

## **ORDINANCE AMENDING THE BOSTON RESIDENTS JOBS POLICY AND BOSTON EMPLOYMENT COMMISSION**

WHEREAS, the City of Boston expends substantial funds on construction projects to develop, repair, and maintain municipal facilities and infrastructure; and

WHEREAS, public funds spent by the City of Boston on construction projects are derived from taxes paid by Boston residents; and

WHEREAS, the City of Boston advances the public interest by ensuring all construction projects under its purview are constructed and administered in accordance with plans, specifications, and contract provisions furthering the economic inclusion policies of the City and promoting economic opportunities for Boston residents, people of color, and women; and

WHEREAS, the City of Boston and the Boston Planning and Development Agency also enable private developers to obtain state and federal funds and provide such developers with zoning relief, property tax, and other benefits, for the purpose of constructing public and private projects in the City of Boston; and

WHEREAS, the construction industry is an important component of the City's economy and it is in the City's and the public's best interest to increase the supply of qualified construction workers, particularly those historically underrepresented in the construction industry, including Boston residents, people of color, and women; and

WHEREAS, the City has made substantial public investments in its schools and workforce development system, including Madison Park High School, Building Pathways, and Operation Exit; and

WHEREAS, City-funded construction projects provide a crucial opportunity to connect participants in these City-funded or City-operated workforce development programs with employment and training opportunities, and to direct employment and training opportunities created by the City's public expenditures; and

WHEREAS, the City of Boston will continue to make construction project bids and awards in future years and pre-apprenticeship and apprenticeship training programs have successfully established a meaningful diversity of apprentice workers; and

WHEREAS, poverty continues to persist in Boston and different demographic groups continue to be disproportionately affected by unemployment and insufficient income; and

WHEREAS, the Mayor and the Office of Economic Development understand that economic equity is a defining challenge for the City of Boston and are committed to ensuring inclusion and equity in the workforce; NOW, THEREFORE,

BE IT ORDAINED BY THE CITY OF BOSTON AS FOLLOWS:

**SECTION 1.** City of Boston Code, Ordinances, Chapter 12, Section 12-10 is hereby amended by striking this section in its entirety.

**SECTION 2.** City of Boston Code, Ordinances, Chapter 8, Section 8-9.1 is hereby amended by striking the words "Contract Compliance Office," "Minority Person," "Resident," and their respective definitions, and adding the following at the end of the section:

*Bona fide Boston resident* means a worker who provides sufficient evidence of his or her status as a resident of the City of Boston as described in section 8-9.3(a)(2)(f).

*Boston Residents Jobs Policy standards* or *BRJP standards* means the standards as described below:

1. At least fifty-one percent of the total work hours of journey people and fifty-one percent of the total work hours of apprentices in each trade on a Covered Project shall be by bona fide Boston residents;
2. At least forty percent of the total work hours of journey people and forty percent of the total work hours of apprentices in each trade on a Covered Project shall be by people of color;
3. At least twelve percent of the total work hours of journey people and twelve percent of the total work hours of apprentices in each trade on a Covered Project shall be by women.

*City-Funded Project* means any construction project funded in whole or in part by City funds or funds which, in accordance with a Federal grant or otherwise, the City expends or administers.

*Commission* means the Boston Employment Commission.

*Compliance Monitor* means the person or persons assigned by the Boston Residents Jobs Policy office or the Boston Planning and Development Agency compliance office to monitor a Covered Project's compliance with this Ordinance.

*Covered Project* means (1) Any City-Funded Project as defined in this section or (2) Any Major Development Project as defined in this section.

*Developer* means an entity that owns or coordinates the construction or substantial rehabilitation of a Major Development Project.

*General Contractor* or *Construction Manager* means any person, firm, partnership, owner operator, limited liability company, corporation, joint venture, proprietorship, trust, association

or other legal entity that employs individuals to perform work on Covered Projects, including contractors and subcontractors of all tiers.

