

Offered by Councilor Michelle Wu



## CITY OF BOSTON IN CITY COUNCIL

### AN ORDINANCE REGARDING CORPORATE TAX BREAK TRANSPARENCY IN THE CITY OF BOSTON

*WHEREAS:* Bostonians deserve greater transparency around corporate tax breaks to guarantee a positive return on the City's investment. Taxpayers in the city should be able to easily access information about which companies are benefiting from corporate tax breaks; *and,*

*WHEREAS:* Massachusetts received the lowest score from Pew Foundation in 2017 for its evaluation of tax breaks; *and,*

*WHEREAS:* The city of Boston offers Tax Increment Financing, Special Tax Assessments, Chapter 121A, and Chapter 121B agreements to advance its economic development and housing goals; *and,*

*WHEREAS:* Boston's Tax Increment Financing Program received a score of zero in transparency from Good Jobs First, while other cities, such as New York and Austin, are providing their citizens with transparent databases that hold businesses accountable; *and,*

*WHEREAS:* Businesses receiving tax breaks should have to share basic information on the benefits they will provide the city, including number of jobs created with wages and benefits information. This information should be presented to the public in a user-friendly manner that is easily accessible; *NOW THEREFORE BE IT*

*ORDERED:* That the City of Boston Code, Ordinances be amended in Chapter VIII by adding after Section 8-12 the following:

#### **8.13. Accountability in Economic Development.**

##### **8.13-1. Definitions.**

- a. "*City*" means an agency, board, commission, office, public benefit corporation or public benefit authority of the city.
- b. "*Corporate parent*" means any person, association, corporation, joint venture, partnership, or other entity that owns or controls 50 percent or more of a recipient corporation.
- c. "*Date of subsidy*" means the date that the city provides the initial monetary value of a development subsidy to a recipient corporation provided, however, that where the subsidy is for the installation of new equipment, such date shall be the date the corporation puts

the equipment into service and provided, further, that where the subsidy is for improvements to property, such date shall be the date the improvements are finished, or the date the corporation occupies the property, whichever is earlier.

- d. *“Development subsidy” or “subsidy”* means any expenditure of public funds with a value of at least \$25,000.00 for the purpose of stimulating economic development within the city, including but not limited to bonds, grants, loans, loan guarantees, enterprise zones, empowerment zones, tax increment financing, grants, fee waivers, land price subsidies, matching funds, tax abatements, tax exemptions, and tax credits.
- e. *“Duration of subsidy”* means as many years as a subsidy benefits a recipient corporation, such as the number of years a tax credit may be claimed and/or carried forward, the number of years a loan is for, or the number of years a property tax reduction applies.
- f. *“Full-time job”* means a job in which an individual is employed by a recipient corporation for at least 35 hours per week.
- g. *“Part-time job”* means a job in which an individual is employed by a recipient corporation for less than 35 hours per week.
- h. *“Project site”* means the site of a project for which any development subsidy is provided, as specified by street address, name of locality and ZIP code.
- i. *“Recipient corporation”* means any person, association, corporation, joint venture, partnership or other entity that receives a development subsidy.
- j. *“Temporary position”* means a job in which an individual is hired for a season or for a limited period of time.

### **8.13-2. Reporting and Disclosure of Tax Subsidies.**

#### a. Disclosure.

For all corporate tax subsidies given by the city, including, but not limited to tax increment financing agreements and 121A and 121B agreements, the City of Boston Assessing Department shall publish prominently on their website annual corporate performance reports for all active agreements no later than April 1 of each year. The report shall contain all relevant data collected to monitor these agreements, including, but not limited to, the data from the Economic Development Incentive Program (EDIP) annual report, both in a searchable database and as a spreadsheet that can be downloaded in its entirety. When a new report is posted, earlier versions of the data shall remain available on the website.

