

County Council of Cuyahoga County, Ohio

Ordinance No. O2023-0009

<p>Sponsored by: Councilmember Miller</p> <p>Co-sponsored by: Councilmembers Sweeney, Kelly, Turner, Stephens, Simon, Tuma, Jones and County Executive Ronayne</p>	<p>An Ordinance amending Sections 501.15, 501.19, and 505.03 of the Cuyahoga County Code to provide that Wage Theft committed by current or prospective contractors shall be grounds for debarment; and that this Ordinance become immediately effective.</p>
--	--

WHEREAS, according to the Economic Policy Institute, approximately 217,000 Ohioans are victims of wage theft from minimum wage non-payment each year, and typically costs each victim \$2,800 in a work year; and

WHEREAS, the Ohio Attorney General estimates that as many as 459,000 Ohio workers may be misclassified each year, costing the state \$180 million in foregone income taxes; and

WHEREAS, wage theft has an outsized impact on low-wage workers in Cuyahoga County; and

WHEREAS, the Council now desires to amend the county's debarment law to authorize the Inspector General to debar county contractors who engage in wage theft or payroll fraud.

NOW, THEREFORE, BE IT ENACTED BY THE COUNTY COUNCIL OF CUYAHOGA COUNTY, OHIO:

SECTION 1. Section 501.15(A)(6) of the Cuyahoga County Code is hereby amended to read as follows (additions are underlined):

6. the contractor shall not have been penalized or debarred from any federal, state, or local public contract or falsified certified payroll records, **have an Adverse Determination of Wage Theft or Payroll Fraud as defined in Section 505.03(B)(4) of this Code**, or has otherwise been found, after appeals, to have violated the Fair Labor Standards Act in the past seven years, or during the contractor's entire time of doing business, if less than seven years;

SECTION 2. Section 501.19(C)(1) of the Cuyahoga County Code is hereby amended to read as follows (additions are underlined):

1. Every contractor whose annual aggregate amount of contracting with the County exceeds ten thousand dollars (\$10,000) shall complete an ethics training program, including information regarding wage theft laws, prescribed by the Inspector General prior to doing business with the County. The Department of Consumer Affairs shall partner with Ohio Means Jobs and/or any successor organization to inform county residents of their workplace rights under federal, state, and local law.

SECTION 2. Section 505.03 of the Cuyahoga County Code is hereby amended to read as follows (additions are underlined, deletions are stricken):

Section 505.03 Grounds for Debarment

A. Five-Year Debarment. The Cuyahoga County Inspector General may debar, for a period of five years, a contractor for a conviction of or a civil judgment within the preceding five years anywhere in the United States, its territories, or outlying areas, for any of the following:

1. Commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public contract or subcontract;
2. Violation of any federal, state, or local ethics laws, regulations, or policies;
3. Violation of any federal or state antitrust statutes, regulations, or policies;
4. Violation of any federal, state, or local laws, regulations, or policies relating to the submission of bids, proposals, statements of qualifications, or any other type of offers;
5. Collusion to restrain competition by any means;
6. Embezzlement;
7. Theft;
8. Forgery;
9. Bribery;
10. Falsification;
11. Destruction of records;
12. Making false statements;
13. Tax evasion;

14. Criminal violation of any federal, state, or local tax laws;
15. Violation of any federal, state, or local laws intended to protect against abusive debt collection practices, such as the federal Fair Debt Collection Practices Act;
16. Receiving stolen property;
17. Intentionally affixing a label indicating that a product was made in a jurisdiction when the product was not made in that jurisdiction;
18. Any other cause listed in Section 505.03(B) or Section 505.03(C) of this Chapter; or
19. Commission of any other offense indicating a lack of business integrity or business honesty that seriously and directly affects the present responsibility of a contractor.

B. Three-Year Debarment. The Cuyahoga County Inspector General may debar, for a period three years, a contractor, based upon a reasonable belief, for any of the following within the preceding three years:

1. Violation of the terms of a public contract or subcontract in a serious manner, such as:
 - a. Willful or reckless failure to perform in accordance with the terms of one or more contracts; or
 - b. A history of failure to perform, or of unsatisfactory performance of, one or more contracts;
2. Violation of the terms, conditions, or requirements of a Small Business Enterprise program, a Disadvantaged Business program, a Minority and Female Business Enterprise program, or any other similar program, including, but not limited to, acting as a front company by purporting to be a Small Business Enterprise, a Disadvantaged Business, a Minority or Female Business, a Veteran owned business, or any other such type of business when not in fact;
3. Violation of prevailing wage laws;

4. An Adverse Determination of Wage Theft or Payroll Fraud. For the purposes of this paragraph:

- a. **“Adverse Determination” means a final adjudication, not subject to appeal, by a court of competent jurisdiction, a final action by a state or federal governmental agency, or a final adjudication by an arbitrator or arbitral body of competent jurisdiction, including, but not limited to, an administrative merit**

determination, arbitration award or decision, civil judgment, or criminal conviction, that a Contractor or Subcontractor committed Wage Theft or Payroll Fraud. If the person or entity appeals or contests the final adjudication, final action, or final determination, the Adverse Determination becomes effective whenever that initial adjudication, action, or determination, in whole or in part, is affirmed on appeal or after the contest, or the appeal or contest is denied.

