WAGE THEFT ORDINANCE

WHEREAS, the City Council hereby finds and determines that wage theft in all its various forms, including the illegal misclassification of employees as independent contractors, has become an epidemic particularly in the construction industry; and

WHEREAS, the City Council hereby further finds and determines that the problem is so pervasive that traditional law enforcement agencies lack the resources to address it effectively, and that, as a result, municipalities have the civic responsibility to do whatever is within their power and authority to prevent such illegal practices from taking place on their own construction projects and on projects receiving municipal tax relief; and

WHEREAS, the City Council hereby further finds and determines that wage theft is often accompanied by employer tax and insurance fraud, with employers failing to pay their payroll taxes and workers compensation premiums, and that it will not tolerate spending tax dollars or providing tax relief for construction projects being built by contractors engaging in tax fraud; and

WHEREAS, the City Council hereby further finds and determines that, in any event, taxpayer money is most efficiently and productively spent by awarding construction contracts to, and providing tax relief for construction projects built by, reputable, honest, law-abiding firms that include and enforce provisions requiring, with respect to their own employees and those of subcontractors at all tiers, compliance with state laws governing the payment of prevailing wages and other wage and hour laws, the provision of workers compensation coverage, and the proper classification of individuals as employees and not as independent contractors, as well as state law concerning health insurance coverage; and

WHEREAS, the City Council hereby further finds and determines that, due to the pervasiveness of wage theft in the construction industry, significant financial incentives are necessary to motivate property owners and their general contractors to take steps sufficient to ensure that wage theft does not occur on their projects; and

WHEREAS, the City Council hereby further notes that a Disparity Study has been conducted that concludes that a significant disparity exists between the demographics of the workforce in the Pioneer Valley and the representation of people of color, and women from that workforce who actually are employed by construction industry contractors in the area; and

WHEREAS, the City Council hereby further finds and determines that, based on that Disparity Study and on the high level of unemployment, diversified workforce demographics, and large population of people of color, the residents of the City of Easthampton should be part of and benefit from public construction projects and projects receiving municipal tax relief and that, accordingly, it is appropriate to require that each public construction project and project receiving tax relief include employment opportunities for the City of Easthampton residents, people of color, women, and veterans; and

NOW, THEREFORE, BE IT ORDAINED by the City Council that the Easthampton Code of Ordinances be amended to add to Chapter 4 Buildings and Building Regulations, Section 4-3 Wage Theft to include the following:
Section 1. DEFINITIONS

A. "Easthampton resident" means any person for whom the principal place of residence is within the City of Easthampton during the entirety of time the person works on a Public Construction Project within the City. Proof of such residence may include, but is not limited to, the following: a valid Massachusetts Driver’s License or Massachusetts Identification Card, utility bills, proof of voter registration, or such other proof acceptable to the City.

B. "Person of Color" means:

1. African-American - All persons having origins in any of the Black racial groups of Africa, including, but not limited to, African-Americans, and all persons having origins in any of the original peoples of the Cape Verdean Islands.

2. Hispanic - All persons having their origins in any of the Spanish-speaking peoples of Mexico, Puerto Rico, Cuba, Central or South America, or the Caribbean Islands.

3. Asian American - All persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian sub-continent, or the Pacific Islands, including, but not limited to China, Japan, Korea, Samoa, India, and the Philippine Islands;

4. Indigenous, American Indian or Native American - All persons having origins in any of the original peoples of North America and who are recognized as an Indian by a tribe or tribal organization; or

5. Eskimo or Aleut - All persons having origins in the original peoples of Northern Canada, Greenland, Alaska, and Eastern Siberia.

C. "Veteran" means a person who has served in any branch of the United States Armed Forces, and was not dishonorably discharged.

Section 2. MUNICIPAL CONSTRUCTION CONTRACTS

Whenever the City of Easthampton is procuring construction services subject to the provisions of M.G.L. Chapter 149, Chapter 149A or Chapter 30, §39M, the following shall be incorporated into the procurement documents and made part of the specifications and contract. Any person, company or corporation shall acknowledge, in writing, receipt of said requirements with their bid or proposal.

A. All bidders or proposers, contractors, and subcontractors and trade contractors, including subcontractors that are not subject to M.G.L. Chapter 149, §44E, (the “contractor”) under the bidder for projects subject to M.G.L. Chapter 149, §44A(2), M.G.L. Chapter 30, §39M and, proposers under M.G.L. c Chapter 149A, shall as a condition for bidding or subcontracting verify under oath and in writing at the time of bidding or submittal in response to an RFP or in any event prior to entering into a contract or subcontract at
any tier, that they comply with the following conditions for bidding, contracting or subcontracting and, for the duration of the project, shall comply with the following requirements and obligations:

1. The contractor shall not have been debarred or suspended from performing construction work by any federal, state or local government agency or authority in the past five years;

2. The contractor shall not have been found within the past five years by a court or governmental agency in violation of any law relating to providing workers’ compensation insurance coverage, misclassification of employees as independent contractors, payment of employer payroll taxes, employee income tax withholding, wage and hour laws, earned sick time, prompt payment laws, or prevailing wage laws;

3. The contractor shall maintain appropriate industrial accident insurance sufficient to provide coverage for all the employees on the project in accordance with M.G.L. Chapter 152 and provide documentary proof of such coverage included with the contractor’s submitted bid to the Procurement Office to be maintained as a public record;

4. The contractor shall properly classify employees as employees rather than independent contractors and treat them accordingly for purposes of prevailing wages and overtime, workers’ compensation insurance coverage, unemployment taxes, social security taxes and state and federal income tax withholding. (M.G.L. Chapter 149, §148B on employee classification).

