

ORDINANCE NO. 05-64 AC CMS

AN ORDINANCE PROPOSING TO AMEND THE CHARTER OF THE CITY OF OBERLIN, OHIO, TO ADD A NEW SECTION XIX H. ESTABLISHING A LIVING WAGE COMMISSION AND PROVIDING FOR ITS POWERS AND DUTIES AND DECLARING AN EMERGENCY

WHEREAS, on September 7, 2005, the Clerk of Oberlin City Council received a petition proposing an amendment to the Charter of the City of Oberlin to establish a Living Wage Commission; and

WHEREAS, Article XVIII, Sections 8 and 9 of the Ohio Constitution require that the Council of the City of Oberlin certify and submit such a proposed Charter Amendment to the voters of the municipality.

NOW, THEREFORE, BE IT ORDAINED by the Council of the City of Oberlin, County of Lorain, State of Ohio, 5/7ths of all members elected thereto concurring:

SECTION 1. That the attached proposed amendment to the Charter of the City of Oberlin, Ohio, which would add a new Section XIX H. to establish a Living Wage Commission and set forth its powers and duties, is hereby approved and adopted, subject, however, to approval by the electors of the City of Oberlin.

SECTION 2. That said proposed amendment to the Charter of the City of Oberlin, Ohio, shall be submitted to the electors of the City of Oberlin for acceptance or rejection at an election to be held on the first Tuesday after the first Monday in November, 2005, to wit: November 8, 2005; and if approved by majority vote shall become effective immediately thereafter.

SECTION 3. The Clerk of Council of the City of Oberlin shall cause this ordinance to be certified to the Board of Elections of Lorain County, Ohio, no later than September 9, 2005, and shall further cause the full text of said proposed Charter Amendment to be published in a newspaper of general circulation in the City of Oberlin, Ohio, at least once a week for two consecutive weeks during the month of October, 2005, with the first publication to be at least fifteen (15) days prior to the election, and a copy of said proposed amendment shall be mailed to each registered voter of the municipality at least 30 days prior to said election.

SECTION 4. It is hereby found and determined that all formal actions of this Council concerning or relating to the adoption of this ordinance were adopted in an open meeting of this Council, and that all deliberations of this Council and 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.

SECTION 5. That this ordinance is hereby declared to be an emergency measure necessary for the immediate preservation of the public peace, safety, and welfare of the citizens of the City of Oberlin, Ohio, to wit:

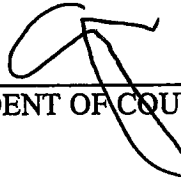
"to comply with all applicable time limits in placing a charter amendment on the ballot",

and shall take effect immediately upon passage.

PASSED: 1st Reading - September 9, 2005 (Emergency - Passed 6 Ayes/0 Nays/1 Absent)
2nd Reading -
3rd Reading -

ATTEST:


CLERK OF COUNCIL


PRESIDENT OF COUNCIL

POSTED: September 9, 2005

EFFECTIVE DATE: September 9, 2005

a:/ORD05-64Charter.LivingWage.Amend

CERTIFICATE OF RESULT OF ELECTION ON QUESTION OR ISSUE

Revised Code, Section 3301.11

State of Ohio

County of LORAIN

12-06-05 A10:26 IN

The Board of Elections of LORAIN County herebycertifies that at the election held in CITY OF OBERLIN

(Subdivision)

in said county on NOVEMBER 8, 2005

(Date of election)

the

vote cast on the following issue was as follows:

Issue

**A PROPOSAL TO AMEND ARTICLE XIX OF THE CHARTER OF THE CITY OF OBERLIN
BY ADDING SECTION H AS FOLLOWS:
ESTABLISHING A LIVING WAGE COMMISSION AND
PROVIDING FOR ITS POWERS AND DUTIES.**

Votes: EIGHT HUNDRED AND SEVENTEEN
(For, yes, etc.—as on ballot)

817

(Number)

Votes: ONE THOUSAND, FIVE HUNDRED AND TWENTY TWO
(No, against, etc.—as on ballot)

1522

(Number)

Total vote cast on issue:

2339

(Number)

Witness our official signatures at SHEFFIELD, Ohio insaid county, this 22ND day of NOVEMBER, 2005, 19

Chairman

Thomas J. Smith
Robert J. Bourgeois
John L. Blum
Anthony B. Hearn

Attest:

Director

BOARD OF ELECTIONS

LORAIN

County, Ohio

PETITION FOR SUBMISSION OF PROPOSED
AMENDMENT TO CHARTER

23 valid
6 invalid
29 total 25 km

NOTICE

Whoever knowingly signs this Petition more than once, signs a name other than his own, or signs when not a legal voter, is liable to prosecution.

