

Living Wage Ordinance

WHEREAS, the City is accountable for the creation and maintenance of employment opportunities such as those created through the employment of direct city employees, through the provision of service contracts to private contractors to provide services for the City, and through the public financing of economic development projects designed to create or retain jobs in the City; and

WHEREAS, the City has a limited amount of taxpayer resources and has an interest in protecting the public health, safety and welfare of its residents by establishing certain compensation requirements for its own employees and employees of firms that enter into service contracts with the City or receive economic development assistance from the City; and

WHEREAS, such compensation requirements have the potential to increase consumer income and thereby decrease the number of employees whose incomes are below the poverty level, invigorate neighborhood business, help reduce blight in the City, and reduce the need for taxpayer-funded subsidies; and

WHEREAS, payment of higher wages is associated with greater business investment in employee training, higher productivity, and lower employee absenteeism and turnover; and

WHEREAS, this Chapter is intended to promote better quality and increase the reliability of services procured for the City and provided to City residents by promoting higher productivity and retention of employees working on city service contracts and on projects that are the subject of city financial assistance; and

WHEREAS, this Chapter is adopted pursuant to the City's spending and procurement powers as authorized by the Home Rule Act, [CITE], and provides for payment of living wages only to employees of Covered Employers, defined herein; further, this Chapter does not establish any generally applicable City minimum wage, or affect the wages paid by any business or individual that chooses not to contract with the City to provide services covered under this Chapter and not to accept city financial assistance subject to this Chapter.

NOW, THEREFORE BE IT ENACTED BY THE PEOPLE OF THE CITY OF [CITY]:

Section 1: Popular Name and Purpose

- (1) This Chapter shall be known as the [CITY] Living Wage Law.
- (2) The purpose of this Chapter is to ensure that when taxpayer-funded benefits are extended by the City to private businesses, they are used in a way that benefits the interests of the City as a whole, by creating jobs that keep workers and their families out of poverty. This Chapter therefore requires the City, its contractors and subcontractors, and businesses benefiting from its financial assistance programs to pay their employees a wage that will enable a full-time worker to support a family at a level that meets basic needs and avoids economic hardship.

Section 2: Definitions

For purposes of this Chapter, the following definitions shall apply:

- (1) "City" means the City of [CITY], its departments, offices, agencies, subdivisions, or officials thereof. City also includes any public authority or agency, including but not limited to the **[insert any city authorities you absolutely want to cover – if any]**, that is controlled by, a majority of the governing body of which is appointed by, or that receives public funds appropriated by or allocated on behalf of the City, and any department, office, agency, subdivision, or official of such an entity.
- (2) "City Contract" means any agreement between the City and any other Person to provide services to the City or its residents. City Contract includes any grant, including but not limited to Community Development Block Grant (CDBG) funds, awarded to a Person in order for it to provide specific services to the City or its residents. City Contract does not include agreements primarily for the purchase or lease of goods or property for the City; nor agreements for the provision of professional services such as legal services, banking services, architectural services, or computer services.
- (3) "Contractor" means any a Person that has entered into a City Contract.
- (4) "Subcontract" means any contractual relationship under which a Person does either of the following: (a) assists a Contractor in performing a City Contract, or accepts or transfers any right or responsibility set forth in a City Contract; or (b) performs services on-site for a Beneficiary at property that is the subject of City Financial Assistance.
- (5) "Subcontractor" means any Person that has entered into a Subcontract.
- (6) "Covered Employer" means any entity fitting the definitions set forth in Section 4.
- (7) "Employee" means any person who performs work on a full-time, part-time, temporary, or seasonal basis, including employees, temporary workers, contracted workers, contingent workers, and persons made available to work through services of a temporary services, staffing or employment agency or similar entity.
- (8) "Covered Employee" means any individual fitting the definitions set forth in Section 5.
- (9) "Designated Department" means the City department or agency designated to be responsible for the overall implementation and enforcement of this Chapter.
- (10) "Benefits Expenditure" means payments made by a covered employer for any bona fide fringe benefits, paid directly to an employee or to a third party on behalf of a covered employee or dependents of a covered employee, such as benefits related to health care, retirement security, disability, or training and education, but excluding any payments that are tips or gratuities, deducted from a covered

employee's wages or otherwise reimbursed by a covered employee, or required by any other local, state, or federal law. Also excluded from this definition is the value of any benefit for which a covered employee is eligible but for which no payment is actually made by a covered employer to the covered employee or to any other party on the covered employee's behalf because the covered employee either does not actually utilize or does not elect to receive the benefit for any reason.

