

DRAFT
BOSTON EMPLOYMENT COMMISSION SANCTIONS POLICY

The Mayor's Executive Order of July 12, 1985, entitled The Executive Order Extending the Boston Residents Jobs Policy, requires the Developer to submit, and the authority to approve, a construction employment plan.

The Boston Employment Commission was established by an ordinance passed by City Council on July 30, 1986 and signed by the Mayor of the City of Boston. The Commission was created for the purpose of ensuring that findings may be determined with respect to compliance of the Boston Residents Jobs Policy in a manner that is comprehensive, consistent, and fair for all parties involved.

On January 25, 2017, an Ordinance Amending the Boston Residents Jobs Policy and Boston Employment Commission was signed into the city charter. The Amendments specified in part that Developers are required to comply with the Boston Jobs Ordinance, detailing required meetings, submissions, verifications, and general guidelines to prevent city-ordered sanctions.

This additional amendment before the council today provides specific guidelines for Sanctions and Penalties, Notice Service and Content, Timeline for Issuance of Notice, Notice of Commission Vote, Appeals, Judicial Review and Enforcement.

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 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.

VIOLATIONS. 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.

NOTICE SERVICE AND CONTENT. Every notice or order authorized pursuant to violations of 8-9.3 shall be in writing and shall be served from the compliance monitor on the contractor or subcontractor responsible for the project. Service shall be provided by: 1. Personally, by any person authorized by the building official; or 2. By any person authorized to serve in the civil process by leaving a copy of the order or notice at the responsible party's last and usual place of business or abode; or 3. By sending the party responsible or their agent authorized to accept service of process in Massachusetts a copy of the order by registered or certified mail return receipt requested, if he is within Massachusetts. All Notifications shall include the BRJP Compliance Rubric Recommendation Form detailing the compliance steps that have been violated, the violation fine amount recommended, date of corrective action meeting, and date of the Commission's determination vote. A thorough list of all city programs and services for business assistance shall be provided at the time of notice.

PENALTIES AND TIMELINE FOR ISSUANCE OF NOTICE. Notice provision shall be determined by the following compliance efforts:

- a. Pre-Construction Meetings. General Contractors will immediately be fined \$300 for each subcontractor that fails to attend and/or starts work without attending the contractually required meetings. Meetings will be rescheduled for a later date in addition to the assessment of the fine.
- b. Corrective Action Meetings. General Contractors will be fined for each subcontractor that fails to attend. Meetings will be rescheduled for a later date in addition to the assessment of the fine.
- c. Boston Employment Commission Meetings. Developers will be fined \$300 for failure to attend when requested, and for non-attendance by each contractor or subcontractor when

requested. Meetings will be rescheduled for a later date in addition to the assessment of the fine.

- d. Weekly Payroll Submissions. Non-compliance will result in a corrective action meeting to be scheduled for no later than 7 days after the initial failure to report. Violations will need to be corrected within 7 business days or a retroactive fine of up to \$300 per day may be assessed.
- e. Confirming Workforce Efforts and Requests. Non-compliance will result in a corrective action meeting to be scheduled for no later than 7 days after the initial failure to report. Violations will need to be corrected within 7 business days or a retroactive fine of up to \$300 per day may be assessed.
- f. Jobs Bank Referrals. Non-compliance will result in a corrective action meeting to be scheduled for no later than 10 days after the initial failure to report. Violations will need to be corrected within 7 business days or a retroactive fine of up to \$300 per day may be assessed.
- g. Boston Resident Verification. Non-compliance will result in a corrective action meeting to be scheduled for no later than 10 days after the initial failure to report. Violations will need to be corrected within 7 business days or a retroactive fine of up to \$300 per day may be assessed.

ITEMS FOR CONSIDERATION TO DETERMINE FINE. Prior to the Commission vote to levy a fine for non-compliance, Commissioners shall hold a meeting to review any information or documentations related to non-compliance notices or complaints. Commissioners will consider several factors in determining fines including:

1. Size of the business of the general contractor. [The Small Business Association](#) defines in Subsector 236: Construction of Buildings as small businesses earning under \$39.5 million in annual revenue. Subsector 238:

Specialty Trade Contractors qualifies small businesses as earning under \$16.5 million in revenue

2. Numbers of staff persons employed by the business
3. Any previous complaints or notices of non-compliance issued by the Commission
4. Additional factors may be included in final decisions made by the Commission prior to the issuance of a sanction.

NOTICE OF COMMISSION VOTE. After continued failure to comply within 7 days of the corrective action meeting, Notice of Formal Recommendation of Fines will be served upon the General Contractor. The Notice will announce the submission for a formal recommendation for fine at the next monthly occurring Commission hearing. Within 7 to 10 business days after the monthly Commission hearing, the Commission shall call a special meeting to take a final determination vote. In conjunction with the announcement of the special meeting, notice of Public Hearing shall be presented to the City Clerk's Office. Information provided must include a meeting date, time, and list of topics to be discussed. Notice of the final determination vote shall be sent to the General Contractor by mail within 24 hours of the decision.

APPEALS. As in accordance with Section 8-9.8 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 on not more than five (5) pages explaining why the Commission's decision should be reversed. Such appeal must be received by the Commission within thirty-five (35) 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 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.

JUDICIAL REVIEW. A person aggrieved by a decision of the municipal hearing officer may appeal to the district court or other court of competent jurisdiction pursuant to section 21D of chapter 40, on a form provided by the municipality, and shall be entitled to a de novo hearing before a clerk magistrate of the court. The

court shall consider such appeals under a civil standard. The aggrieved person shall file the appeal within 10 days after receiving notice of the decision from the municipal hearing officer who conducted the hearing.

ENFORCEMENT. Violations to this code shall be enforced in accordance with the applicable provisions of The Ordinance Amending the Boston Residents Jobs Policy and the Boston Employment Commission. Any person who violates a provision of this code or fails to comply with any of the requirements thereof shall be subject to penalties as prescribed by this ordinance.

NON-COMPLIANCE. In the event of repeated non-compliance by development companies, the City of Boston reserves the right to originate a list of offenders and disseminate that list to all city offices charged with contracting and procurement of city funds. The purpose of this list is to provide notice for all city offices of vendors who have been non-compliant with past projects. The non-compliance list will provide a full list of city-funded projects in collaboration with the development company, time periods, and a definition of the specific efforts of non-compliance.