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REMINDER

CITY COUNCIL

Dennis Fiorelli
President
Sara Continenza
Joe Frank
Marty Gelfand
Jane Goodman
Ruth Gray
Justin Tisdale

NOTICE OF MEETING

MEETING OF: **FINANCE COMMITTEE**

CALLED BY: JOE FRANK, CHAIRMAN

DATE: **October 15, 2019**

LOCATION: COMMITTEE/JURY ROOM

TIME: 7:00 P.M.

RE: ORD. 11-19 ESTABLISHING GUIDELINES FOR WAGE ENFORCEMENT

COMMITTEE MEMBERS:

DENNIS FIORELLI
RUTH GRAY

COUNCIL MEMBERS:

SARA CONTINENZA
MARTY GELFAND
JANE GOODMAN

ADMINISTRATION:

BRENDA WENDT, FINANCE DIRECTOR

CITY OF SOUTH EUCLID, OHIO

ORDINANCE NO.: 11-19
INTRODUCED BY: Fiorelli
REQUESTED BY: Mayor

May 28, 2019

AN ORDINANCE

AN ORDINANCE ENACTING NEW SECTIONS 172.27 THROUGH 172.42 ENTITLED "WAGE ENFORCEMENT", AS CONTAINED IN CHAPTER 172 "MUNICIPAL INCOME TAX" OF TITLE NINE "TAXATION", OF PART ONE "ADMINISTRATIVE CODE" OF THE CODIFIED ORDINANCES OF THE CITY OF SOUTH EUCLID, OHIO, FOR THE PURPOSE OF ESTABLISHING GUIDELINES FOR WAGE ENFORCEMENT; AND DECLARING AN EMERGENCY.

WHEREAS, the City has an interest in ensuring that workers within its corporation limits, particularly individuals working on City-supported projects, are paid in compliance with all federal, state, and local laws; and

WHEREAS, a study by the National Employment Law Project found that some amount of pay is illegally withheld routinely, from paychecks of over sixty percent of low-wage workers in major cities across the United States; and

WHEREAS, the Ohio Attorney General's Office has estimated that more than 90,000 Ohio workers were illegally misclassified as independent contractors rather than their real legal status as full employees, resulting in a cost to the State of Ohio and local governments of hundreds of millions of dollars in lost unemployment compensation, workers' compensation premiums, and state and local income taxes, and

WHEREAS, when employers in the City of South Euclid commit this type of wage theft or payroll fraud, their illegal activity costs the City income tax revenue, negatively impacting the City's ability to pay for basic services; and

WHEREAS, it is necessary to clarify the City's interest in protecting workers from wage theft and payroll fraud in contracts from wage theft and payroll fraud in which the City enters; and

WHEREAS, payroll fraud refers to when a business conceals its true tax or other financial liability to a government agency, most commonly by misclassifying employees or paying for business transactions in cash or its equivalent without keeping appropriate records; and

WHEREAS, wage theft means not properly paying workers for all work performed, most commonly by paying less than minimum wage, not paying for all hours worked, failing to pay prevailing wage, or failing to pay overtime, in violation of local, state, or federal law; and

WHEREAS, Council also desires that the City take all possible actions to recover any incentives that were offered to parties doing business with the City as a market participant if those parties, or their contractors or subcontractors, are found to have committed wage theft or payroll fraud; and administrative hearing any government body, or industry-specific regulatory or investigative body.

NOW THEREFORE BE IT RESOLVED by the Council of the City of South Euclid, Ohio that new sections 172.27 through 172.42 read as follows:

Section 1:

172.27 LEGISLATIVE INTENT AND PURPOSE.

It is the purpose of this Chapter to assure that when the City provides incentives to private parties or entities to support development within the City, those private parties or entities fully comply with state and federal payroll and wage and hour laws, thereby ensuring that workers receive proper compensation for their work. Where there are violations of those state and federal wage and payroll laws on City supported developments, this chapter obligates any parties involved in the development know, are aware or should be aware of violations report them to the City in a

timely manner. This Chapter also puts parties or entities that receive development incentives from the City on notice that if they or their subcontractors violate wage or payroll laws, the City intends to recoup its investment to the extent allowed under the laws and regulations governing those City-sponsored events.