- (11) "Maximum Benefits Expenditure Credit" means \$1.25 upon implementation of this Chapter. Starting January 1, 2008, and each year thereafter, this amount shall be upwardly adjusted in proportion to the increase, if any, for the period of the preceding September over the level as of September of the immediately preceding year in the Consumer Price Index - All Urban Consumers or its successor index as published by the U.S. Department of Labor or its successor agency.
- (12) "City Financial Assistance" means something of economic value, awarded or conveyed to a Person, by or through the approval of the City, for the purpose of promoting economic development, job retention, or job growth. Generalized financial assistance such as that provided through broadly applicable tax reductions shall not qualify as City Financial Assistance. City staff assistance shall not by itself be considered City Financial Assistance. The opportunity to enter into a Contract with the City shall not by itself be considered City Financial Assistance.

City financial assistance includes, but is not limited to, any of the following things when they are awarded for the purpose of promoting economic development, community development, job retention, or job growth: any grant (except grants awarded to fund the provision of specific services to the City or its residents, which are treated as City Contracts); below-market-rate loans; deferrals or reductions of payments due on a loan; reduction in the interest rate of a loan; financial planning assistance; tax incentive or abatement; tax increment financing; bond financing; rent subsidies; land write-downs (*i.e.* the donation, sale, lease, assignment, or transfer of land at less than fair market value of property); rebates; contingent obligations taken on by the City, such as any guarantee; provision of tangible personal property such as materials, equipment, fixtures, merchandise, inventory, or machinery.

- (13) "City Financial Assistance Agreement" means any contract or agreement to provide or extend City Financial Assistance, or otherwise involving the award of City Financial Assistance.
- (14) "Beneficiary" means any Person that is a recipient of City Financial Assistance, as defined above.
- (15) "Subtenant" means any tenant or leaseholder of a Beneficiary that uses or occupies property that is the subject of the City Financial Assistance.
- (16) "Living Wage" means a wage equal to the levels established in Section 6.

- (17) "Person" means any individual, partnership, corporation, limited liability company, sole proprietorship, association, joint adventure, estate, trust, and any other entity, group or combination acting as a unit, and the individuals constituting such group or unit.

Section 3: Applicability

- (1) This Chapter shall apply to any for-profit Contractor or Beneficiary that employs or contracts with five (5) or more individuals firmwide; or a non-profit Contractor or Beneficiary that employs or contracts with ten (10) or more individuals firmwide.
- (2) This Chapter shall apply to any City Contract or City Financial Assistance awarded, entered into, extended or renewed after the effective date of this Chapter.

Section 4: Covered Employer

- (1) The City is a "Covered Employer" in all of its operations and activities.
- (2) A Contractor is a "Covered Employer" if it enters into one or more City Contracts where the annual value of payments under all such City Contracts is (or is projected to be) \$25,000 or more. A Contractor is a Covered Employer from the beginning of the term of the City Contract that caused the combined annual value of payments to exceed \$25,000, and continues until the termination of all City Contracts.
- (3) A Beneficiary is a "Covered Employer" if it receives City Financial Assistance with a combined value that is (or is projected to be) valued at \$100,000 or more. A Beneficiary is a Covered Employer from the beginning of the term of the City Financial Assistance Agreement that causes the cumulative value of all City Financial Assistance Agreements received by the Beneficiary to exceed \$100,000. A Beneficiary ceases to be a Covered Employer ten years after the later of the following dates: the date upon which the most recent City Financial Assistance Agreement was received; or the date upon which it ceased to receive City Financial Assistance.
- (4) A Subcontractor is a "Covered Employer" beginning on the later of the following dates: (a) the beginning of the term of the Subcontract; or (b) the date on which the Subcontractor's associated Contractor or Beneficiary becomes a Covered Employer. A Subcontractor ceases to be a Covered Employer on the earlier of the following dates: (a) the termination of the Subcontract; or (b) the date on which the Subcontractor's associated Contractor or Beneficiary ceases to be a Covered Employer.
- (5) A Subtenant is a "Covered Employer" beginning on the later of the following dates: (a) the beginning of the term of its lease with the Beneficiary; or (b) the

date on which its associated Beneficiary becomes a Beneficiary. A Subtenant ceases to be a Subtenant at the earlier of the following dates: (a) the termination of the lease; or (b) the on which date its associated Beneficiary ceases to be a Beneficiary.