5. The contractor shall comply with M.G.L. Chapter 151, §1A and M.G.L. Chapter 149, § 148 with respect to the payment of wages;

6. The contractor shall not discriminate against citizens of states other than Massachusetts in hiring individuals for the project but, as between prospective employees who are residents of Massachusetts, however, shall give preference to residents of the City of Easthampton. The City shall provide the contractor with local instructions on the preferred means to publicize employment opportunities to City residents.

7. The contractor shall provide employment in the amount of 15.3% of the contractor’s hours worked on the project to people of color, 6.9% of the contractor’s hours worked on the project to women, and 5% of the contractor’s hours worked on the project to Veterans. In the event the contractor cannot find qualified diverse workers, the contractor can submit documentation detailing efforts to meet these requirements.

8. The contractor must make arrangements to ensure that each employee of every contractor and subcontractor of any tier entering or leaving the project individually completes the appropriate entries in a daily
sign-in/out log. The sign in/out log shall include: the location of the project; current date; printed employee name; signed employee name; name of employee's employer and the time of each entry or exiting. The log shall contain a prominent notice that employees are entitled under state law to receive the prevailing wage rate for their work on the project. Such sign-in/out logs shall be provided to the City on a weekly basis with the certified payrolls and upon request shall be a public record.

9. The contractor, prior to bidding or, if not subject to bidding requirements, prior to performing any work on the project, shall sign under oath and provide to the City a certification that they are not debarred or otherwise prevented from bidding for or performing work on a public project in the Commonwealth of Massachusetts or in the City.

10. The contractor 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; and

11. The contractor must submit weekly to the Procurement Office certified payrolls for all employees. A certified payroll format will be provided by the City that includes the employees full name, address, identifying number, gender and race, and which tabulates hours worked for females, people of color and residents of Easthampton. Each contractor shall provide a copy of the OSHA 10 card for every employee attached to the first certified payroll they submit on which the employee appears.

12. The applicant and contractor agrees to attend all regularly scheduled and/or special meetings convened by the City for the purpose of reviewing workforce hiring commitments in parts 6 and 7.

B. A proposal or bid submitted by any general bidder or by any trade contractor or subcontractor under the general bidder or proposer that does not comply with any of the foregoing conditions for bidding shall be rejected, and no subcontract for work outside the scope of M.G.L. Chapter 149, §44F shall be awarded to a subcontractor of any tier that does not comply with the forgoing conditions.

C. All bidders or proposers and all trade contractors and subcontractors under the bidder or proposer who are awarded or who otherwise obtain contracts on projects subject to M.G.L. c.149, §44A(2), c. 149A, or c.30, §39M shall comply with each of the obligations set forth in paragraph A above for the entire duration of their work on the project, and an officer of each bidder or
subcontractor under the bidder shall certify under oath and in writing on a weekly basis that they are in compliance with such obligations.

D. Any proposer, bidder, trade contractor or subcontractor under the bidder or proposer that fails to comply with any one of obligations set forth in Paragraph A above for any period of time shall be, at the sole discretion of the City, subject to one or more of the following sanctions: (1) cessation of work on the project until compliance is obtained; (2) withholding of payment due under any contract or subcontract until compliance is obtained; (3) permanent removal from any further work on the project; (4) liquidated damages payable to the City in the amount of 5% of the dollar value of the contract.

E. In addition to the sanctions outlined in Paragraph D above, a proposer, general bidder or contractor shall be equally liable for the violations of its subcontractor with the exception of violations arising from work performed pursuant to subcontracts that are subject to M.G.L. c.149, §44F. Any contractor or subcontractor that has been determined by the City/Town or by any court or agency to have violated any of the obligations set forth in Paragraphs A and C above shall be barred from performing any work on any future projects for six months for a first violation, three years for a second violation and permanently for a third violation.

