

MASON, GRIFFIN & PIERSON

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MEMORANDUM

To: Mayor and Council of Princeton

From: Lisa M. Maddox, Esq. 
Assistant Princeton Attorney

Date: June 12, 2014

Re: **"Landscaping Registration" Ordinance**

Attached on behalf of the Code Subcommittee please find the Landscaping Registration Ordinance for re-introduction at the Mayor and Council's meeting on June 16, 2014. Also attached is a memorandum from Council Member Heather Howard which provides a detailed background explaining the genesis for inclusion of the wage theft provisions in the Landscaping Registration Ordinance.

As explained in Council Member Howard's memorandum, this Ordinance has been revised to include provisions addressing the issue of wage theft. Importantly, the Ordinance focuses on educating persons seeking to register as landscapers of the federal and state wage theft laws as well as state laws governing workers' compensation insurance. The Ordinance has been amended as follows:

1. Section 10C-2 has been amended by adding a definition for what constitutes "wage theft." "Wage theft" means having been found guilty, liable or responsible in any judicial or administrative proceeding of committing a violation of the Federal or State wage and hour laws.
2. Section 10C-3 has been amended to provide in (b) that, at the time of applying for registration, applicants must acknowledge that they have received, or been offered at no cost, copies of the Federal and New Jersey wage and hour laws and New Jersey workers' compensation insurance laws.
3. Section 10C-3 has also been amended to provide in (e) that a registrant may have his or her registration suspended or revoked either temporarily or permanently because of the violation of wage theft laws. Again, in order to suspend or revoke, there must be an actual determination by a judicial or administrative body that there has been a commission of wage theft.

Please do not hesitate to contact me if you have any questions or concerns in reference to the above.

Attachs.

cc: Robert W. Bruschi, Administrator (w/attachs.)
Kathy Monzo, Assistant Administrator (w/attachs.)
Linda S. McDermott, Clerk (w/attachs.)
Trishka W. Cecil, Esq., Attorney (w/attachs.)
Edwin W. Schmierer, Esq. (w/attachs.)

MEMORANDUM

To: Princeton Mayor and Council

From: Heather Howard, Council Liaison to Human Services Commission
John Heilner, Chair, HSC Subcommittee on Immigration Issues

Date: June 10, 2014

Re: Wage Theft Amendments to Landscaping Ordinance

This memo is intended to brief you on our proposal to incorporate wage theft prevention and enforcement into the landscaping ordinance that is before Council.

Background

As you know, HSC's Immigration Issues Subcommittee has been working for the last year and a half to protect the rights and safety of our immigrant community. One key initiative has been a focus on wage theft, which is when employers deny workers' wages through a variety of methods, including not paying overtime at time and a half, paying less than the agreed amount, not paying for all hours worked, or paying less than the minimum wage, misclassifying them as independent contractors, or simply not paying at all.

Although wage theft is prohibited by state¹ and federal² law, based on conversations with Princeton residents, federal surveys and other research³ we believe that it unfortunately occurs all too frequently in our community, especially for day laborers who work in landscaping, restaurants and other low wage industries. Moreover, wage theft is underreported, as workers often do not report it for fear of losing their jobs, or out of concern for their immigration status. It should be noted that all federal and state wage theft laws are applicable regardless of a worker's immigration status.

Thus far, our efforts to address wage theft have focused on:

- **Enhanced enforcement:** Recognizing that the mere existence of a state law prohibiting wage theft is not sufficient without robust enforcement, we have focused on enhancing Princeton's ability to identify potential violations, assist victims and pursue remedies [*support prosecution of cases*]. The Human Services Department, Princeton Police Department (PPD), and Latin American Legal Defense Fund (LALDEF) have collaborated to streamline the process for workers reporting wage theft, including a new intake form and process that will allow workers to seek help at any of these agencies, in English or Spanish. In addition, as part of a broader training on immigration issues, the PPD invited representatives from the NJ Department of Labor and Workforce Development's Wage and Hour Division and New Labor, a group in New Brunswick

¹ The New Jersey Wage and Hour Law, N.J.S.A. 34:11-56a. *et seq.*, the New Jersey State Wage Payment Law, N.J.S.A. 34:11-4.1 *et seq.* or N.J.S.A. 2C:40A-2. Note also that there is [legislation pending](#) in the NJ legislature to strengthen penalties for wage theft, but prospects for enactment at this time are uncertain.

² The Federal Fair Labor Standards Act of 1938, 29 U.S.C.A. § 201 *et seq.* See also <http://www.dol.gov/whd/flsa/>.

