



Special Report

City of Pittsburgh
Service Worker Prevailing Wage Ordinance

Report by the
Office of the City Controller

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TABLE OF CONTENTS

Background	1
Summary and Options for Policymakers	2
City of Pittsburgh Prevailing Wage Ordinance	3
Contracts	4
City Subsidies	6
Tax Increment Financing and Tax Abatement Programs	6
Parking Tax Diversions	8
Authorities' Prevailing Wage Policies	10
Comparison to City of Philadelphia's Service Worker Prevailing Wage Requirements	11
Scope of Workers and City Activities Covered.....	13
City Activities Triggering Prevailing Wage Requirements.....	13
Enforcement.....	14

APPENDIX

Background

Prevailing wage laws set a minimum wage that employees must be paid when working on a project made possible by public funds, usually through government contracts or public subsidies that support commercial and residential development. Typically, the “prevailing wage” consists of a base hourly wage rate plus a supplement that accounts for the value of fringe benefits, both of which are determined by a regulatory agency using an analysis of local labor conditions.

Advocates of prevailing wage laws cite various benefits, including supporting working class jobs with decent wages, reducing racial wage disparities, and preventing contracted employers from using public funds to undercut local labor markets with low wages.

Early prevailing wage laws focused on the construction sector. The Davis-Bacon Act of 1931 requires workers on federally funded or federally assisted construction projects of more than \$2,000 to be paid at least the prevailing wage. Similarly, the Pennsylvania Prevailing Wage Act of 1961 sets prevailing wages for all construction projects over \$25,000.

The McNamara-O'Hara Services Contract Act of 1965 was the first federal prevailing wage law to focus on service employees, applying to federal contractors and subcontractors on prime contracts over \$2,500. The US Department of Labor annually publishes prevailing wage rates for each occupational classification, and many localities that have adopted their own prevailing wage laws, including Pittsburgh, rely on these annual determinations to determine their own rates.

The City of Pittsburgh and Allegheny County adopted similar prevailing wage ordinances for service sector employees in February and April of 2010, respectively. This report focuses on the City of Pittsburgh's ordinance. More information on the County's service worker prevailing wage requirements can be found in Chapter 280 of the Allegheny County Code of Ordinances.

Summary and Options for Policymakers

The City Controller's Office began this report in May 2022, which was then requested by City Council in July 2022 pursuant to Resolution 595. The goal of this report is to assess the overall enforcement of the City of Pittsburgh Service Worker Prevailing Wage Ordinance and present local policymakers with options to improve its effectiveness. Listing City Council's concerns, Resolution 595 states that the City of Pittsburgh and intergovernmental authorities:

- do not possess or maintain a comprehensive list of contracts and/or projects covered by the Ordinance,
- neither inform employers about the requirements of the Ordinance nor consistently enforce the payment of prevailing wages to service workers covered by it,
- do not compel covered employers to provide annual payroll data as required by the Ordinance,
- do not provide any ongoing reporting on the number of service workers who have benefited from the existence and/or enforcement of the Ordinance, and
- do not track job creation/job quality data for publicly subsidized developments.

As this report outlines, the Controller's Office found that the Ordinance's effectiveness has been limited by three key factors hindering its potential impact on raising local workers' wages.

First, the Ordinance is unclear as to which City activities or programs should trigger prevailing wage requirements, and applicable city departments reported that prior administrations did not attempt to provide clarity or directives. In addition, both the Department of Finance's Real Estate division and the URA expressed doubts that the Ordinance's requirements could be applied to some of the City's largest subsidy programs, including tax increment financing and tax abatement programs. This report presents options for an incumbent mayoral administration to resolve these ambiguities through executive action.

Second, the Ordinance's criteria for qualifying contracts and projects may be overly prohibitive. The City's Procurement division noted that only one active contract carries prevailing wage requirements, as only the City-County Building has met the Ordinance's building size threshold. By comparing the Ordinance with the City of Philadelphia's similar requirements for building service workers, this report presents ways that City Council can make improvements through legislative action.