F. This portion of the Ordinance goes into effect immediately.

Section 3. TAX INCREMENT FINANCING AND HOUSING DEVELOPMENT EXEMPTION AGREEMENTS

Minimum Mandatory Conditions. In addition to any other conditions that may be required in connection with tax increment financing or housing development exemption relief granted by the City, each Tax Increment Financing Agreement and each Housing Development Exemption Agreement entered into between the City and the recipient of such relief shall be subject to and shall include the following set of mandatory conditions:

A. It shall be a special and material condition of this Agreement 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 that is engaged to perform the construction work during the term of this Agreement on the property that is the subject of this Agreement (hereinafter, collectively and individually, the “contractor”) shall comply with the following qualifications and conditions at all times during their performance of work on the property:

1. The contractor has not been debarred or suspended from performing construction work by any federal, state or local government agency or authority in the past five years;

2. The contractor has not been found within the past five years by a court or governmental agency in violation of any law relating to providing workers
compensation insurance coverage, misclassification of employees as independent contractors, payment of employer payroll taxes, employee income tax withholding, wage and hour laws, earned sick time, prompt payment laws, or prevailing wage laws;

(3) The contractor 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 as part of the application process, or prior to commencing any work to the Procurement Office to be maintained as a public record;

(4) The contractor must properly classify employees as employees rather than independent contractors and treat them accordingly for purposes of minimum wages and overtime, 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 contractor must comply with G.L. c. 151, §1A and G.L. c. 149, § 148 with respect to the payment of wages;

(6) The contractor 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; and

(7) The contractor shall not discriminate against citizens of states other than Massachusetts in hiring individuals for the project but, as between prospective employees who are residents of Massachusetts, however, shall give preference to residents of the City of Easthampton.

(8) The contractor shall provide employment in the amount of 15.3% of the contractor’s hours worked on the project to people of color, 6.9% of the contractor’s hours worked on the project to women, and 5% of the contractor’s hours worked on the project to Veterans. In the event the contractor cannot find qualified diverse workers, the contractor can submit documentation detailing efforts to meet these requirements.

(9) The applicant shall submit a list to the City of all the expected contractors to work on the project as part of the applicant’s request for tax relief. The list shall include the name of the primary contact, the Contractor’s address and either a phone number or email address. The applicant will provide a final all inclusive list to the City within 30 days of the conclusion of the project.

(10) The applicant and/or the contractor must submit monthly to the Procurement Office certified payrolls for all contractors. A certified payroll format will be provided by the City that includes the employees full name, address, identifying number, gender and race, and which tabulates hours.
worked for females, people of color and residents of Easthampton. Each contractor shall provide a copy of the OSHA 10 card for every employee attached to the first certified payroll they submit on which the employee appears.

(11) The contractor must make arrangements to ensure that each employee of every contractor and subcontractor of any tier entering or leaving the project individually completes the appropriate entries in a daily sign-in/out log. The sign in/out log shall include: the location of the project; current date; printed employee name; signed employee name; name of employee’s employer and the time of each entry or exiting. Such sign-in/out logs shall be provided to the City on a weekly basis with the certified payrolls and upon request shall be a public record.

(12) The contractor agrees to attend all regularly scheduled and/or special meetings convened by the City for the purpose of reviewing workforce hiring commitments in parts 6 and 7.

(13) Complaints concerning compliance with the qualifications and conditions set forth above shall be directed to the staff at the Procurement Office responsible for project compliance, who shall investigate the complaint and make a determination as soon as administratively feasible and notify the complaining party and the contractor and applicant or its designee. Such complaints must be submitted in writing no later than 270 days following the completion of the construction project.

B. If any person or entity subject to the foregoing qualifications and conditions fails to comply with any of them with respect to work on the property, the parties agree that such an event materially frustrates the public purpose for which this Agreement and any certification by the state was intended to advance. In such an event, the City shall petition the appropriate state agency or body for revocation of the certification and, upon such revocation, the tax relief provided by this Agreement shall be terminated and the property owner shall pay to the City an amount equal to the value of the tax relief already received under this Agreement.

C. The applicant certifies as part of the application process that any contractor or subcontractor previously determined by the City or by any court or agency to have violated any of the obligations set forth in Paragraphs A for the previous five years shall not be hired to perform work on the project.

D. In the event the owner of the property challenges the termination of the tax relief provided by this Agreement and/or the revocation by the state of any certification, the owner shall set aside in an escrow account an amount equal to the full amount of the tax savings that previously would have
accrued under this Agreement while any such challenge remains pending. The owner of the property shall have a continuing obligation to contribute to the escrow account amounts equal to the additional tax savings that accrue under this Agreement while its challenge remains pending. The owner shall promptly provide to the City with documentation of its compliance with this obligation. The conditions of the escrow account shall provide that, in the event the owner is unsuccessful in its challenge, the funds in the account shall be paid to the City. The owner’s obligations under this subsection shall be judicially enforceable. It is the intent of the parties that the residents of this municipality are third party beneficiaries of this Agreement, and that it may be enforced in a civil proceeding brought by not less than 10 taxable inhabitants.

E. Section 3 goes into effect January 1, 2020.

Section 4. SEPARABILITY

If any provision of this Ordinance, or the application of such provision to any person or circumstances, shall be enjoined or held to be invalid, the remaining provisions of this Ordinance, or the application of such provisions to persons or circumstances, other than that which is enjoined or held invalid shall be not affected thereby.