

ORDINANCE NO. 2016-32

AN ORDINANCE ENACTING CHAPTER 106 WAGE ENFORCEMENT
OF THE CODIFIED ORDINANCES AND DECLARING AN EMERGENCY

WHEREAS: Council desires to create Chapter 106 Wage Enforcement of the Codified Ordinances of the City of Parma Heights by requiring rules, regulations for wage enforcement.

NOW, THEREFORE, BE IT ORDAINED by the Council of the City of Parma Heights, County of Cuyahoga and State of Ohio:

Section 1. Chapter 106 Wage Enforcement of the Codified Ordinances of the City of Parma Heights is hereby enacted to read as follows:

**CHAPTER 106
WAGE ENFORCEMENT**

106.01 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 who know of the violations to 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 contractors 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 incentives.

106.02 DEFINITIONS.

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

(a) “Adverse Determination” means a determination that a person has committed wage theft or payroll fraud. Such determination includes 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" means any contract entered into between the City and a person under which the City provides an incentive or benefit that is projected to exceed \$25,000, including but not limited to the following:

- (1) Tax abatements or credits;
- (2) Tax increment financing contract or agreement;
- (3) Any commercial loan, provided by or backed by the City; or
- (4) Any conveyance of land for less than fair market value.

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.

(c) "Contractor" means the individual, partnership, corporation, association or other entity that is leading the construction of provision or goods or services on a development site on behalf of a person.

(d) "Complaint" means a report made to the City or any governmental agency having relevant jurisdiction that a person 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 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 who has allegedly committed the theft or fraud; the project during which or the agreement under which that 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 person may be the complainant.

(e) "Development Site" means the property that is the subject of an agreement or on which a contractual undertaking is to be performed.

(f) "Payroll Fraud" means 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.

(g) "Person" means any individual, partnership, corporation, firm, trust, association or other business entity that enters into an agreement with the City.

(h) "Subcontractor" means any person who enters into a contract with a contractor to preform work on a development site or work pursuant to, related to, or in furtherance of an agreement.

(i) “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 agreement; or any successor to any of these laws or regulations.

106.03 REPORTING WAGE THEFT AND PAYROLL FRAUD.

(a) Any person entering into an agreement with the City shall include provisions in solicitations and contracts regarding a development site that require all employers to provide a sworn statement as to whether there has been any adverse determination against the employer within the preceding three (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 three (3) year period for wage theft or payroll fraud.

(c) Any person entering into 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 against the employer for any wage theft or payroll fraud.

(d) Any person who has 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 30 days of receipt by the person who entered into the agreement.

106.04 CONTRACT OR AGREEMENT LANGUAGE.

All agreements subject to this chapter shall contain the following two paragraphs or substantially similar language.

“This contract is or may be subject to the Wage Enforcement provisions of the Parma Heights 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 defined in Chapter 106 of the Parma Heights Municipal Code) against the person, contractor or subcontractor to the City within thirty (30) days of notification of the complaint or adverse determination.”

“Under the Wage Enforcement provisions, the City shall have the authority, under appropriate circumstances, to terminate this Agreement or reduce the incentives or subsidies to be provided under this Agreement and to seek other remedies.”

The omission of this language 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.

106.05 WAGE THEFT MONITORING, INVESTIGATION AND COMPLIANCE.

(a) The City 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 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 chapter.
- (3) The submission of complaints to the City alleging wage theft or payroll fraud by a person who has entered into an agreement with the City.

(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 City 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 reserves the right to investigate wage theft or payroll fraud complaints and to 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 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 a person or the person's contractor for wage theft or payroll fraud with respect to any work 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, including but not limited to the Service Director, Finance Director, City Engineer, Law Director and the City Prosecutor, 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 thirty (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 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 subcontractor from future agreements or other contracts with the City; and
- (4) Informing the relevant City departments of the adverse determination, including but not limited to the Service Director, Finance Director, City Engineer,

Law Director and the City Prosecutor 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. The pursuit of any remedy or remedies by the City shall not exclude the City's pursuit of any other remedy or remedies.

106.06 APPLICATION TO NEW CONTRACTS.

The provisions 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 into after the effective date of the ordinance codified in this chapter which renewal or amendment alone meets the financial threshold requirement of this chapter.

106.07 SEVERABILITY.

Each section and each part of each section of this chapter is declared to be an independent section or 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, or the application thereof to any person or circumstance, is held to be invalid, the renaming sections or parts of the sections and the application of such provisions shall continue to be valid and effective.

Section 2. This Council finds and determines that all formal actions of this Council concerning and relating to the adoption of this Ordinance were taken in an open meeting of this Council and that all deliberations of the Council and of any of its Committees comprised of a majority of the members of the Council that resulted in those formal actions were in meeting open to the public, in compliance with the law.

Section 3. This Ordinance is declared to be an emergency measure necessary for the public peace, health and safety of the Municipality and for the further reason it is necessary to enact Chapter 106 Wage Enforcement of the Codified Ordinances of the City of Parma Heights; wherefore, this ordinance shall be in full force and effect immediately upon its passage by Council and approval by the Mayor.

PASSED: 12-12-2016


PRESIDENT OF COUNCIL

ATTEST: Florence A. Bohdan

FILED WITH
THE MAYOR: 12-12-2016

12-12-2016
APPROVED

[Signature]
MAYOR.