter 326)
RULES AND REGULATIONS



SECTION 1. GENERAL

1.1 Purpose

The purpose of these regulations is to establish procedures for:

- a. Review and approval of Agreements for compliance with the contract requirements of Chapter 326 of the Cincinnati Municipal Code;
- b. Filing Complaints of Wage Theft or Payroll Fraud associated with work done on Development Sites, or notifying the City of such Complaints filed with another agency;
- c. Review, investigation, referral, and monitoring determinations of Complaints of Wage Theft or Payroll Fraud associated with work done on Development Sites; and
- d. Recommendation and determination of appropriate remedies in the event of an Adverse Determination.

1.2 Authority

The authority to issue these regulations is set forth in CMC § 326-7.

1.3 Policy

These regulations shall be construed in accordance with the policy that individuals performing work on Development Sites for development supported by City Incentives shall receive proper compensation for that work in accordance with local, state and federal wage and payroll laws, and that the City shall be entitled to recoup its City Incentives investment to the extent permitted by law in the event workers are paid in violation of those laws. In furtherance of that policy, and within 12 months of the issuance of these Regulations, DEI will explore with the City’s Office of Performance and Data Analytics the feasibility of automating an accessible electronic list of contracts subject to Chapter 326 of the Cincinnati Municipal Code.

1.4 Effective Date

These regulations shall be effective upon approval by the City Manager.

SECTION 2. DEFINITIONS

2.1 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, including an administrative merit determination, arbitration award or decision, or civil judgment, and includes any determination made in or through an administrative hearing, any governmental body, or any industry-specific regulatory or investigative body.

2.2 Agreement

“Agreement” means any contract between the City and any Person relating to construction or real estate development under which the City provides a City Incentive as defined herein.

2.3 City Incentive

- a. "City Incentive" means any incentive or benefit that is projected to exceed \$25,000 in value, including but not limited to Community Reinvestment Area tax abatements, job creation tax credits, any commercial loan, any conveyance of land for less than fair market value, tax increment financing, or grants.
- b. The construction, expansion or modification of a public infrastructure improvement by the City that benefits a project shall not be included in calculating the total value of an economic incentive or benefit for purposes of this definition.
- c. 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 Chapter 326 of the Cincinnati Municipal Code and these Regulations, such compensation is deemed to be a benefit.

2.4 Complaint

"Complaint" means a report, made to the City as provided in Section 5 of these Regulations, to the U.S. Department of Labor, to the Ohio Department of Commerce, or to any other government agency or other body with authority to investigate and adjudicate such reports, 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 made to the City may be made on a Form WE-50, "Wage Theft or Payroll Fraud Complaint." If a Form WE-50 is not used, a report must contain all of the following information in order to be considered a Complaint:

- a. The name of the Person, 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 the Wage Theft or Payroll Fraud is alleged to have been committed;
- c. A description of the alleged Wage Theft or Payroll Fraud;
- d. The name of the complainant; and
- e. The name of at least one witness or victim of the Wage Theft or Payroll Fraud, which individual may also be the complainant.

2.5 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.

2.6 DEI

"DEI" means the Department of Economic Inclusion of the City of Cincinnati.

- 2.7 Director
“Director” means the Director of DEI.
- 2.8 Development Site
“Development Site” means the property that is the subject of an Agreement or on which a contractual undertaking is to be performed.
- 2.9 Payroll Fraud
“Payroll Fraud” means concealing a Person’s true tax or other financial liability to a government agency from government licensing, regulatory, or taxing agencies through tax evasion or fraud; misclassification of employees; the unreported or underreported payment of wages; paying a business transaction in cash without keeping appropriate records of reporting and withholding; or committing a violation of local, state or federal wage or payroll laws by any other means.
- 2.10 Person
“Person” means any individual, partnership, corporation, firm, trust, association or other entity that enters into an Agreement, and specifically includes any entity or agency 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 the Agreement. For purposes of Chapter 326 of the Cincinnati Municipal Code and these Regulations, the City may look beyond the signatory to the Agreement to the real party in interest or common owner.
- 2.11 Regulations
“Regulations” means these City of Cincinnati Wage Enforcement (Chapter 326) Rules and Regulations, and as hereafter amended.
- 2.12 Subcontractor
“Subcontractor” means any individual, partnership, corporation, firm, trust, association or other entity that enters into a contract with a Contractor, or with a higher tier Subcontractor, to perform work on the Development Site or work pursuant to, related to, or in furtherance of an Agreement.
- 2.13 Tax Commissioner
“Tax Commissioner” means the Tax Commissioner of the City of Cincinnati.
- 2.14 Wage Theft
“Wage Theft” means a violation of the Ohio Prompt Pay Statute, O.R.C. § 4113.15; the Ohio Minimum Fair Wage Standards Act, O.R.C. Chapter 4111; Ohio’s Minimum Wage Constitutional Amendment, Section 34a of Article II of the Ohio Constitution; O.R.C. Chapters 4109 or 4115; O.R.C. Sections 4113.17, 4113.18, 4113.52, or 4113.61; any federal statute or regulation comparable to the aforementioned Ohio statutes; any statute or regulation of another state