To the Council, the legislative authority of the City of Oberlin, Ohio:

We, the undersigned electors of the City of Oberlin, Ohio, respectfully petition the legislative authority of the City of Oberlin to forthwith provide by Ordinance, for submission to the electors of the City of Oberlin, the following proposed amendment to the Charter of Oberlin to-wit:

**Proposed Charter Amendment- New Section
Article XIX Section H- Living Wage Commission**

H. Living Wage Commission.

- 1) **Membership.** The Living Wage Commission shall be composed of one member from City Council, the City Manager or his appointee, one member from the business community, one member from a labor organization, and a member of the Minority Business Enterprises Advisory Board. The term for the member from the business community and from the labor organization shall be for three (3) years. The term for the member from City Council, the Minority Business Enterprises Advisory Board and the City Manager or his appointee shall correspond to the term or employment by the City, while in office or on the Board. The meetings of the Commission shall be public meetings and its records shall be deemed public records.
- 2) **Duties and Powers.** The Commission shall be responsible for the administration of the Living Wage provisions, terms, and conditions. The Commission shall monitor the investigation and resolution of any complaints filed with the Director of Planning and Zoning and Economic Development or the Finance Director. All complaints must be filed within 180 days of the alleged violation. The Director of Planning and Zoning and Economic Development shall be responsible for the enforcement of the Living Wage with respect to city financial assistance recipients. The Finance Director shall be responsible for the enforcement of the Living Wage with respect to contracts and subcontracts. The Directors shall investigate any complaints filed with respect to any violations and report their findings to the Commission which shall hear and decide the complaints. The Commission shall conduct a review and collect data regarding the Living Wage and shall prepare a report every three (3) years regarding its impact on the City.
- 3) **Living Wage.** A Living Wage for covered and non-exempt recipients, employers and subcontractors shall be the greater of \$10.50 per hour or 110% of the updated federal poverty level for a family of four for employees with health benefits and the greater of \$12.00 or 130% of the updated federal poverty level for a family of four for employees with no health benefits. Covered employers, subcontractors and recipients must post a notice stating that employees may be subject to a Living Wage, the current Living Wage with health benefits and without health benefits, and must provide the notice to all employees presently employed and subsequently employed. Employees of covered employers, subcontractors and recipients may file complaints with respect to the Living Wage with the appropriate Director.
- 4) **Coverage.** The following employees and persons shall be paid a Living Wage, a) any person who is an employee of a contractor or subcontractor under a contract with the City and who is directly working under that contract, and b) any person who is an employee of a City financial assistance recipient, their contractor or subcontractor, and who works at a site or expends his or her time working on the project or a portion of the business that receives the financial assistance for a Covered Employer as is provided for in section 5, unless an exemption or a waiver is provided for or is granted pursuant to or in accordance with section 6. All Contracts and grants of Financial Assistance shall contain express language in the Contracts or grants of Financial Assistance subjecting the financial assistance recipient, contractor or subcontractor to the provisions for a Living Wage.



5) **Covered Employers.** Any person or entity that is a Recipient of Financial Assistance from the City in an aggregate amount of at least \$75,000 who is not granted an exemption or waiver shall be subject to the Living Wage. Any person or entity that has entered into one or more Contracts with the City that have an aggregate value of at least \$25,000 in any calendar year who is not granted an exemption or waiver shall be subject to the Living Wage.

6) **Exemptions and Waivers.** The following exemptions are hereby granted: (a) any for profit employer who employs at the time of the execution of the Contract or at the time of the grant of the Financial Assistance less than twenty-five (25) employees, (b) any non-profit employer who employs at the time of the execution of the Contract or at the time of the grant of the Financial Assistance less than fifty (50) employees, (c) any employee employed in a public construction work job or project that is subject to the provisions of state or federal law pertaining to prevailing wage rates or wage rates for public work employment, (d) any employee covered by any collective bargaining agreement or labor agreement or act, (e) any employee of Oberlin College, and (f) any employee who is a person who is enrolled in a high school or college and are under the age of twenty-three (23). In addition the City Council may grant waivers or hardship exemptions. A hardship exemption or waiver may be granted by City Council when an employer can clearly demonstrate a specific particular harm that would be felt uniquely by the employer if the Living Wage was applied. Economic hardship alone will not sufficient to demonstrate hardship unless it is of the type that would not affect any competitor. The following types of specific particular harm may provide sufficient grounds for the hardship exemption (a) a loss of profitability that will clearly result in the elimination of a sufficient number of jobs, (b) a loss in profits that will clearly and substantially impact the long term stability of the employer, or (c) as to non-profit employers a clear substantial hindrance in the ability to deliver a substantial amount of its services. Hardship exemptions or waivers from the Living Wage are disfavored, and will be granted only when the balance of the competing interests weigh clearly in favor of the granting of the hardship exemptions or waivers. If hardship exemptions or waiver are granted, partial hardship exemptions or waivers are favored over blanket hardship exemptions or waivers. Hardship exemptions or waivers must be limited in duration and can be renewed. Permanent hardship exemptions or waivers are not permitted.