- b. **“Payroll Fraud” means concealing an entity's true payroll tax liability or other financial liability to a government agency from government licensing, regulatory or taxing agencies through misclassification of employees, failure to report or underreported payment of wages, or executing a cash transaction while failing to maintain proper records of reporting and withholding.**
- c. **“Wage Theft” means a violation of R.C. § 4113.15, R.C. § 4111, Oh. Const. Art II, Sec. 34a; R.C. Chapters 4109 or 4115; R.C. §§ 4113.17, 4113.18, 4113.52, or 4113.61; or a violation of any substantially equivalent federal or state law, as any of these laws may be amended or superseded.**

~~4.5.~~ Submission of false information in connection with any bids, proposals, statements of qualifications, or any other offers to the County or any other public or private entity;

~~5.6.~~ Abuse of the selection process by repeatedly withdrawing bids or proposals before purchase orders or contracts are issued or failing to accept orders based upon firm bids;

~~6.7.~~ Attempting to influence a public employee to breach ethical conduct standards or to influence contract award;

~~7.8.~~ Commission of an unfair trade practice under any federal, state, or local laws;

~~8.9.~~ Failure to cooperate in monitoring contract performance by refusing to provide information or documents required in a contract or failing to respond to complaints;

~~9.10.~~ Failure to cooperate with a Cuyahoga County or any other public investigation or audit;

~~10.11.~~ Filing a lawsuit against Cuyahoga County that a court finds to be frivolous or filed in bad faith;

~~11-~~12. Provided that the tax or court-cost liability is determined to finality and the contractor is delinquent in making payment, delinquent taxes or court costs as follows:

- a. Delinquent federal or state taxes in an amount that exceeds \$3,000; or
- b. Any delinquent Cuyahoga County taxes or court costs in any amount;

~~12-~~13. Any other cause listed in Section 505.03(A) of this Chapter without regard to whether there is a conviction or civil judgment against the contractor for such cause;

~~13-~~14. Violation of any other responsible business practice; or

~~14-~~15. Any other cause determined by the Inspector General to be sufficiently serious and compelling so as to represent lack of good faith or responsibility by the contractor.

B. 18- Month Debarment. The Cuyahoga County Inspector General may debar, for a period of 18 months, a contractor, based upon a reasonable belief, for any of the following within the preceding 18 months:

1. Breach or violation of any contract or agreement with the County; or
2. Commission of an act of moral turpitude in its business practices not provided for in Section 505.03, subsections A and B herein.

C. Single Debarment Per Incident. The Inspector General may not debar a contractor under this Chapter more than once for the same incident. However, if a contractor is debarred under Section 505.03(B) or Section 505.03(C) and the contractor is later convicted or subjected to a civil judgment for the same incident for which the contractor was debarred, the Inspector General may automatically extend the duration of the debarment to five years. If the Inspector General extends the duration of any debarment under this provision, the contractor may appeal the extension to the Debarment Review Board and from there to the Cuyahoga County Court of Common Pleas under Ohio Revised Code Chapter 2506 in the same manner as it has the right to appeal the initial debarment under Section 505.06 of this Chapter.

D. Term of Debarment if Extenuating Circumstances Exist.

1. If the Inspector General is satisfied that extenuating circumstances warrant a reduction in the duration of a debarment, the Inspector General may reduce the duration of a debarment as follows:
 - a. The Inspector General may reduce the duration of a five-year debarment under Section 505.03(A) to a three-year debarment;
 - b. The Inspector General may reduce the duration of a three-year debarment under Section 505.03(B) to an 18-month debarment; or

- c. The Inspector General may reduce the duration of an 18-month debarment under Section 505.03(C) to a one-year debarment.
2. If the Inspector General reduces the duration of a debarment as provided herein, the Inspector General must expressly identify the extenuating circumstances in the Notice of Debarment.

SECTION 3. It is necessary that this Ordinance become immediately effective for the usual daily operation of the County; the preservation of public peace, health, or safety in the County; and any additional reasons set forth in the preamble. Provided that this Ordinance receives the affirmative vote of at least eight members of Council, it shall take effect and be in force immediately upon the earliest occurrence of any of the following: (1) its approval by the County Executive through signature, (2) the expiration of the time during which it may be disapproved by the County Executive under Section 3.10(6) of the Cuyahoga County Charter, or (3) its passage by at least eight members of Council after disapproval pursuant to Section 3.10(7) of the Cuyahoga County Charter. Otherwise, it shall take effect and be in force from and after the earliest period allowed by law.

SECTION 4. It is found and determined that all formal actions of this Council relating to the adoption of this Ordinance were adopted in an open meeting of the Council, and that all deliberations of this Council and of any of its committees 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.

On a motion by Mr. Miller, seconded by Ms. Turner, the foregoing Ordinance was duly enacted.

Yeas: Turner, Simon, Kelly, Miller, Sweeney, Tuma, Conwell and Stephens

Nays: Schron

Recuse: Gallagher

County Council Vice- President		Date

County Executive		Date

Clerk of Council		Date

First Reading/Referred to Committee: April 25, 2023

Committee(s) Assigned: Council Operations, Intergovernmental Relations and Public Transportation

Additional Sponsorship Requested on the Floor: April 25, 2023

Legislation Substituted in Committee: May 2, 2023

Legislation Substituted on the Floor: May 9, 2023

Additional Sponsorship Requested: May 9, 2023

Additional Sponsorship Requested: May 15, 2023

[Clerk's Note: Technical corrections were made to the Legislation and are pursuant to Council Rule 11J: June 6, 2023]

Journal CC050
May 23, 2023