Finally, there is a critical need to centralize the City's labor enforcement efforts into a single office equipped to proactively ensure employers and workers alike are aware of and compliant with local requirements. While the Controller's Office has pursued full enforcement wherever applicable, without notification from their union, employees are almost never aware that they are entitled to this benefit. In 2020, Philadelphia faced similar obstacles and created a Department of Labor. Pittsburgh can achieve better results for local workers as well, but it will require a coordinated effort between the current administration and City Council to determine the scope and budgetary commitment needed.

Options for Policymakers Presented:

Option 1: Establish Payroll Reporting Process for Covered Contractors

Option 2: Conduct a Legal Review of Eligible Public Subsidy Programs

Option 3: Conduct a Citywide Review of Public Subsidies

Option 4: Establish Payroll Reporting Process for Recipients of City Subsidies

Option 5: Work with Authorities to Pass Aligning Policies

Option 6: Simplify Prevailing Wage Requirements for City Contracts

Option 7: Simplify Prevailing Wage Requirements for City Subsidies

Option 8: Address Sales and Leases of City Property in Prevailing Wage Policies

Option 9: Extend Prevailing Wage Agreement Requirements for City Subsidies and Sales and Leases of City Property

Option 10: Require More Frequent Reporting of WH-347 Payroll Records

Option 11: Set a Standard 10-Year Prevailing Wage Requirement for City Subsidies and Sales of City Property

Option 12: Create an Office of Labor Protection

City of Pittsburgh Service Worker Prevailing Wage Ordinance

The City of Pittsburgh Service Worker Prevailing Wage Ordinance was enacted on February 2, 2010 and can be found in Title I, Article VII, Chapter 161.38 of the City Code. According to Resolution 595, the ordinance “was enacted in response to the concern that private developers in the City of Pittsburgh were using public money to underwrite private businesses that were paying wages substantially lower than wages paid in similar non-publicly financed projects in the rest of the City”.

Four broad categories of service employees are covered under its provisions: building service, food service, hotel, and grocery employees. There are two ways that prevailing wages may become binding on an employer:

1. A City service contract will employ building or food service employees
2. A project receives a “City subsidy” of at least \$100,000 and will employ building service, food service, hotel, or grocery employees

The contract or project must *also* involve a building (or complex of buildings) meeting a minimum size requirement:

Size of Building/Complex:	City Contracts <i>Building and food* service work</i>	City Subsidies <i>Building, food*, hotel, and grocery service work</i>
> 100,000 square feet	Commercial office space	Commercial office space, hotel or motel, mixed use commercial space, shopping mall, sports stadium, performance hall, amphitheater, museum, cultural institution, college or university, distribution, warehouse, industrial facility, parking facility
> 25,000 square feet		Grocery sales floor area
50 or more residential units	Residential buildings	Residential buildings
No size specified	Any other type of building	Library

* Food service work “shall not include direct employment in independently-owned restaurants other than cafeterias”

The Ordinance delegates prevailing wage rate determinations and intake of complaints to the Office of the City Controller. Rates are requested annually by the City Controller and the most available rates are posted on the City Controller’s website using three data sources: the Bureau of Labor Statistics’ wage data, local collective bargaining agreement rates, and the McNamara-O’Hara Service Contract Act rates.

Based on available resources, the City Controller’s Office has pursued enforcement through three primary routes: informing covered employers of their requirements, receiving and investigating complaints of noncompliance, and seeking mediation between parties when disputes arise. Still, there is no central location where covered subsidy projects and contracts are tracked, impeding more effective enforcement. The City could better achieve the Ordinance’s goals by building administrative capacity to enforce not only this ordinance, but other labor-related statutes as well, a topic discussed in Option 12.

Contracts

In December 2017, City Council amended the City Code to add Section 161.45, “City of Pittsburgh Minimum Wage Requirements for Designated Contracts.” It supersedes the Service Worker Prevailing Wage Act by specifying that covered building service and food service employees on City contracts shall be paid no less than \$15 per hour, excluding the fringe benefits supplement.