7) **Definitions.** (a) "Financial Assistance" includes, but is not limited to, bond financing, tax increment financing, tax abatement assistance of any kind, and other funds; that are not governed by federal or state regulations and are not excluded in this subsection and where the application of this section is consistent with laws authorizing the City to expend such other funds. Financial assistance is also understood to include any in-kind assistance that the recipient would otherwise have to pay. Loans are not considered financial assistance unless they are forgiven or discounted below the available market rate over the life of the loan. The rental or use of City property below fair market rentals shall be deemed financial assistance. The purchase or sale of City property by a person shall be considered financial assistance if such purchase or sale is a bargain sale, below fair market value; (b) "Person or entity" means any individual, proprietorship, partnership, joint venture, corporation, limited liability company, trust, association, or other entity that may employ individuals or enter into contracts; (c) "Subcontractor" means any person not an employee who enters into a contract with a Contractor who is the recipient of Financial Assistance or has entered into a Contract with the City; (d) "Health Benefits" mean providing or offering to provide single health care benefits for employees at employer cost or requiring an employee contribution toward the purchase of such health benefits for employees, provided that the employee cost or contribution equals no more than fifteen percent (15%) of employees' wages; and (e) "Living Wage" has the meaning as is provided in section three (3).

8) **Additional Terms, Rules and Regulations.** Council shall enact by ordinance such additional terms, rules and regulations for the Commission which it deems necessary for its operations pertaining to, related to or associated with the enforcement administration and application of this charter provision, including with limitation such matters as hearings, notices, compliance, maintenance of records, complaints, violations, appeals, investigations, applications, hardship exemptions, audits, examinations, reports, penalties, or waivers. To the extent that Council has not by ordinance provided otherwise the Commission shall adopt its own rules and regulations to govern such matters and in case of a conflict with an ordinance of Council, the ordinance shall prevail. The provisions of Article XIX, Sections A and B shall apply to the Living Wage Commission except to the extent they may conflict with the express provisions of this Section H which shall control in case of a conflict.

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9) **Prohibition of Retaliation and Discrimination.** An employer shall not discharge, reduce the compensation or otherwise discriminate against any employee for making a complaint or otherwise asserting his or her rights under this Living Wage provision, participating in any of its proceedings or using any remedies to enforce his or her rights under this Living Wage provision. A person who believes he or she has been retaliated against in violation of this section may file a complaint. Such complaint shall be processed, investigated, and heard according to the procedures under this Living Wage provision. If after a hearing the allegations of retaliation are found to be true, then appropriate sanctions may be ordered, including the denial of the right to bid on future City contracts for a specified period of time, or the right to receive any financial assistance for a specified period of time.

10) **Sanctions and Penalties.** Any employer found to have violated a provision of the Living Wage provisions, who has submitted false or fraudulent information, or who fails to cooperate in an investigation or an audit pursuant to the provisions for a Living Wage hereunder, may be subject to one or more of the following sanctions or penalties imposed by the City, (a) withholding of payments, either in whole or in part, until the employer cures the default or is in full compliance, (b) termination, suspension or cancellation of the Contract or Financial Assistance, (c) denial of the right of employer to bid on future Contracts or to receive future Financial Assistance, (d) repayment or refund of previous paid Financial Assistance, and (e) the filing of a complaint with any pertinent federal agency. No remedy set forth in this section is intended to be exclusive or a prerequisite for asserting a claim for relief to enforce any rights under the Living Wage provisions in a court of law.

11) **Effective Date.** The provisions of the Living Wage shall apply to Contracts or Financial Assistance entered into or granted after the effective date of this charter provision, and to existing Contracts or Financial Assistance grants after the effective date of this charter provision when such Contracts or grants of Financial Assistance are amended, modified, or changed subsequent to the effective date of this charter provision.

We hereby designate the following petitioners as a committee to be regarded as filing this petition or its circulation: John Whitman, 46802 Rt. 20, Oberlin, Ohio 44074; Mary H. McCalla, 91 Kendal, Oberlin, Ohio 44074; David Laczko, 525 E. College St., Oberlin, Ohio 44074; and J.J. Schaum, 309 Edgemoor Pl., Oberlin, Ohio 44074;

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	Signature (Written in Ink or Indelible Pencil)	Place of Residence Street and Number		Date		
				Mo.	Day	Year
1.	Dan K. Lamber	525 EAST COLLEGE ST.	Oberlin	9	5	5
2.	Mary H. McCalla	91 Kendal Dr.	Oberlin	9	5	5
3.	Matthew Stacy	2 Kendal Dr.	Oberlin	9	5	5
4.	J.J. Schaum	309 Edgemoor Place	Oberlin	9	5	05
5.	[Signature]	525 EAST COLLEGE ST. OBERLIN OH	Oberlin	9	5	05
6.	Bryce Allen	North 314 121st St	Oberlin	9	6	05
7.	Damon [Signature]	113 West College St Harkness 305	Oberlin	9	6	05
8.	Cara E. Blassler	2 South Progress St 212 Talcott	Oberlin	9	6	05
9.	Rebecca Drury	167 Woodland St Noah 316	Oberlin	9	6	05
10.	[Signature]	113 West College St Harkness 210	Oberlin	9	6	05
11.	[Signature]	167 Woodland St Noah 116	Oberlin	9	6	05
12.	[Signature]	167 Woodland St Noah 107	Oberlin	9	6	05