*Major Development Project* means any new construction or substantial rehabilitation project in the City for which a Project Notification Form has not already been submitted to the Boston Planning and Development Agency on or before January 31, 2017 for the specific construction or rehabilitation, which requires Zoning Relief, and in which it is proposed to erect a structure or structures having a total gross floor area (exclusive of all accessory parking garage space) in excess of fifty thousand (50,000) square feet or to enlarge or extend a structure or structures so as to increase its (or their) gross floor area (exclusive of all accessory parking garage space) by more than fifty thousand (50,000) square feet or to substantially rehabilitate a structure or structures having, or to have, after rehabilitation, a gross floor area (exclusive of accessory parking garage space) of more than one hundred thousand (100,000) square feet.

*People of color* means individuals who are Black, Hispanic/Latino, Asian/Pacific Islander, or Native American.

**SECTION 3.** City of Boston Code, Ordinances, Section 8-9.2 is hereby amended by striking the section in its entirety and inserting in place the following:

8-9.2. Boston Residents Jobs Policy office

(a) The Boston Residents Jobs Policy office in the Office of Economic Development (“BRJP office”) shall be responsible for the planning, implementation, and overall coordination of compliance monitoring on all Covered Projects, including but not limited to Major Development Projects. Some Covered Projects will be monitored by the Boston Planning and Development Agency compliance office (“BPDA compliance office”), which will assume the role of the BRJP office for purposes of this ordinance on those projects. On Covered Projects, the developer, general contractor/construction manager, and each subcontractor must meet with the assigned compliance monitor prior to beginning construction to discuss initial project overview, including project duration, dollar amount, workforce projections, and BRJP standards. Subcontractors added to a Covered Project after the beginning of construction must meet with the assigned compliance monitor prior to beginning work on the project.

(b) The BRJP office shall operate a referral program, called the Boston Residents Jobs Bank, which shall refer City residents, people of color, and women to general contractors, construction managers, and subcontractors to increase opportunities for Boston residents, people of color, and women for employment and training on construction projects within the City of Boston.

(c) Prior to the commencement of any Covered Project, the assigned compliance monitor shall:

1. Review spending plans for the project;
2. Review timeline and workforce projections for the project;
3. Identify the number of job positions to be created by the project;
4. Specify training needed for entry-level and semi-skilled positions by job title;

5. Assist the City, developers, and general contractors, in conjunction with appropriate unions and their existing collective bargaining agreements where applicable; with recruiting employees and arranging for training through established union apprenticeship programs. On non-union projects, assist the City, developers, and general contractors with recruiting employees through available community-based programs; and
6. Utilize the Jobs Bank to refer Boston residents, people of color, and women to general contractors and subcontractors to assist such general contractors/construction manager and subcontractors to comply with this Ordinance and to increase opportunities for Boston residents, people of color, and women for employment and training on construction projects within the City of Boston.

(d) On each Covered Project, the assigned compliance monitor shall track the number of hours completed by people of color who are Boston resident people of color.

**SECTION 4.** City of Boston Code, Ordinances, Section 8-9.3 is hereby amended by striking the section in its entirety and inserting in place the following:

#### 8-9.3 Compliance

(a) On any new Covered Project, a general contractor/construction manager or subcontractor may comply with the Boston Residents Jobs Policy by achieving, on a craft by craft basis, at least one of the following:

1. Meeting the BRJP standards as defined in section 8-9.1 and providing documentation of such to the assigned compliance monitor; or
2. Taking each of the following steps:
  - a. Prior to the start of construction, the general contractor/construction manager shall designate an individual to serve as a compliance officer for the purpose of complying with the Boston Residents Jobs Policy.
  - b. Prior to the start of construction, the general contractor/construction manager and each subcontractor then selected shall meet with the assigned compliance monitor for the purpose of reviewing the Boston Residents Jobs Policy standards, estimated construction activity over the construction period of the Covered Project, and each item listed in section 8-9.2(c). A representative of the awarding or contracting authority on public projects may attend the meeting. The general contractor/construction manager shall in a timely manner complete and submit to the Commission and the assigned compliance monitor a projection of the workforce needs over the course of construction of the Covered Project. Such submission shall reflect the needs by trade for each month of the construction process. This process shall continue with each subcontractor subsequently hired. All meetings shall be documented and a copy of the documentation shall be filed with the assigned compliance monitor.
  - c. Whenever any person involved in the construction of a Covered Project makes a request to a union hiring hall, business agent, general contractor/construction managers'