Controller’s Office staff met with representatives from the Office of Management and Budget’s (OMB) Procurement division and requested a comprehensive list of all covered

contracts since 2010, as well as any current or past WH-347 payroll records collected from vendors as required by the Ordinance. Procurement staff noted that their involvement with enforcing relevant provisions of the Ordinance began in 2017 as the County processed the City's contracts in years prior. They noted no knowledge of any existing list or WH-347s collected and that only the City-County Building has met the Ordinance's building size requirements. As of November 2022, that has left only one active contract qualifying for service worker prevailing wage rates: #52750 St. Moritz Security Services, informed by the Controller of their coverage in August 2016. Procurement reported that no known WH-347s have been collected from this vendor either.

Option 1: Establish Payroll Reporting Process for Covered Contractors

OMB's Procurement division should establish procedures to collect WH-347 payroll records from any covered vendors as required under the Ordinance. Copies should be submitted to the City Controller's Office for auditing and recordkeeping.

In addition to the St. Moritz contract, the Controller's Office has found at least two other contracts covered under the Ordinance. In August 2016, the Controller informed CleanNet Systems of Pennsylvania of their employees' coverage for the cleaning of Citiparks recreation centers. The contract expired in 2020 and was not renewed.

In February 2021, the local SEIU submitted a complaint of noncompliance on behalf of cleaners in the City-County Building contracted under Quality Services Inc., alleging that while they were being paid the correct prevailing wage base rate, they were not receiving the fringe benefits supplement. The contractor was notified in April and requested a hearing as the Ordinance as granted by the Ordinance. The hearing was held in May with the Controller's solicitor appointed as the hearing officer and evidence presented by representatives from Quality Services and OMB. Since the employees in question were part-time under the contract, both Quality Services and OMB argued that the contractor was "in compliance with the Ordinance because under state and federal law and the City's own practice, they are not responsible for benefits for anyone working less than 30 hours per week".

The Controller requested an advisory legal opinion from the City's Law Department addressing whether Quality Services was legally required to provide benefits or payment in lieu of benefits to part-time employees. The City Solicitor provided a memorandum to the Controller on June 25, which included the following answer: "Yes. The Ordinance applies to service workers at large; part-time and full-time janitorial staff are included in the same 'job classification' and, for the purposes of both local and federal prevailing wage law (as the former references the latter), no distinction is made between the two classes in this respect". Furthermore, it states the department's conclusion that "the Ordinance's requirement of benefits to service employees does apply to part-time employees including those of Quality Services."

Shortly after, the Controller affirmed the Law Department's advisory opinion and notified Quality Services that the covered employees were entitled to the fringe benefits supplement.

City Subsidies

Tax Increment Financing and Tax Abatement Programs

A project receiving a "City subsidy" may trigger prevailing wage requirements if the project employs service workers and the subsidy has an aggregate value of at least \$100,000. Under the Ordinance, a subsidy must be one of the following:

- A grant
- A loan that is forgiven or discounted below the market rate over the life of the loan
- Bond financing
- Infrastructure improvements related to a project
- Below-market sale or lease of a property
- Other form of financial assistance related to a project

Two of the largest subsidy programs maintained by the City or the authorities are tax increment financing ("TIFs") and tax abatement programs. Both aim to revitalize blighted properties and neighborhoods.

Tax abatement programs offer a temporary reduction in property assessments or tax credits for developments meeting certain requirements as an incentive to promote economic growth and community development. The Real Estate division receives and reviews all applications for tax abatement programs. In 2019, City Council consolidated and replaced all existing tax abatements into three:

1. Owner-occupied Residential/ For-Sale Development
2. Commercial Residential
3. Industrial, Commercial, or Other Business Structures

Tax increment financing was first authorized for Pennsylvania municipalities when the state passed the Tax Increment Financing Act in 1990. The City of Pittsburgh followed suit in 1993 by authorizing its first TIF programs. The URA manages the TIF application and review process. In a TIF district, property tax values are frozen for a set period while a project is completed. The project improves the value of a property, but any increase over the frozen base value is collected as the "increment" to help the developer finance the project.

The Controller's Office staff met with senior staff in the URA and the Department of Finance's Real Estate division to discuss whether the City's tax abatement programs, TIFs, or other programs have been found to qualify under the Service Worker Prevailing Wage Ordinance.