that may apply to a particular Development Agreement; or the City's living wage requirements in Cincinnati Municipal Code Chapter 317; or any successor to any of these laws or regulations.

SECTION 3. CONTRACTUAL REQUIREMENTS

3.1 Contract Language

Every Agreement shall contain all of the following, or substantially similar, language:

- a. This contract is or may be subject to the Wage Enforcement provisions of the Cincinnati Municipal 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 all of those terms are defined in Chapter 326 of the Cincinnati Municipal Code) against the Person, Contractor or Subcontractors to the Department of Economic Inclusion within 30 days of notification of the Complaint or Adverse Determination.
- b. If this contract is subject to the Wage Enforcement provisions of Chapter 326 of the Cincinnati Municipal 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 city manager or his or her designee 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 city manager or his or her designee.
- c. If this Agreement is subject to the Wage Enforcement provisions of Chapter 326 of the Cincinnati Municipal 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's Department of Economic Inclusion 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 proscribed 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 Chapter 326 of the Cincinnati Municipal 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 Chapter 326 of the Cincinnati Municipal 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 Cincinnati Municipal Code Chapter 326, Wage Enforcement, as administered by the City of Cincinnati Department of Economic Inclusion. Such notice shall include contact information for the Department of Economic Inclusion as provided by the department.
- 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.

3.2 Director Approval

a. Contracts

Every Agreement between the City and a Person must be submitted to the Director for review before the Agreement is circulated within the City for signature to ensure that the language required by Chapter 326 is included in the Agreement. Agreements must include an approval line for the Director.

b. Contractor and Subcontractor Utilization

- i. Before any work can begin under an Agreement or on a Development Site, each Person entering into an Agreement after the issuance of these Regulations shall submit to the Director for approval a Form WE-20, "Subcontractor Utilization Plan," identifying each Contractor the Person intends to utilize to perform work under the Agreement or on the Development Site.
- ii. Before any Subcontractor can begin work under an Agreement or on a Development Site, the Person entering into an Agreement after the issuance of these Regulations shall collect from the Contractor or Subcontractor for which a lower tier Subcontractor is performing work on the Development Site and submit to the Director for approval a Form WE-20, "Subcontractor Utilization Plan," identifying each Subcontractor the Contractor or higher tier

Subcontractor intends to utilize to perform work under the Agreement or on the Development Site.

- iii. For each Agreement executed on or after March 3, 2016 but prior to the issuance of these Regulations, which Agreement has not yet expired, the Person shall submit to the Director Forms WE-20, "Subcontractor Utilization Plan," before any Contractor or Subcontractor yet to perform work under the Agreement or on the Development Site is authorized to begin work under the Agreement or on the Development Site.

For work that is to be bid in phases, the process set forth in this Section 3.2.b. must be followed for each such bid phase.

SECTION 4. SWORN STATEMENTS REGARDING WAGE THEFT OR PAYROLL FRAUD

4.1 Form WE-30 - Affidavit Regarding Wage Theft and Payroll Fraud

Each Person entering into an Agreement after the issuance of these Regulations or renewing or amending an Agreement after the issuance of these Regulations, which renewal or amendment alone meets the financial threshold requirement of Chapter 326, must complete for itself, prior to execution of the Agreement, and shall collect from all employers, Contractors and Subcontractors, prior to authorizing such employers, Contractors or Subcontractors to perform any work under the Agreement or on the Development Site, a Form WE-30, "Affidavit Regarding Wage Theft and Payroll Fraud," indicating whether there has been any Adverse Determination for Wage Theft or Payroll Fraud against the Person, employer, Contractor or Subcontractor during the immediately preceding 3 years.