association, or community referral source for qualified construction workers, the request shall ask that those qualified applicants referred for construction positions be referred in proportions specified in the Boston Residents Jobs Policy and shall further contain a recitation of the standards listed in section 8-9.1. However, if the requesting party's workforce composition at any time falls short of any one or more of the standards, the requesting party shall adjust his or her request so as to seek to more fully achieve the proportions specified in section 8-9.1. If the union hiring hall, business agent, general contractor/construction managers' association, or community referral source to whom a request for employees has been made fails to fully comply with such request, the requesting party's compliance officer shall seek written confirmation from the hall, agent, association, or community referral source that there are insufficient employees in the categories in the request and that the insufficiency is documented on the unemployed list maintained by the hall, agent, association, or community referral source. Copies of any confirmations obtained, as well as the requests for confirmation, shall be forwarded to the assigned compliance monitor.

d. All Boston residents, people of color, and women applying directly to the general contractor/construction manager or any subcontractor for employment in construction on a Covered Project who are not subsequently employed by the party to whom application is made shall be referred by said party to the BRJP Jobs Bank and a written record of such referral shall be made by said party, a copy of which shall be sent to the assigned compliance monitor.

e. General contractors/construction managers and subcontractors shall maintain a current file of the name, address, and telephone number of each Boston resident, person of color, and woman who has sought employment with respect to a Covered Project, or who was referred to the general contractor/construction manager by the BRJP Jobs Bank but was not hired. The general contractor/construction manager shall maintain a record of the reason any such person was not hired. A copy of the file shall be sent each month to the assigned compliance monitor.

f. Before hiring, general contractors/construction managers and subcontractors shall obtain from each Boston Resident worker to be employed in the construction of the Covered Project a sworn statement containing the worker's name and place of residence, as well as a driver's license or state form of identification and a current (30 days), postmarked bill sent to their permanent residence. Documentation of residency shall be kept in the worker's file and be included in the initial compliance review. The residency verification will be good for the duration of the project. Failure to properly verify a worker's residency will result in not having the resident hours credited towards the overall project hours.

g. One week after the commencement of the construction of the project, and each week thereafter until the completion of the project, general contractors/construction managers and subcontractors shall submit electronically to the BRJP office or BPDA compliance office for the week just ended a report which contains the following information for each employee who performed any work on the project in the week just ended: the employee's name, place of residence, race, gender, craft, job category, apprenticeship participation,



number of hours worked, and employer. The report shall also include the total number of hours worked by the total workforce in each craft during the week just ended.

h. Compliance monitors will be allowed to make site visits to construction projects to determine employment standards relative to the BRJP goals. General contractors/construction managers and selected subcontractors shall attend corrective action meetings with the assigned compliance monitor upon the monitor's request to review and outline action steps required towards targeted goals for the duration of the project. The results of the corrective action meetings shall be included in compliance reviews.

i. General contractors/construction managers and subcontractors shall send a letter to the assigned compliance monitor upon issuance of the final certificate of occupancy related to a Covered Project. The general contractor/construction manager or subcontractor must cooperate with close out procedure.

j. General contractors/construction managers and subcontractors shall appear before the Boston Employment Commission when requested.

k. General contractors/construction managers and each subcontractor shall maintain records reasonably necessary to ascertain compliance with the steps detailed in clauses (a) through (i) of this section for at least three (3) years after the issuance of a certificate of occupancy for the Covered Project.

l. General contractor/construction managers shall incorporate in every subcontractor contract an enumeration of the BRJP standards and shall impose on each subcontractor a responsibility to take all steps enumerated in clauses (a) to (k) of this section; or

3. By demonstrating the high impracticality of complying with the BRJP standards for a particular contract or class of employees in a particular craft before project commencement and agreeing to sponsor a specified number of new apprentices or other trainees specifically for the purpose of satisfying this subsection, in trades in which noncompliance is likely, and retaining those apprentices or trainees throughout the duration of the project. All apprentices or trainees retained to satisfy this subsection must be bona fide Boston residents, people of color, or women. The general contractor/construction manager or subcontractor must work in coordination with the BRJP office or Boston Planning and Development Agency compliance office to avoid fines and other penalties under this section. This subsection may be utilized for compliance with this Ordinance only upon written authorization by the compliance monitor for each particular craft on a project.