The URA maintains that as an authority created independently from the City of Pittsburgh, the City's ordinance is not legally binding on them. Establishing the same

requirements on URA activities would require them to approve their own policy – which it did, in September 2019 via Resolution No. 241, “The Service Worker Wage Policy” (Appendix A, B).

However, URA staff pointed to two issues that they or the City might encounter if attempting to apply either policy to TIFs. First, the TIF program is authorized by state law, and attempting to attach prevailing wage requirements to TIF applications is likely to be contested by developers who could appeal to the state. Other major subsidy programs administered by the URA, like the Regional Assistance Capital Program (RACP), have not been considered as qualifying under the policy for the same reason.

Second, TIF projects involve all three local taxing bodies (the City, the County, and the school district), as well as the URA, which acts as the bond issuer for eligible developments. While the City, County, and URA have aligning service worker prevailing wage policies, an intergovernmental agreement involving the school district might still be necessary.

Likewise, the City’s tax abatement programs run into similar issues. Current abatement programs, as well as past programs like Act 42 and LERTA, derive their authorization from state law and involve other taxing bodies. Real Estate staff noted no directives from any former administration to review tax abatements or any other programs under the ordinance, pointing to a long-term need for centralization of enforcement efforts. In the short-term, the City administration can take steps to clear up these legal ambiguities.

The Controller’s Office sought to address these legal ambiguities by submitting questions to the Law Department. The City Solicitor declined to respond, citing a conflict of interest.

Option 2: Conduct a Legal Review of Eligible Public Subsidy Programs

The Mayor’s administration should direct the Law Department to conduct a review of the City’s ability to place prevailing wage requirements on tax abatements, TIFs, and other major subsidy programs that derive their authorization from the state or federal government.

Option 3: Conduct a Citywide Review of Public Subsidies

The Mayor’s administration should then conduct a thorough review of all City subsidy programs that may trigger service worker prevailing wage requirements and establish procedures with City departments to ensure affected parties are notified of their requirements.

Despite these concerns, the Controller’s Office has found at least one project to be covered on the basis of its TIF subsidy. After being notified of the building’s potential coverage by SEIU Local 32BJ, the Controller’s Office concurred in August 2016 and sent written correspondence to Millcraft Investments, owner of the Tower 260 project. Millcraft was

informed that the project qualified, as Tower 260 met the building size threshold *and* the project's \$8.5 million in tax increment financing met the City subsidy threshold.

The City's Real Estate division also expressed uncertainty about the tools available to them to enforce prevailing wages on a property beyond development. The ordinance currently does not provide any guidance as to how long prevailing wage requirements should last. In the case of contracts, the City can clearly enforce contract requirements for the duration of that contract. But in the case of City subsidies, many of the service sector jobs that the Ordinance intends to cover are only created after subsidies have been spent, development is complete, and the City no longer has a direct or legally binding relationship with the property's owners.

Those familiar with the ordinance's legislative history reported that the intention was to tie prevailing wage requirements to a property "in perpetuity." Staff in Real Estate pointed to frequent changes of ownership post-development as an obstacle to this, given that there few tools available to them to ensure requirements carry over from one property owner to the next. In addition, Real Estate stressed that abatements are only granted *after* construction is complete and the property is reassessed; only then would prevailing wage requirements become potentially enforceable. A more reasonable approach to this is proposed in Option 11.

On the other hand, the URA's property disposition process requires redevelopments of URA-owned property to remain consistent with the initial proposal for 20 years. If the redeveloper wants to sell their project, make significant aesthetic changes to the building, or change the initially proposed end use within those 20 years, they must first receive the URA's approval. This provides ample time and a directly binding relationship in which to enforce service worker prevailing wages, and the URA should incorporate this into their proposal requirements, as also noted in Option 11.

Parking Tax Diversions

Another source of high-dollar City subsidies comes from the URA's Parking Tax Diversion Program. A developer whose project includes taxable parking spaces on the property can request that a portion of the revenues collected by the City be returned to the developer over time to subsidize construction costs, improvements to surrounding public spaces, or affordable housing initiatives on the site. The URA's Board of Directors, City Council, and mayor must all approve an eligible application before the subsidy is granted.