Section 5: Covered Employee

- (1) Employees of the City are Covered Employees for all hours they work for the City.
- (2) Employees of Covered Employers are Covered Employees for all hours they perform work: (a) relating to a City Contract; or (b) at a location that is the subject of City Financial Assistance.
- (3) Where a Covered Employer cannot determine which of its Employees perform work relating to a City Contract, all of its Employees shall be Covered Employees.

Section 6: Living Wage Required.

- (1) Every Covered Employer must pay Covered Employees no less than a Living Wage for all hours worked as a Covered Employee. The Living Wage shall be \$10.55 per hour upon implementation of this Chapter. Each year thereafter, starting January 1, 2008, the amount of the living wage shall be upwardly adjusted in proportion to the increase, if any, for the period of the preceding September over the level as of September of the immediately preceding year in the Consumer Price Index - All Urban Consumers or its successor index as published by the U.S. Department of Labor or its successor agency.
- (2) A Covered Employer may claim a credit toward the Living Wage in the amount of their average hourly Benefits Expenditure per Covered Employee, up to the Maximum Benefits Expenditure Credit. A Covered Employer may use any reasonable methodology to determine their average Benefits Expenditure per Covered Employee. To claim this credit, a Covered Employer must furnish proof of Benefits Expenditures made on behalf of each Covered Employees or their family to the Designated Department or that Department's designee.
- (3) Beginning in 2007 and each year thereafter, the City shall publish a bulletin on December 1 announcing the adjusted Living Wages and Maximum Benefits Expenditure Credit, which shall take effect on January 1 of the following year. This bulletin shall be distributed to all City agencies and Covered Employers upon publication. Covered Employers shall provide written notification of the rate adjustments to their Covered Employees, and to their affected contractors, Subcontractors and tenants. In the event that the City fails to publish the adjusted Living Wages, it shall remain the obligation of each Covered Employer to calculate and begin paying the adjusted Living Wages effective January 1.

Section 7: Compensated Leave.

- (1) Paid Sick Leave. Covered Employers shall permit Covered Employees to take at least 10 days per year of paid leave. Paid leave may be taken without prior notice to the Covered Employer when an Employee or a member of his or her immediate family is sick. Covered Employees may use paid sick leave for routine medical or dental visits. This paragraph does not mandate the accrual from year to year of paid sick leave.
- (2) Other Annual Leave. In addition to paid sick leave, Covered Employers shall provide at least 12 days of paid annual leave per year for use by each Covered Employee, which may include any federal public holidays for which a Covered Employer provides paid leave. Covered Employees shall have no work responsibilities on days of paid annual leave, and may use such days for any desired purpose, including illness or routine medical or dental visits.
- (3) Accrual and Implementation. When the need to take leave is foreseeable, Covered Employers may require reasonable advance notice of an employee's intent to use paid leave.

Covered Employees who regularly work at least forty hours per week shall be paid for at least eight hours of work for each day of paid leave required under this Section. Covered Employees who regularly work fewer than forty hours per week shall be paid a prorated portion of an eight-hour day for each day of paid leave required under this Section.

Covered Employees shall accrue one day of paid sick leave and one day of paid annual leave per month of full-time-equivalent employment up to the required minimum of 10 paid sick days per year, and 12 days of paid annual leave. All days of paid annual leave provided by a Covered Employer, including paid holidays and paid days off provided pursuant to a collective bargaining agreement, may be counted toward provision of the 12 days of paid annual leave required by this Section.

Section 8: Retaliation Prohibited

No Covered Employer shall discharge or take other adverse action against any Person in retaliation for asserting any claim or right under this Chapter, for assisting any other person in doing so, or for informing any person about their rights.

Section 9: Exemptions

Notwithstanding any other provisions in this Chapter, the following exemptions shall apply:

- (1) For any City Contract or City Financial Assistance, the City Council may grant a partial or complete exemption from the requirements of this Chapter if it determines that any application of this Chapter that would violate federal, state or local laws(s), or for any of the following employers:

- (a) A not-for-profit corporation employing employees under 21 years of age for:
 - (i) A bona fide training program;
 - (ii) An after school or summer or youth employment program; or
 - (iii) A bona fide work study program, internship, fellowship, or other similar program.
- (b) A not-for-profit organization that provides human services pursuant to City Contracts and demonstrates that it cannot reasonably afford to pay the Living Wage and Provide Health Care or Child Care to their Covered Employees based on payment rates under the City Contract and other resources available to them.