(b) On any new Major Development Project, a developer may comply with the Boston Residents Jobs Policy by achieving, on a craft by craft basis, at least one of the following:

1. Meeting the BRJP standards as defined in section 8-9.1 and providing documentation of such to the assigned compliance monitor; or

2. Taking each of the following steps:

- a. Incorporating in every general construction contract or construction management agreement an enumeration of the BRJP standards and imposing a responsibility upon each general contractor/construction manager or construction manager to take all steps enumerated in clauses (a) to (j) of section 8-9.3(a)(2) and to incorporate the BRJP standards in all subcontracts and impose on all subcontractors the obligation to take such steps.
  - b. Meeting with the general contractor/construction manager no less frequently than weekly throughout the period of construction of the Covered Project to review the general contractor/construction manager's compliance with the BRJP standards and the steps enumerated in clauses (a) to (i) of section 8-9.3(a)(2). The developer shall maintain minutes of such meetings and shall forward a copy of such minutes to the assigned compliance monitor within ten (10) days of each meeting.
  - c. Appearing before the Boston Employment Commission when requested.
3. By demonstrating the high impracticality of complying with the BRJP standards for a particular contract or class of employees in a particular craft before project commencement and agreeing to sponsor a specified number of new apprentices in addition to those employed pursuant to City of Boston Code of Ordinances, Section 8-9.5, in trades in which noncompliance is likely, and retaining those apprentices throughout the duration of the project. All apprentices retained under this section must be bona fide Boston residents, people of color, or women. The General contractor or subcontractor must work in coordination with the BRJP office or Boston Planning and Development Agency compliance office to avoid fines and other penalties under this section. This subsection may be utilized for compliance with this Ordinance only upon written authorization by the compliance monitor for each particular craft on a project.

**SECTION 5.** City of Boston Code, Ordinances, Section 8-9.4 is hereby amended by striking the section in its entirety and inserting in place the following:

8-9.4 Boston Employment Commission

- (a) The Commission will be responsible for compliance review of all Covered Projects, including those monitored by the BPDA compliance office, and enforcing this Ordinance, up to and including the imposition of sanctions and fines.
- (b) The Commission will be comprised of seven (7) Commission members.
- (c) The Mayor will appoint all Commission members. The Mayor will select either one or two Commission members from recommendations made by organizations dedicated to workers' rights in the City of Boston, one Commission member from recommendations made by labor unions including SEIU and trade unions, one Commission member from recommendations made by organizations representing the development community, and one Commission member from recommendations made by organizations representing the non-profit development community.

- (d) Commission members may serve a maximum of three (3) consecutive two-year terms.
- (e) The Chairperson of the Commission shall be designated by the Mayor and shall serve in that capacity for a term of two (2) years.
- (f) The Mayor may remove a Commission member, including a Chairperson, for cause by filing a written statement with the City Clerk. The Mayor's decision shall be final.
- (g) The Commission shall meet at least monthly.
- (h) The Commission shall review each Covered Project at the 25%, 50%, 75% and 100% percent complete stage, measured by total worker hours completed. Commission review shall occur at least every three months, regardless of the stage of project completion.
- (i) The Commission shall monitor Davis-Bacon Act requirements contained in City agency or Boston Planning and Development Agency contracts. The Commission shall receive compliance information and shall forward any information concerning apparent noncompliance to appropriate federal agencies.
- (j) The Commission shall have the authority to promulgate regulations as to matters within the Commission's purview after public notice and hearing and upon a vote of all members and is directed to consider The Policy Group on Tradeswomen's Issues document entitled *Finishing the Job: Best Practices for Diversity in Construction* when promulgating regulations concerning how the Commission will assess efforts to comply with this ordinance.