The program finds its authorization from the Pennsylvania's Redevelopment Cooperation Law and Intergovernmental Cooperation Law. Applicants must meet the URA's Sponsorship Requirements, which include a Minority Workforce Inclusion plan, sustainability practices, engagement with community groups, and affordable housing development. Program guidelines set a maximum diversion rate of 75% for developments located in targeted areas, create significant economic impacts, or preserve or create affordable housing. Full details can be found in the URA's most recent Parking Tax Diversion Program Guidelines.

Since 2010, the City has approved diversions for five developments, shown below:

Parking Tax Diversions Approved by City Council, 2010-2022				
Development Name	Date of Diversion Final Approval	Total Amount Approved for Diversion	Length of Diversion Period	Development Status
350 Oliver (Downtown)	12/03/2013	\$7,000,000	20 years	Complete
3 Crossings (Strip District)	12/21/2015	\$1,000,000	15 years	Complete
Union Trust Building (Downtown)	11/14/2016	\$5,708,405	17 years*	Complete
Block E (Lower Hill)	12/17/2019	\$25,000,000	19 years*	Not Started
City's Edge (Uptown)	09/22/2020	\$10,000,000	19 years*	Not Started

* Agreements include a provision to transfer diverted funds to the City's Affordable Housing Fund in the year following expiration of the developer's subsidy

All five developments will exceed the Service Worker Prevailing Wage Ordinance's monetary threshold of \$100,000 for City subsidies. However, coverage also requires meeting its building size thresholds: 100,000 square feet for most commercial or mixed-use developments or 50 units for residential buildings.

To determine the developments' coverage status, the Controller's Office requested information on square footage and other relevant details from the URA. Shown below are the best available details related to each development, as well as a determination of their potential coverage.

Developments Receiving Parking Tax Diversion Subsidies		
Development Name	Development Details	Determination
350 Oliver	25,000 ft ² ground-floor retail space	Not Covered
3 Crossings	<u>375,000 ft² multi-building "urban flex" space*</u> 16,000 ft ² retail space <u>Residential building of 300 units</u>	Potentially Covered
Union Trust Building	<u>500,000 ft² commercial office space</u> 35,000 ft ² retail space	Covered and Informed
City's Edge	<u>Residential building of 100 units</u> 12,000 retail space	Potentially Covered
Block E	80,000–90,000 ft ² live venue including Amphitheater, wraparound retail and parking garage	Not Covered

The URA noted that the above figures may not distinguish between usable and net square footage and may reflect outdated data from the URA's pre-construction applications. In addition, a multi-building development that meets the Ordinance's 50-unit residential building threshold but not thresholds for commercial or retail space may require further investigation to determine which buildings on the property are covered. Finally, it must be established that there are service workers employed in those buildings eligible to receiving prevailing wages. For these reasons, the Controller's Office unable to conclusively determine whether the 3 Crossings and City's Edge developments are covered and urges further investigation by the URA.

In January 2017, the City Controller informed The Davis Companies, the developer of the Union Trust Building project, that the building was found covered under the Service Worker Prevailing Wage Ordinance, as it met the building size threshold and the sum of the project's parking tax diversions met the City subsidy threshold. The company responded by proposing a timeline to implement the prevailing wages due to ongoing changes with its service employees' collective bargaining agreements.

The following January, the Controller's Office received a complaint claiming that security workers at the Union Trust Building were being paid less than the appropriate prevailing wage and were not receiving the fringe benefits supplement. The City Controller submitted notice of the complaint to The Davis Companies and Allied Universal, the building's security contractor, and requested payroll records for covered employees.

Option 4: Establish Payroll Reporting Process for Recipients of City Subsidies

The URA should establish procedures to collect WH-347 payroll records from any employer whose project is found covered. Copies should be submitted to the City Controller's Office for auditing and recordkeeping. The URA should also determine whether the 3 Crossings and City's Edge developments qualify under the Service Worker Prevailing Wage Ordinance and whether there are (or will be) employees on those sites eligible for prevailing wages.