172.28 DEFINITIONS.

For the purpose of this Chapter, the words and phrases defined in the section hereunder shall have the meanings respectively ascribed to them by the Ohio Revised Code and Ohio common law, unless specifically defined in this Chapter.

- (a) Adverse Determination. A determination that a person has committed wage theft or payroll fraud. Such determination involves an administrative determination, arbitration award or decision, or civil judgment, including any determination made in or through an administrative hearing any government body, or industry-specific regulatory or investigative body.
- (b) Agreement. Any contract entered into between the City and person or business entity which the City provides an incentive or benefit that is projected to exceed twenty-five thousand dollars (\$25,000.00), including but not limited to the following:
 - (1) Tax abatements
 - (2) Tax increment financing contract or agreement
 - (3) Any commercial loan, provided by or backed by the City
 - (4) Any conveyance of land for less than fair market value

Contractor. "Contractor" means any firm, individual, co-partnership, corporation, association or any other organization, or any combination thereof, who by himself or itself or by or through others constructs, alters, repairs, adds to, subtracts from, reconstructs or remodels any building, structure or appurtenance thereto, or who or which undertakes, offers to undertake, purports to have the capacity to undertake or submits a bid to do so and whose work requires a permit by these Codified Ordinances.

"Contractor" includes subcontractors and also specialty contractors whose operations as such are the performance of construction work requiring special skill and whose principal contracting business involves the use of specialized building trades or crafts, and whose work requires a permit by these Codified Ordinances. Any property owner in the City requesting more than one building permit within a three-year period for the construction of a new dwelling shall be considered a contractor.

- (c) Complaint. Any report made to the City or any governmental agency having relevant jurisdiction that a person, business entity, non-profit, or other entity has committed wage theft or payroll fraud. A complaint may be such a report submitted to the U.S. Department of Labor, the Ohio Department of Commerce, or another body with the 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 include the following information in order to be considered a valid complaint: name of the person, business entity, non-profit, or other entity to have allegedly committed the wage theft or payroll fraud; the project during which or the agreement under which the person is alleged to have committed the theft or fraud; a description of the theft or fraud suspected to have been committed; the name of the complainant; and the name of at least one witness or victim of the theft or fraud, which personally be the complainant.
- (d) Development Site. The property that is the subject of an agreement or on which the contractual undertaking is to be performed.
- (e) Payroll Fraud. Concealing a person's true tax or other financial liability to a government agency from government licensing, regulatory, or tax 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 any other means.
All such sworn statements shall be submitted to the City within thirty (30) days of receipt by the person who entered into the agreement.

- (f) Wage Theft. A violation of Ohio's Prompt Pay Statute, O.R.C. 4113.15; the Ohio Minimum Fair Wage Standards Act, O.R.C. Chapter 411; 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; statute or regulation of another state that may apply to a particular agreement; or the LOCAL LAWS if applicable.
- (g) Subcontractor. Any individuals, partnerships, corporations, association or other for profit or non-profit entities that enter into a contract with a contractor to perform work on a development site or work pursuant to, related to, or in furtherance of an agreement.