The report shall also contain the Assessor’s determination of whether the company has yet met its obligations as required by the subsidy, including for job creation, wages, and benefits. If the Assessor has previously determined that a company has achieved its obligations, the report shall contain the Assessor’s determination of whether the company has maintained its achieved obligations.

Along with the report, the Assessor should also post PDF copies of or links to key documents relating to the subsidy award, including the original contract agreement.

If the Assessor determines that the company has failed to achieve its obligations as required by the subsidy in the required period of time, or if the Assessor determines that the company has failed to maintain its achieved obligations, the report shall also state what penalty or penalties the city has imposed upon the company.

The report will also include the Assessor's verification that the company's corporate parent has maintained at least 90 percent of its employment in the state since December 31 of the year the subsidy was granted. If the Assessor determines that the company's corporate parent has failed to maintain such a level of employment, the report shall include whatever penalty or penalties, if any, that have been imposed upon the company.

b. Reporting.

For all future subsidy agreements, the City shall require each corporation to file a disclosure report with the city no later than February 1 each year. The reporting form shall be issued by the city and include the following information:

1. The name, street and mailing addresses, phone number, and chief officer of the recipient corporation along with its NAICS industry code and its Dun's identifier number;
2. The project street address where the subsidized activity takes place if it is different from the address in (a);
3. A summary of the number of jobs required by the terms of the subsidy deal, and actual jobs created or lost as of December 31 of the previous year. Broken down by full-time, part-time, and temporary positions, and by wage group;
4. Whether health care insurance coverage is provided to the employees at the project site, and if so, the share of the policy premiums paid by the company;
5. The total employment in the state of the recipient's corporate parent on the two previous dates of December 31, broken down by full-time, part-time and temporary positions;
6. If applicable, a summary of capital investment required by the terms of the subsidy deal, and actual capital investment made as of December 31 of the previous year;
7. A statement as to whether the subsidized project has, during the previous calendar year, resulted in reduced employment at any other site controlled by the recipient corporation or its corporate parent, inside or outside the state as a result of automation, merger, acquisition, corporate restructuring, relocation, or other business activity;
8. A statement summarizing any instance, during the previous calendar year, in which the recipient company, or a parent or subsidiary entity, was determined by a government agency to have violated any federal, state or local law or regulation relating to environmental protection, taxation, labor standards, or employment discrimination or was notified that an investigation of a possible violation had been initiated; and
9. A signed certification by the chief officer of the recipient corporation as to the accuracy of the progress report.

Recipient companies shall file such annual performance reports for the duration of the subsidy, or not less than five years, whichever period is greater.

c. Compliance. For all future subsidy agreements, the City shall require that the Assessor shall have access at all reasonable times to the project site and the records of the recipient corporation in order to monitor the project and verify the Corporate Performance Reports.

d. Fines. For all future subsidy agreements, the City shall require that the a recipient corporation that fails to provide the city with a completed Corporate Performance Report on time shall be subject to a fine of not less than \$500 per day to commence within ten working days after the February 1 deadline and of not less than \$1,000 per day to commence twenty days after such deadline. A recipient corporation that fails to provide the city access to the project site at a reasonable time shall be subject to a fine of \$1,000 per day starting with the day access is first not provided.

### **8.13-3. Job Creation and Job Quality Standards**

a. Job Creation Standards. The city shall not approve job creation subsidies unless the recipient corporations shall create at least one new full-time job in the city for each \$35,000 of assistance it receives for a project, cumulatively from subsidies.

The recipient corporation's obligation to maintain such newly created jobs in the city shall remain in effect for the duration of the subsidy, or for five years, whichever is longest.

The job creation requirements herein shall be used to determine whether a company is liable for subsidy recapture or rescission.

The recipient corporation may not count a job as new if the same job previously existed in another facility controlled by the recipient corporation in the United States.

b. Job Quality Standards.