4.2 Form WE-40 - Supplemental Affidavit Regarding Wage Theft and Payroll Fraud

Each Person entering into an Agreement after the issuance of these Regulations, renewing or amending an Agreement after the issuance of these Regulations, which renewal or amendment alone meets the financial threshold requirement of Chapter 326, or that has an existing Agreement executed on or after March 3, 2016 and prior to the issuance of these regulations, which Agreement has not yet expired, must complete for itself and must collect from all employers, Contractors and Subcontractors a Form WE-40, "Supplemental Affidavit Regarding Wage Theft and Payroll Fraud," within 30 days of the filing of a Complaint or any Adverse Determination rendered against the Person or against such employer, Contractor or Subcontractor for Wage Theft or Payroll Fraud.

4.3 Submissions to Director

Each Person that enters into an Agreement on or after March 3, 2016 shall submit all required Forms WE-30 and WE-40 to the Director within 30 days of receipt.

SECTION 5. COMPLAINTS OF WAGE THEFT OR PAYROLL FRAUD

5.1 Obligation to Report

Any Person who has entered into an Agreement, the term of which has 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 as set forth in this Section 5 of these Regulations.

5.2 Complaints Made Directly with the City

- a. A Complaint of Wage Theft or Payroll Fraud that is alleged to have occurred in connection with an Agreement or with a Development Site may be made with the Director on a Form WE-50, "Wage Theft or Payroll Fraud Complaint." If a complainant elects not to use a Form WE-50, he or she must include all of the specific information identified in Section 2.4(a)–(e) of these Regulations.
- b. Each Complaint must be accompanied by any direct evidence of Wage Theft or Payroll Fraud that may be within the complainant's possession or control.
- c. Complaints may be filed electronically by sending a completed and notarized copy of the Form WE-50 or other Complaint along with all supporting documentation via email to dei@cincinnati-oh.gov and including the phrase "Wage Enforcement Complaint" in the subject line of the email or by mailing or hand-delivering the original Complaint and copies of all supporting documentation to City of Cincinnati, Department of Economic Inclusion, ATTN: Wage Enforcement, 805 Central Ave., Suite 610, Cincinnati, OH 45202. A copy of Form WE-50 is included in the Appendix to these Regulations and is available on the DEI website at www.cincinnati-oh.gov/inclusion.
- d. Within 2 business days of receiving a Complaint, the Director will appoint a member of the DEI staff to do each of the following:
 - i. Review the Complaint;
 - ii. Request a copy of the contract with the Person, Contractor or Subcontractor alleged to have committed Wage Theft or Payroll Fraud;
 - iii. Determine the appropriate agency to which the Complaint should be referred for investigation for alleged violations of state or federal law or to determine what additional investigation may be necessary for alleged violations of Chapter 317 of the Cincinnati Municipal Code;

- iv. For alleged violations of state or federal law, report to the Director within 21 days of assignment his or her determination as to the state or federal agency responsible for investigation and enforcement of the particular type of Wage Theft or Payroll Fraud alleged in the Complaint to have occurred with a recommendation for referral; and
 - v. For Complaints concerning the failure of an employer to comply with the Living Wage provisions of Chapter 317 of the Cincinnati Municipal Code, complete the investigation within 21 days and make a determination recommendation to the Director.
- e. After receiving the staff recommendation, the Director shall:
- i. For alleged violations of state or federal law, report the Complaint to the appropriate state or federal agency within 7 days, reserving to the City the right to independently investigate and to take appropriate action as permitted under the Agreement and under Chapter 326 of the Cincinnati Municipal Code if the Director deems warranted; and
 - ii. For Complaints concerning an alleged violation of Chapter 317 of the Cincinnati Municipal Code, make a determination and communicate the same to the complainant and to the Person, Contractor or Subcontractor alleged to have violated the Chapter.