Authorities' Prevailing Wage Policies

In addition to the URA, the Controller's Office requested any existing service worker prevailing policies from the Housing Authority, Parking Authority, and Sports & Exhibition Authority but found that none have codified one mirroring the City of Pittsburgh's. However, all three have incorporated elements of the Ordinance into certain contracts as part of their RFP processes.

In at least one case, the Housing Authority included an attachment in an RFP for security services, which stated that "the [Authority] intends to mirror the intent of the City of Pittsburgh's prevailing wage law herein and as such will expect respondents to offer wage rates at or above those that have been published by the Controller of the City of Pittsburgh pursuant to that law."

That attachment became the subject of a dispute in 2016 after the Controller’s Office received a complaint from a security employee of Am-Guard Inc., a covered contractor with the Housing Authority. The complaint alleged that while Am-Guard was paying security guards the correct base prevailing wage, they were not providing the fringe benefits supplement. After being notified, Am-Guard rejected the notification on the grounds that the Housing Authority had never formally adopted the Service Worker Prevailing Wage Ordinance. The dispute continued into 2017, when the Controller’s Office issued a formal review of the case and determined that Am-Guard was noncompliant. While the contractor’s argument was dismissed, the case illustrates how the authorities’ formal adoption of the City’s Service Worker Prevailing Wage Ordinance is key to providing clear and reasonable expectations for covered employers.

Option 5: Work with Authorities to Pass Aligning Policies

Like the URA, the boards of any authorities administering service contracts or City subsidies leading to the creation of service work should formally adopt service worker prevailing wage policies mirroring the City’s ordinance.

Comparison to the City of Philadelphia’s Service Worker Prevailing Wage Requirements

The City of Philadelphia’s prevailing wage requirements are found in section 17-107 of the Philadelphia Code. Initially covering construction work, categories of employees covered under the chapter has been expanded over time to include those involved in building service work and non-professional service contracts. Although its goals are the same, the provisions found in Philadelphia's Code point to several improvements that can be made to Pittsburgh’s system of enforcement.

The following tables summarize the requirements of Pittsburgh and Philadelphia’s service worker prevailing wage requirements.

Summary of Pittsburgh Service Worker Prevailing Wage Requirements				
City Activity	Monetary Threshold	Service Workers Covered	Building Size Threshold	Duration of Prevailing Wage Requirements
Contracts	n/a	Building, Food	100,000 square feet or 50 residential units	Duration of contract
Public Subsidies	\$100,000	Building, Food, Hotel, Grocery	100,000 square feet or 25,000 square feet of grocery space or 50 residential units	Unclear
Sales of Public Property	Unclear			
Leases of Public Property	Unclear			

Summary of Philadelphia Service Worker Prevailing Wage Requirements				
City Activity	Monetary Threshold	Service Workers Covered	Building Size Threshold	Duration of Prevailing Wage Requirements
Contracts	Building service contracts: \$100,000 Non-professional contracts: \$200,000	Building	n/a	Duration of contract
Public Subsidies	n/a	Building	50,000 square feet or 50 residential units	Duration of subsidy or 10 years from the issuance of certificate of approval (whichever is later)
Sales of Public Property	n/a	Building	50,000 square feet or 50 residential units	10 years from date of sale or issuance of certificate of approval (whichever is later)
Leases of Public Property	n/a	Building	50,000 square feet or 50 residential units	Duration of lease

Scope of Workers and City Activities Covered

Philadelphia's prevailing wage requirement for construction workers was initially established in the 1950s and was then expanded in 2008 to cover building service workers. In this area, Pittsburgh's Service Worker Prevailing Wage Act goes further than Philadelphia's, aiming to cover building service, food service, grocery, and hotel workers depending on the city activity. Still, high barriers and unclear enforcement have limited the number of local employees eligible to benefit from its provisions.

City Activities Triggering Prevailing Wage Requirements

As mentioned, Pittsburgh's ordinance explicitly covers two City activities that may trigger prevailing wage requirements: contracts and public subsidies. Philadelphia's ordinance covers four: contracts, public subsidies, sales of property, and leases of property.