In order for a job to count as a new, full-time job under Section 8.13-3(a), it shall have the following features:

1. Wages: The average hourly wage paid to non-managerial workers at the project site must be no lower than 100 percent of the state rate for the industry and job title, as most recently established by the United States Bureau of Labor Statistics;
2. Health Insurance: The recipient corporation must offer health insurance coverage and at least half of the cost of the insurance premium must be paid by the recipient corporation;
3. Hours: The job must provide at least 1,820 hours of work per year;
4. Paid Leave: The job must provide a total of at least 12 days per year of paid leave for vacation, family care, or other personal time off;
5. Targeted Hiring: The recipient corporation must ensure that at least thirty percent of all work hours are performed by individuals whose primary place of residence is within a zip code that includes a census tract or portion thereof in which the median annual household income is less than \$45,000 per year, as measured and reported by the U.S. Census Bureau. The recipient corporation must ensure that at least ten percent of all work hours are performed by individuals who, prior to commencing work, have an

annual household income of less than \$45,000 and face at least two of the following barriers to employment: (1) being homeless; (2) being a custodial single parent; (3) receiving public assistance; (4) lacking a GED or high school diploma; (5) having a criminal record or other involvement with the criminal justice system; (6) suffering from chronic unemployment; (7) having been emancipated from the foster care system; or (8) being a military service veteran; and

6. Apprenticeship Participation: For construction-phase jobs created by the subsidized project, the recipient corporation and/or its contractors and subcontractors must participate in an apprenticeship program that is registered with the state or federal government.

#### **8.13-4. Clawbacks and Rescissions.**

##### **a. Subsidy Recapture or Rescission.**

The city shall cross-check job-creation and other performance data submitted by recipients against information sources such as unemployment insurance records or shall conduct periodic audits of company submissions using outside auditors.

The city shall not approve subsidies unless the recipient corporation shall be subject to subsidy recapture or rescission if:

1. It fails to achieve its job creation, wage, and health care requirements for the project site within two years of the date of subsidy;
2. It fails to maintain its wage and benefit achievements as long as the subsidy is in effect, or five years, whichever is longer; or
3. The corporate parent of the recipient corporation fails to maintain, for the duration of the subsidy or for five years, whichever is longest, at least 90 percent of its employment in the state, with the basis of December 31 of the year the subsidy was granted.

##### **b. Subsidy recapture or rescission shall take place as follows:**

1. For each year the recipient corporation falls short of its obligations for job creation, wages, and health care insurance, the value of the subsidy shall be reduced on a prorated basis by the same share of jobs that were not created and/or that failed to meet wage and health care insurance obligations. If the subsidy has already accrued to the recipient corporation, the city shall recapture the subsidy reduction.
2. If a recipient corporation falls short on its job creation obligations by 25 percent or more for three consecutive years, the pro rata recapture shall apply for the third year in default and the subsidy shall be rescinded effective January 1 of the following year.
3. For each year the corporate parent fails to maintain at least 90 percent of its base employment level in the state, the subsidy shall be reduced at twice the rate of the corporate parent's job loss from 100 percent of its basis of December 31 of the year the subsidy was granted. If the subsidy has already accrued to the recipient corporation, the city shall recapture the subsidy reduction.
4. If the corporate parent fails to maintain at least 90 percent of its base employment level in the state for three years in a row, the pro rata recapture shall apply for the third year in default and the subsidy shall be rescinded effective January 1 of the following year.

c. Enforcement Records are Public Records. The city shall publish on its website summary statistics about its recapture and recession enforcement activities as well as lists of recipient companies subject to those penalties and the specific terms of each company's shortfall and penalty.

All records required to be prepared or maintained under this Act, including but not limited to, applications, performance reports, recapture proceedings, and any other records relating thereto, shall be subject to disclosure under the state's Open Records Act.

**8.13-5. Severability.** The invalidity of any section or provision of this Ordinance shall not invalidate any other section or provision thereof, nor shall it invalidate any permit, approval or determination which previously has been issued.

Filed on: February 13, 2019