³ See, e.g., "All Work and No Pay: Day Laborers, Wage Theft, and Workplace Justice in New Jersey," Seton Hall School of Law Immigrant Rights/International Human Rights Clinic (July 2011), "Issue Brief: Wage Theft in New Brunswick," Unity Square and New Labor (July 30, 2013), and "Summary of Research on Wage and Hour Violations in the United States," National Employment Law Project (January 2012).

focused on immigrant workers, to train the entire force on the applicable laws and the appropriate handling of complaints.

- Expanded education and prevention: We also recognize that workers themselves may not be aware of their rights – or comfortable asserting them – and thus will be developing training for day laborers and low wage workers on wage theft prevention and on-the-job safety, and the municipality’s commitment to addressing complaints. This complements the PPD’s overall enhanced community outreach effort. We are also exploring ways to educate the employer community in Princeton.

Ordinance Amendments

The landscaping ordinance before Council presents an opportunity to both educate landscapers (hopefully preventing wage theft) and also to provide a new remedy for violations of wage theft laws. The amendments are as follows:

- Requirement that applicants for registration be notified of our wage theft policies (in addition to Princeton’s leaf, brush and log collection program);
- Requirement that applicants for registration also be notified of NJ’s workers’ compensation insurance laws, to protect workers’ health and safety and home/business owners and landscapers from lawsuits that could be avoided with proper insurance, and
- Inclusion of violation of wage theft laws as a cause for suspension or revocation of a registration.

Late last year, New Brunswick enacted a wage theft ordinance that denies a business license to any applicant found guilty of a wage theft violation. If Princeton adopts these amendments, as we recommend, we believe we would be the second municipality in New Jersey to address wage theft through local ordinance.

We want to thank Bob Hough and Elisa Neira for their cooperation in crafting this approach. We look forward to future opportunities to incorporate wage theft prevention and enforcement into relevant ordinances, and have already begun discussions with Health Officer Jeff Grosser about possible approaches in restaurant inspections.

Cc: R. Bruschi, Administrator
K. Monzo, Assistant Administrator
R. Hough, Director of Infrastructure and Operations
E. Neira, Human Services Director
J. Grosser, Health Officer
L. McDermott, Municipal Clerk
Lisa Maddox, Municipal Attorney
Human Services Commission

**AN ORDINANCE BY PRINCETON
CONCERNING LANDSCAPING
REGISTRATION AND AMENDING
THE "CODE OF THE TOWNSHIP
OF PRINCETON, NEW JERSEY,
1968".**

WHEREAS, the Borough of Princeton and Township of Princeton pursuant to the provisions of the New Jersey Municipal Consolidation Act, *N.J.S.A. 40:43-66.35* consolidated as Princeton on January 1, 2013; and

WHEREAS, pursuant to *N.J.S.A. 40:43-66.64*, the Princeton Council on January 1, 2013 adopted a Resolution continuing in effect Ordinances of the former Borough of Princeton and the former Township of Princeton as a new Code for Princeton is prepared; and

WHEREAS, the Princeton Council's Code Subcommittee has reviewed and updated Chapter 10C of the "Code of the Township of Princeton, New Jersey, 1968," pertaining to Landscaping Registration; and

WHEREAS, the Princeton Council wishes to adopt said Code revisions which will become a part of the new Princeton Code at a future date.

NOW, THEREFORE, BE IT ORDAINED by the Princeton Council as follows:

Section 1. Chapter 10C of the "Code of the Township of Princeton, New Jersey, 1968," is hereby repealed in its entirety.

Section 2. A NEW Chapter 10C of the "Code of the Township of Princeton, New Jersey, 1968," as set forth on Exhibit A attached hereto and made a part hereof is hereby adopted to set forth provisions governing landscaping registration and to replace the aforementioned Chapter 10C of the "Code of the Township of Princeton, New Jersey, 1968".

Section 3. All ordinances and resolutions or parts thereof inconsistent with this Ordinance are repealed.

Section 4. If any section, subsection, sentence, clause, phrase or portion of this Ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision, and such holding shall not affect the validity of the remaining portion thereof.

Section 5. This Ordinance shall take effect upon its final adoption and publication as provided for by law. The attached Chapter 10C shall be applicable within Princeton upon taking effect and shall become a part of the new Princeton Code once completed and adopted.

Linda S. McDermott, Clerk

Liz Lempert, Mayor

Ordinance Introduced:

Ordinance Adopted:

EXHIBIT A

CHAPTER 10C. LANDSCAPING - REGISTRATION

Sec. 10C-1. Registration requirement for landscapers for hire; purpose.

No person shall landscape or engage in any landscaping on any public or private property within the municipality for hire without first registering with the department of infrastructure and operations, on forms to be supplied by said department.

The purpose of this chapter requiring landscaper registration is to ensure that persons defined in section 10C-2 are cognizant of Princeton's regulations concerning the leaf, branch and log collection program, Federal and New Jersey State wage and hour laws and the New Jersey State workers' compensation laws.