172.29 REPORTING WAGE THEFT AND PAYROLL FRAUD.

- (a) Any individual, partnership, corporation, association or other for profit or non-profit entity entering into an agreement with the City shall include provisions in solicitations and contractors regarding a development site that requires all employers, contractors, and subcontractors to provide a sworn statement as to whether there has been any adverse determination against the employers, contractors, and subcontractors within the preceding five (5) year period for wage theft or payroll fraud.
- (b) Any individual, partnership, corporation, association or other for profit or non-profit entity entering into an agreement shall require that any contractor or subcontractor performing work or proposing to perform work on a development site shall provide a sworn statement whether there has been an adverse determination rendered against that contractor or subcontractor in the preceding five (5) year period for wage theft or payroll fraud.
- (c) Any individual, partnership, corporation, association or other for profit or non-profit entity entering into an agreement shall include provisions in solicitations and contractors regarding the development site that requires all contractors, subcontractors, and employers to provide it with an updated sworn statement with in thirty (30) days of any adverse determination rendered against the employer for any wage theft or payroll fraud.
- (d) Any individual, partnership, corporation, association or other for profit or non-profit entity, who have entered into 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 thirty (30) days of receipt by the person who entered into the agreement.

172.30 CONTRACTOR OR AGREEMENT LANGUAGE

All agreements subject to this Chapter shall contain the following two (2) provisions or substantially similar language.

- (a) This contract is the subject of the Wage Enforcement provision of the City of South Euclid Municipal Code. These provisions require any individual, partnership, corporate, association or other for profit or non-profit entity 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 defined by 1543.03 to the City of South Euclid within thirty (30) days of notification of the complaint or adverse determination.
- (b) Under the Wage Enforcement provision, the City shall have the authority to terminate this Agreement 'or reduce the incentives or subsidies to be provided under this Agreement and seek other remedies.

The omission of the contractor language above in any agreement shall not constitute a waiver of this Chapter's requirements or of any other legal requirement with respect to such agreement, the development site, or any contractor or subcontractor.

172.31 WAGE THEFT MONITORING, INVESTIGATION, AND COMPLIANCE

- (a) The City of South Euclid shall develop rules and regulations for the following:
 - (1) Review of agreements to ensure that language required by this Chapter is included.

- (2) Monitoring of agreements to ensure compliance with this chapter, including reviewing complaints, referring complaints to appropriate agency for investigation and monitoring the outcome of complaints, for any complaints about the practice of any person, contractor or subcontractor relating to the provisions of this Chapter.
 - (3) Allow third parties to submit a complaint to the City alleging wage theft or
- (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, the following shall apply:
- (1) The City of South Euclid Municipal officer or their 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 City of South Euclid's Municipal office or their designee reserves the right to investigate wage theft and payroll fraud and take appropriate action.
 - (3) The City of South Euclid's Municipal office will provide a written notice to the person stating that, if an adverse determination is rendered against an individual, partnership, corporation, association or other for profit or non-profit entity, contractor, 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 or contractor may provide the City with information showing that the adverse determination is under review, contested, or appealed.
- (c) Whenever any adverse determination is rendered against any individual, partnership, corporation, association or other for profit or non-profit entity, subcontractors or contractors and if there is no resolution of the wage theft violation or payroll fraud satisfactory to the City within thirty (30) days of the City's receipt of the 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 up to 100% of the yet to be paid or provided incentive or benefit.
 - (2) Deeming the individual, partnership, corporation, association or other for profit or non-profit entity, or its contractor or subcontractor, ineligible for future agreement or other contractors with the City until all wage theft and payroll fraud penalties have been paid in full.
 - (3) Debarment of individual, partnership, corporation, association or other for profit or non-profit entity, or its contractors or subcontractors for future agreements or other contracts with the City for a period of one (1) year; and
 - (4) Informing the relevant City departments of the adverse determination, including but not limited to the tax commissioner, the department of finance, and the City prosecutor, in order to determine if further action is necessary.
- (c) The City of South Euclid shall be the department/agency with the primary responsibility for investigation, record keeping, and enforcement of this Chapter.

172.32 APPLICATION TO NEW CONTRACTS

The provision of this chapter shall apply to the following:

- a) Agreements entered into after the effective date of the ordinance codified in this Chapter;
- b) Renewals and/or amendments to agreements entered in to after the effective date of the ordinance codified in this Chapter which renewal or amendment alone meets the financial threshold requirements of this Chapter,

172.33 SEVERABILITY.

Each section and each part of each section of this chapter is declared to an independent section of part of a section. 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, of the application thereof to any person or circumstance, is held to be invalid, the remaining

sections or parts of the sections and the application of such provisions shall continue to be valid and in effect.