**SECTION 6.** City of Boston Code, Ordinances, Chapter 8 is hereby amended by inserting after Section 8-9.7 the following sections:

**8-9.8. Sanctions**

- (a) The Commission shall determine compliance with the Boston Residents Jobs Policy standards and the compliance standards listed in section 8-9.3. The Commission shall gather and receive compliance information, investigate non-compliance complaints, and make compliance determinations.
- (b) The Commission shall have the power to impose sanctions upon developers, general contractors/construction managers, and subcontractors found to be in non-compliance with this ordinance. Sanctions may be imposed by a majority vote of the members of the Commission present. Developers may be fined for violations of the Ordinance by general contractors/construction managers and subcontractors on their projects.

1. For City-Funded Projects, penalties and fines may include:
  - a. Fines to a maximum of three hundred dollars (\$300.00) for each violation. A violation occurs where a general contractor/construction manager or subcontractor



has not complied with this Ordinance. Each day of noncompliance will be considered a separate violation.

- b. Creation of a record of non-compliance with City policy that may be considered when awarding future construction contracts on City-Funded Projects.
2. For Major Development Projects, penalties and fines may include:

- a. Fines to a maximum of three hundred dollars (\$300.00) for each violation. A violation occurs where a developer, general contractor/construction manager, or subcontractor has not complied with this Ordinance or analogous provision of any agreement with the Boston Planning and Development Agency. Each day of noncompliance will be considered a separate violation.

- b. Creation of a record of non-compliance with City policy that may be considered when awarding future construction contracts on City-Funded Projects.

(c) The City of Boston may suspend the work of, or payments to, general contractors/construction managers who violate this Ordinance on City-Funded Projects, until compliance is obtained, and may terminate their contract after repeated violations.

(d) General contractors/construction managers and selected subcontractors will be required to make periodic appearances before the Commission to review and provide updates on projects. Appearing parties should bring all documentation of compliance. The assigned compliance monitor will prepare and present a report regarding the following:

1. Statistics for top 5 trades and subcontractors
2. Average payroll submission time
3. Project work hours completed by Boston Residents, people of color, and women
4. Compliance with steps listed in section 8-9.3(a)(2)

(d) Any party may appeal a vote to issue a fine under this Ordinance for reconsideration by the Commission. Such appeal must be made in writing and must include a memorandum of no more than five (5) pages explaining the reasons why the Commission's decision should be reversed. Such appeal must be received by the Commission within thirty (30) days of the hearing date at which the fine was ordered. Upon receipt of a timely appeal, the Commission must schedule the appeal for a hearing and send notice of the same to the appealing party and the assigned compliance monitor. At the hearing, the appealing party and the assigned compliance monitor may present additional relevant evidence. At the conclusion of the hearing, the Commission shall determine whether to vacate its initial findings based on the evidence presented on appeal.

#### 8-9.9 City Council Review

(a) Each year in April and October the Boston City Council will hold a hearing to review the work of the Boston Employment Commission during the preceding six (6) months based on a report that itemizes the number of compliance determinations, the number of developers, General

contractors/construction managers and subcontractors determined to be out of compliance; the number of sanctions levied; the amount of the sanctions levied; the number of sanctions received by Developers and General contractors/construction managers and subcontractors in each of the twenty two trades; the total number of work hours, trade by trade; and the percentage of total hours, trade by trade performed by Boston workers, people of color, and women during the preceding six (6) months. The Boston Employment Commission will also provide data and information that will enable the City Council to make a recommendation as to whether the goals for people of color or female worker hours should be raised.

8-9.10 Hiring Discretion

(a) This Policy does not limit contractors' or subcontractors' ability to assess qualifications of prospective workers, and to make final hiring and retention decisions. No provision of this Policy shall be interpreted so as to require a contractor or subcontractor to employ a worker not qualified for the position in question, or to employ any particular worker.

8-9.11 Severability

(a) If any provision of this section is held to be invalid by a court of competent jurisdiction, then such provision shall be considered separately and apart from the remaining provisions, which shall remain in full force and effect.

**SECTION 7.** This ordinance shall take effect upon passage.

In City Council

JAN 25 2017

*Therese Lacey*  
City Clerk

*[Signature]*  
Mayor