Pittsburgh utilizes a relatively high size-based threshold for contracts meeting prevailing wage requirements; most buildings involved in the work must be at least 100,000 square feet *or* consist of at least 50 residential units. As reported by Procurement, a consequence of this is that only the City-County Building has met those requirements. Philadelphia's requirements for contracts, on the other hand, are dollar-based and straightforward: any building service contract over \$100,000 or other non-professional service contracts over \$200,000. Rather than tying requirements to a specific building, any service work conducted pursuant to the contract is entitled to prevailing wages.

Option 6: Simplify Prevailing Wage Requirements for City Contracts

City Council and the authorities should replace the size-based threshold for City contracts requiring prevailing wages with a reasonable dollar-based threshold (e.g., over \$100,000). This would be administratively simpler, as any contract over a certain amount could be reviewed further to determine if the vendor meets prevailing wage requirements, while also expanding the number of workers who may become eligible for coverage.

Given that the Ordinance allows contractors to increase their billable rates to the City when prevailing wages are updated annually, expanding the universe of covered contracts could come at a higher cost to the City. However, these costs should be weighed against the City's goal of increasing the wages of local workers providing vital services to the public.

While both Pittsburgh and Philadelphia address the use of public subsidies, there are slight variations that might significantly alter their scopes. Pittsburgh first requires the "City subsidy" to be valued of at least \$100,000. The project must then involve service workers in one of many potential building types, most of which must be at least 100,000 square feet in size. In comparison, Philadelphia has *no* monetary threshold for the recipients of public subsidies who

may be required to pay prevailing wages, and it sets its building size threshold at a much lower 50,000 square feet.

Option 7: Simplify Prevailing Wage Requirements for City Subsidies

City Council and the authorities should reduce or eliminate the \$100,000 subsidy threshold and reduce the 100,000 square foot building size threshold needed to trigger prevailing wage requirements.

Philadelphia’s Code then goes on to cover an additional two categories of city activities: sales and leases of city property. Prevailing wages may be triggered when the City or a City agency sells or leases a property involving one of various building types over 50,000 square feet or 50 residential units. Its requirements also extend to any sublessees, property managers, contractors, and tenants conducting business on the property. These categories go largely unaddressed in Pittsburgh’s ordinance; only *below-market* sales and leases are covered under the definition of “City subsidy”.

Option 8: Address Sales and Leases of City Property in Prevailing Wage Policies

City Council and the authorities should expand the ordinance to cover sales and leases of City property involving the eligible building types over 50,000 square feet.

Enforcement

Overall, Philadelphia’s Code is more descriptive in its enforcement standards than Pittsburgh’s ordinance across four categories: contractual language, employer reporting, wage requirement duration, and the agency designated to enforce the requirements.

1. Contractual Language

Philadelphia’s Code establishes contractual requirements for any agreements involving the four categories of City activities that may trigger prevailing wage requirements. All City building services contracts over \$100,000 and non-professional services contracts over \$200,000 must contain a provision specifying the prevailing wages to be paid for each employee occupation. Any agreements made with the recipients of public subsidies, lessees, or purchasers of City property must also specify that they acknowledge their legal obligation to pay prevailing wages as specified under the Code if they are covered. That party must also ensure compliance from any future subcontractors, sublessees, or tenants while covered.

The chapter also provides important legal cover by allowing prevailing wage requirements on the recipients of public subsidies to be waived when prohibited under state law. Similarly, it grants the Procurement Commissioner the authority to waive the provision in contracts if its enforcement would result in the loss of federal, state, or other source of funds.

Pittsburgh's Service Worker Prevailing Wage Ordinance does require City contracts to contain a provision requiring compliance from those whose work is applicable, and Procurement confirmed its inclusion in all service contracts. Enforcement could be bolstered by extending those requirements to other categories of city activities.

Option 9: Extend Prevailing Wage Agreement Requirements for City Subsidies and Sales and Leases of City Property

City Council and the authorities should amend their policies to require a provision in agreements involving the recipients of City subsidies and lessees or purchasers of City property to comply with prevailing wage rates when applicable. That language should allow the City to waive the requirement if it would result in the loss of funds from government sources.