Section 2. That except as herein amended and supplemented, all the provisions of Chapter 172, Municipal Income Tax of the Codified Ordinances of the City of South Euclid, Ohio, shall remain in full force and effect.

172.34 REGISTRATION REQUIRED.

- (a) No person, firm, co-partnership, corporation, association or any other organization, or any combination thereof, shall engage in the business, perform any work which requires a permit or otherwise act in the capacity of a contractor within the City without first being duly registered by the City to perform such work.
- (b) All contractors are hereby required to submit to the Building Department a list of every subcontractor working for them in the City and notify the City of any changes.

172.35 APPLICATION.

- (a) Applicants for registration shall make application at the office of the Building Commissioner on forms prescribed by the Building Commissioner. Each application for registration shall contain the name of the person applying, the location of his place of business, whether such applicant is duly authorized to act for such firm, co-partnership, corporation, association or any combination thereof, as well as such further information as the Building Commissioner shall prescribe.
- (b) The applicant shall submit a current license issued by the State of Ohio relevant to the trade. Such application shall be granted if the Building Commissioner finds that the applicant is qualified to perform the work for which the application for registration is submitted.
- (c) Applicants may apply for registration in the following categories:
 - (1) General Contractor. Contractors performing general trades work including prime builders, developers, or subcontractors, for concrete work, fences, excavators, carpentry, drywall, siding, and roofing work or any related trade as determined by the Building Commissioner.
 - (2) HVAC Contractor. Contractors engaged in the business of installation, repair and replacement of heating, ventilation, air conditioning or mechanical piping systems. Contractors registered in this category may take out permits for heating, ventilating and air conditioning systems, plumbing and electrical systems directly related to connections for the equipment installed.
 - (3) Electrical Contractor. Contractors performing any electrical work covered by the National Electrical Code including fire alarm systems and communications, data wiring installation.
 - (4) Plumbing Contractor. Contractors performing any plumbing work covered by State or local plumbing codes. Contractors performing waterproofing, additional drain tile systems, sewer work, gas piping, fire sprinkler systems and similar work may be registered in this category. Plumbing contractors may take out permits for work customarily associated with their trades such as excavating and/or street openings.
- (d) Evidence of repeated violations of the Building Code or other ordinances of the City shall be sufficient evidence to deny the issuance of a registration.

172.36 REGISTRATION FEE.

- a) The fee shown in Chapter 1125 shall be submitted with the original application and each renewal thereafter, which fee shall be retained by the City and credited to the General Fund. Such registration shall be valid for the calendar year in which issued.
- b) Registration fees as set forth in subsection (a) hereof shall be doubled if a contractor commences activity or work requiring registration in the City without first having become a registered contractor in the City.

172.37 SURETY BOND.

- a) Every applicant shall, upon approval of the registration application, furnish and file with the Building Commissioner a contractors Surety Bond in the amount often thousand dollars (\$10,000), the form of both to be approved by the Director of Law, guaranteeing full and faithful compliance by the applicant with all the provisions of the Building Code and with pertinent rules and regulations promulgated by the authority of the Building Code, and