5.3 Reports Made to the City of Investigations by Other Agencies

- a. A Complaint of Wage Theft or Payroll Fraud that is alleged to have occurred in connection with an Agreement or with a Development Site may be made with the U.S. Department of Labor, the Ohio Department of Commerce, or another agency with the jurisdiction and authority to investigate and adjudicate such Complaints.
- b. Any Person with knowledge that a Complaint has been filed with a federal or state agency for Wage Theft or Payroll Fraud associated with an Agreement or with a Development Site shall report the same to the Director on Form WE-60 within 30 days of becoming aware of such a Complaint.

5.4 Notification and Monitoring Complaints

- a. Within 7 days of receiving a Complaint or a Form WE-60 report that a Complaint has been filed with another agency, or otherwise learning that a Complaint or Adverse Determination has been made, the Director will provide written notice to the Person stating that:

- i. If an Adverse Determination is rendered against the Person or the Person's Contractor or Subcontractor, the City will pursue any one or more available legal, contractual or equitable remedies, which may include, without limitation, any or all of the penalties set forth in subsections (c) and (d) of Section 327-7 of the Cincinnati Municipal Code; and
 - ii. Any Person, Contractor or Subcontractor against whom an Adverse Determination is made may submit to the Director a Form WE-70 with supporting documentation showing that the Adverse Determination is under review, has been formally contested, or has been appealed.
- b. DEI shall contact the investigating agency to request notification of the adjudication when made and to request periodic status updates.

SECTION 6. ACTION ON ADVERSE DETERMINATION

6.1 Determining Finality of Adverse Determination

After receiving notice that an Adverse Determination has been rendered by a federal or state investigating agency against a Person, a Person's Contractor or a Subcontractor with respect to any work done under an Agreement or on a Development Site, and that such Adverse Determination has become final either through exhaustion of all appeal or other contest opportunities or through the failure timely to request an appeal or contest, the Director will notify the City Manager, and DEI shall recommend remedies as set forth in Section 6.2 herein.

6.2 Remedies for Adverse Determination Against a Person or A Person's Contractor

- a. Once an Adverse Determination rendered against a Person or the Person's Contractor with respect to any work done under an Agreement or on a Development Site becomes final, the Director will recommend to the City Manager pursuit of any or all available legal, contractual or equitable remedies, which may include but not be limited to:
 - i. Termination of the Agreement with the Person or unilateral reduction of the City Incentive by up to 100% of the yet to be paid or provided City Incentive;
 - ii. Deeming the Person and/or Contractor ineligible for future Agreements or other contracts with the City until all Wage Theft and Payroll Fraud penalties have been paid in full;
 - iii. Debarment of the Person and/or Contractor from future Agreements or other contracts with the City; and

- iv. Notifying the Director of the Department of Community and Economic Development, the Finance Director, the City Purchasing Agent, the City Prosecutor, the Tax Commissioner, the City Prosecutor and any other relevant City officials of the Adverse Determination in order to determine if further action is necessary or available.
- b. For purposes of making recommendations for remedies in the event of an Adverse Determination that has become final, the Director 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.
- c. Any remedies available to the City under Cincinnati Municipal Code Section 326-7(d) and Regulation 6.2(a) above are in addition to, and not in replacement of, any remedies available to the City under an Agreement or otherwise. The pursuit of any remedy or remedies by the City shall not preclude the City's pursuit of any other remedy or remedies.

6.3 Remedies for Adverse Determination Against a Subcontractor

- a. Once an Adverse Determination against a Subcontractor with respect to any work done under an Agreement or on a Development Site becomes final, the Person, Contractor and/or Subcontractor shall have 30 days in which to reach a resolution of the Wage Theft or Payroll Fraud that is satisfactory to the City.
- b. If there has been no satisfactory resolution of the Wage Theft or Payroll Fraud within 30 days of the City's receipt of notification of a final Adverse Determination, the Director will recommend to the City Manager pursuit of any or all available legal, contractual or equitable remedies against the Person, the Person's Contractor and/or the Subcontractor, which remedies may include but are not limited to those set forth in Cincinnati Municipal Code Section 326-7(d) and in Regulation 6.2 above.

Issued this 7 day of September 2017



Harry Black, City Manager