Nothing in this chapter shall relieve any owner, lessee or tenant of his or her responsibility to comply with the requirements of Princeton's leaf, branch and log collection program set forth elsewhere in this Code.

Sec. 10C-2. Definitions.

As used in this chapter the following words and phrases shall have the following meaning:

For hire shall mean to demand and/or accept payment or compensation for completion of services.

Hedges, trees and shrubs shall have the same meaning as may be defined in chapter 22 of this Code, "Trees and Shrubs."

Landscape and landscaping shall mean to be in the business, occupation or trade of adorning or improving any property or portion of property by trimming or cutting grass or shrubs; by planting, installing or removing leaves, branches, logs, grass, flowers, mulch, hedges or shrubs; or by planting or installing trees. As used in this chapter, *landscape* and *landscaping* shall also refer to solicitation of the above-referenced services.

Person shall mean any individual or entity whose existence is recognized by law, including, but not limited to, any partnership, corporation (for-profit, nonprofit, or municipal and its agencies), firm, association, or any combination of the foregoing.

Wage theft shall mean having been found guilty, liable or responsible in any judicial or administrative proceeding of committing a violation of the Federal Fair Labor Standards Act of 1938, 29 U.S.C.A. § 201 *et seq.*, the New Jersey Wage and Hour Law, N.J.S.A. 34:11-56a. *et seq.*, the New Jersey State Wage Payment Law, N.J.S.A. 34:11-4.1 *et seq.* or N.J.S.A. 2C:40A-2 (violation of contract to pay employees).

Sec. 10C-3. Applications for registration; registration fee; suspension or revocation of registration; disclaimer.

(a) An application for registration shall be made upon forms provided by Princeton and shall be filed with the director of infrastructure and operations or his designee. Approved applications for registration shall be public records.

(b) At the time of registration, applicants shall acknowledge that they have received (or been offered, at no cost) a copy of the provisions of the municipality's ordinance regulating its leaf, branch and log collection program. In addition, applicants shall acknowledge that they have received (or been offered, at no cost) a copy of the Federal and New Jersey State wage and hour laws and New Jersey State workers' compensation insurance laws.

(c) Every registration shall be issued and renewed on an annual basis, effective March 1 of each year, upon payment of an annual fee to the municipality in the amount of ten dollars.

(d) No registration shall be required of any owner, lessee or tenant of real property who shall personally perform activities otherwise requiring a registration; except that all such work must otherwise comply with the municipality's ordinance.

(e) The mayor and council may, upon recommendation of the director of infrastructure and operations, or his designee, after notice and an opportunity for a hearing, suspend or revoke any registration for violation of law, including but not limited to wage theft laws, or related Princeton ordinances, or for good cause, which is shown to be prejudicial to the public health, safety or welfare. In addition, the director of infrastructure and operations or his designee may temporarily suspend any registration for a period not to exceed one week or until the mayor and council can be convened to consider said suspension, when:

(1) The director of infrastructure and operations, or his designee, has reasonable cause or belief that an emergency affecting the public health, safety or welfare so requires; or

(2) The director of infrastructure and operations, or his designee, receives sufficient information to establish that the registrant has committed wage theft which has not been cured by the registrant by compliance with the order or decision of the governmental entity determining the same.

(f) Princeton makes no guarantee or representation regarding the fitness, knowledge or qualification of any person that is registered by Princeton to engage in landscaping for hire.

Sec. 10C-4. Off-site disposal and composting encouraged.

Owners, lessees and tenants, and their registered landscapers, are encouraged, but not required, to either compost leaves, branches and logs themselves on their own property, such as in wooded areas if practicable, or bring leaves, branches and logs to the Lawrence Township Ecological Facility ("Facility"), or such other ecological facility that may be designated by the municipality for disposal. At the time of taking branches and logs to the Facility for disposal, such persons shall provide their name and registration number, along with the property owner,

lessee or tenant's name, address and signature, to the Facility on forms for such purpose available in the office of the director of infrastructure and operations, or from his designee.

Sec. 10C-5. Exemption of home improvement contractors; additional exemptions.

(a) Home improvement contractors registered pursuant to N.J.A.C. 13:45A-17.1 *et seq.* on or after December 31, 2005 shall not be required to register with the municipality as set forth in this chapter.

(b) Persons who are specifically exempt from the registration requirements of N.J.A.C. 13:45A-17.1 *et seq.* under N.J.A.C. 13:45A-17.4 on or after December 31, 2005 shall not be required to register with the municipality as set forth in this chapter.

Sec. 10C-6. Violations; penalties.

For each violation of this chapter, the violator shall be subject to such fines and other penalties as provided in section 1-6 of this Code, entitled "General penalty; continuing violations; repeat violations; other penalties." Repeat offenders shall be subject to additional fines and other penalties as provided in section 1-6 of this Code.