- binding the surety thereon to correct or abate any violations of this Building Code or of pertinent rules or regulations promulgated by authority of this Building Code whenever the applicant named as the principal on such bond refuses, neglects or fails to correct or abate such violations within a reasonable time limit set by the Building Commissioner.
- b) The Building Commissioner shall notify the registered contractor that the violation requires immediate correction and that the surety bond will be in jeopardy. Such a notice shall be in writing and delivered in person or by registered mail to the address shown in the contractor's registration.
 - c) When the Building Commissioner determines that, after delivering the notice a registered contractor has either failed to take significant action to correct the violation in accordance with the time limits established by the Building Commissioner or has failed, in good faith, to pursue the corrections diligently to completion, he or she may notify the registered contractor that he or she intends to take action against the surety bond. Such a notice shall be in writing and delivered in person or by mail to the address shown in the contractor's registration.
 - d) Within three business days of delivery of the notice, the registered contractor may request a hearing before the Building Commissioner for the purpose of disputing either that a violation exists or that proper action has not been taken to correct the violation. If such a request is made in writing, the Building Commissioner shall hold such a hearing within five business days.
 - e) If no request has been timely received for a hearing under subsection (d) hereof, or if, following such a hearing, the Building Commissioner finds that a violation does exist and that the registered contractor has not taken proper action to correct it, the City may then proceed to make the corrections itself by its own labor or by the contracting out for such corrections. All costs incurred by the City in making such corrections may be paid from the bond in the name of the registered contractor. If, after making such deductions, there remains a balance due to the City, the City shall be free to pursue other legal recourse available to obtain full reimbursement.
 - f) The City shall have the right to refuse a bond from any Surety Company after demonstrating just cause. Prior failure to unreasonably pay on demand in the sole discretion of the City shall be considered just cause.

172.38 INSURANCE.

Each general contractor applying for registration shall furnish evidence of insurance for bodily injury in the amount of one hundred thousand dollars/three hundred thousand dollars (\$100,000/300,000), and for property damages in the amount of at least fifty thousand dollars (\$50,000). The City of South Euclid, Ohio shall be named as a holder of the certificate of insurance.

172.39 REGISTRATION WITH INCOME TAX DEPARTMENT.

The Building Commissioner shall forward the names of all contractors who have registered in the City and any lists of subcontractors to the Tax Administrator-Coordinator of the City.

172.40 REMEDIES.

- a) Revocation. A contractors registration may be revoked or suspended at any time by the Building Commissioner for any violation of this Building Code or ordinances or other laws or rules or regulations of the City, or other just cause which the Commissioner in his sole discretion believes constitutes a danger or safety risk to persons or property in the City including but not limited to the causes listed in Sections 172.27 through 172.39.
- b) Appeal to Planning, Zoning, and Building Committee of Council. No contractor deemed by the Building Commissioner or his/her designee to be in violation of the requirements hereof shall be permitted to perform any work whatsoever within the City. Applicants may appeal any decision of the Building Commissioner to the Planning, Zoning and Building Committee of Council at no cost. Appeals must be made within ten days of the Commissioner's decision.

172.41 MUNICIPAL OR UTILITY COMPANY EMPLOYEES' EXEMPTION.

The provisions (requiring registration of contractors) of this Building Code shall not apply to officials or employees of the City engaged in Municipal work, or to officials or employees of

public utilities engaged in such work for such public utilities as they are authorized by law to furnish or provide.

172.42 PENALTY.

Any contractor failing to register as required herein or violates any of the registration requirements herein and commences activity or work requiring registration in the City without first having become a registered contractor in the City shall have the registration fees as set forth in subsection (a) doubled. The contractor may also suffer penalty as provided in Section 172.99. Each day a contractor continues to work without being registered constitutes a separate violation.

Section 3: That is hereby found and determined that all formal actions of this council concerning and relating to the passage of this Ordinance were adopted in an open meeting of this Council, and that all deliberations of this Council and any of its committees on or after November 25, 1975, that resulted in such formal action were in meetings open to the public in compliance with all legal requirements, including Section 121.22 of the Ohio Revised Code.

Section 4: That this Ordinance is deemed to be an emergency measure necessary for the immediate preservation of the public peace, health, and safety within the City and therefore should be adopted at the earliest possible time. Wherefore this Ordinance shall take effect and be in force from and after the earliest period allowed by law and upon signature of the Mayor.

Passed this _____ day of _____, 2019.

Attest:

Dennis Fiorelli, President of Council
Approved:

Keith A. Benjamin, Clerk of Council

Georgine Welo, Mayor

Approved as to form:

Michael P. Lograsso, Director of Law