The City should prioritize exemptions for the following employers:

- (1) Non-profit organizations that predominantly serve low-income clients or populations;
 - (2) Non-profit organizations that demonstrate that they are prudently allocating their limited resources — for example, by showing that their highest paid employee is paid no more than six times the wage rate paid to their lowest paid employee; or
 - (3) Non-profit organizations performing County Contracts that are not awarded through competitive bidding.
- (2) Requirements of this Chapter may be waived by the written terms of a bona fide collective bargaining agreement, provided that this Chapter is expressly referenced in the agreement, and that the agreement sets forth in clear and unambiguous terms the desire of all parties to waive some or all of the requirements of this Chapter. Unilateral implementation of the terms and conditions of employment by either party to a collective bargaining relationship shall not constitute a waiver of any of the requirements of this Chapter.

Section 10: Monitoring and Enforcement

- (1) Every Covered Employer shall agree to the payment of a Living Wage as a condition of entering into or renewing a City Contract or City Financial Assistance agreement, shall agree to post a notice regarding the applicability of this Chapter in every workplace in which Covered Employees are working, and shall agree to provide payroll records or other documentation as deemed necessary within ten (10) business days from the receipt of the City's request. All City Contracts and City Financial Assistance agreements covered by this Chapter shall provide that a violation of the Living Wage requirements of this Chapter shall be a material breach of the City Contract or City Financial Assistance Agreement. The Designated Department of the City shall monitor the compliance of each Contractor or Beneficiary under procedures developed by the Designated Department and approved by the City Administrator.

- (2) Each Covered Employer shall submit to the Designated Department information regarding number of employees and applicable wage rates of its employees covered by this Chapter in such manner as requested by that Department. At the request of the Designated Department, any Contractor or Beneficiary shall provide satisfactory proof of compliance with the living wage provisions of this Chapter.
- (3) Any Person may submit a complaint or report of a violation of this Chapter to the Designated Department. Upon receipt of such a complaint or report, the Designated Department shall investigate to determine if there has been a violation. The investigation shall be resolved within ninety (90) days.

Section 11: Penalties and Enforcement.

- (1) A violation of any provision of this Chapter is a civil infraction punishable by a fine of not more than \$500.00 plus all costs of the action. Any court of competent jurisdiction may issue and enforce any judgment, writ, or order necessary to enforce this Chapter, including backpay to affected employees and other relief deemed appropriate.
- (2) Each day upon which a violation occurs shall constitute a separate violation.
- (3) In addition to enforcement under Subsections (1) and (2), the City shall have the right to modify, terminate, and/or seek specific performance of any City Contract or City Financial Assistance agreement with a Covered Employer or to cancel, terminate or suspend the City Contract in whole or in part and/or to refuse any further payments under the City Contract or City Financial Assistance;
- (4) Nothing contained in this Chapter shall be construed to limit in any way the remedies, legal or equitable, which are available to the City or any other Person for the correction of violations of this Chapter.

Section 12: Private Actions for Damages or Injunctive Relief.

- (1) A Covered Employee who is denied payment of the applicable living wage in violation of this Chapter may bring a civil action in any court of competent jurisdiction for appropriate injunctive relief or damages or both against the Person(s) who acted in violation of this Chapter. No employee or Person shall bring a civil action alleging a violation of this Chapter unless the employee or Person has first provided a written allegation of the violation of this Chapter to the Designated Department and the Covered Employer no less than ninety (90) days prior to filing said civil action. After at least ninety (90) days have passed after the written allegation has been provided, the employee or Person shall be free to proceed with a civil action. Any civil action under this Section must be brought within one year of the last date of the violation. The last date of the violation shall be determined by the last paycheck received by the employee or Person that

did not contain the Living Wage, or by the last occurrence of retaliation prohibited by Section 7.

- (2) As used in subsection (1), "damages" means restitution of the difference between amounts actually paid and the living wage that should have been paid including interest, an additional equal amount as liquidated damages, and reasonable attorney fees and costs.
- (3) Private actions and remedies under this Section shall be in addition to any actions for violations which the City may take.

Section 13: Other Provisions.

- (1) No Covered Employer may fund wage increases required by this Chapter by reducing the compensation, wages, fringe benefits, or leave available to any Covered Employee.
- (2) The City Administrator will submit a report to City Council two years after the effective date of this Chapter, as first enacted, and every two years thereafter. The report will contain, for the two preceding years, information as to the amount of the increases required by Section 6, information as to the number of Covered Employers doing business with the City, and a summary report of all violations of this Chapter.

Section 14. Effective Date

That this Chapter shall take effect 90 days after it is enacted by voters.

Section 15: Preemption and Severability

The sections, subsections and paragraphs of this Chapter shall be deemed severable, and the declaration by a court of competent jurisdiction that any part hereof is invalid shall not affect the remaining parts of the Chapter