2. Employer Reporting

Both cities require covered employers to report employee wages using federal Form WH-347, a weekly payroll reporting form produced by the US Department of Labor. However, Pittsburgh's ordinance requires only annual reporting, while Philadelphia's requires employers to provide the form to the enforcement agency on a weekly basis, no later than seven days after the end of the work week. Given that the form records an employee's weekly hours and wages, Pittsburgh's annual requirement is too sparse to expect consistent and accurate recordkeeping without continuous enforcement.

Option 10: Require More Frequent Reporting of WH-347 Payroll Records

City Council and the authorities should require reporting of Form WH-347 from covered employers on a more frequent basis to regularly verify compliance.

3. Duration of Prevailing Wage Requirements

How long an employer should be required to provide and report prevailing wages is intuitive in the case of City contracts and leases: for the duration of the contract or the lease. In the case of public subsidies or sales of City property, the answer is less clear. While Pittsburgh's ordinance is silent on the issue, Philadelphia's Code provides a straightforward answer: ten years. Covered recipients of public subsidies must pay prevailing wages for the duration of the assistance *or* 10 years from the issuance of a certificate of approval, whichever is later. The initial developer must also require any subsequent owners, lessees, and tenants to comply prevailing wage requirements. Covered purchasers of City property must pay prevailing wages for 10 years from the sale or issuance of a certificate of approval, whichever is later. They must also require all property managers, contractors, lessees, and tenants to comply with and be bound by the prevailing wage requirements.

As mentioned, Pittsburgh’s ordinance indicates that prevailing wage requirements arising from public subsidies remain effective in perpetuity. Based on conversations with those in the URA and Real Estate division familiar with the City’s subsidy and development programs, long-term enforceability of this would be exceedingly difficult. A more realistic approach would be to adopt Philadelphia’s language setting 10 years as the standard, giving both the employer and enforcement body a clear timetable for compliance.

Option 11: Set a Standard 10-Year Prevailing Wage Requirement for City Subsidies and Sales of City Property

City Council and the authorities should adopt a 10-year standard for prevailing wage requirements as it relates to City subsidies and sales of City property, or while a property remains under URA’s disposition process, whichever is longer.

4. Enforcement Agency

Perhaps most importantly, Philadelphia has since transferred enforcement of its prevailing wage requirements to the City’s Department of Labor, a fully staffed agency dedicated specifically to labor law enforcement.

Facing a growing collection of local labor laws, Philadelphia’s City Council proposed, and local voters approved, a permanent Department of Labor and Board of Labor Standards in 2020 to centralize enforcement and improve the local business community’s awareness and compliance with their requirements. The Department consists of the following divisions:

- Office of Employee Relations – intake of Equal Employment Opportunity complaints and addressing workplace issues, including harassment and discrimination claims; advising and assisting in workplace conflict management; providing employer information about FMLA, ADA, and other HR programs
- Office of Labor Relations – negotiates and administers collective bargaining agreements with the City’s municipal labor unions; handles dispute resolutions between the City and labor unions related to grievances, arbitration, and unfair labor practices
- Office of Worker Protections – intake for reports of wage theft, wrongful terminations, paid sick leave violations, Fair Workweek violations, and Domestic Worker Bill of Rights violations, and COVID-19 retaliation complaints
- Office of Labor Standards – enforcement of prevailing wage requirements and workforce diversity standards

In some respects, the City of Pittsburgh is in a similar position, having taken a larger role in matters of labor in recent years, yet the City lacks a department or office where those policies can be centrally enforced.

Under the current system of service worker prevailing wage enforcement, the Controller’s Office relies on complaints to determine where remedial action is needed. In

contrast, an Office of Labor Protection could enable the City to achieve enforcement on a proactive basis by building relationships and outreach with local employers and community groups.

While the City of Pittsburgh Service Worker Prevailing Wage Ordinance can be amended and improved, overall compliance is likely to suffer without centralizing the City's approach to protecting workers' rights and benefits. The Controller's Office found that enforcement of the ordinance was balkanized across City departments and the authorities, and overall awareness of it was low. Controller's Office staff reported that WH-347 payroll records had never been submitted to the Office, pointing to a need to coordinate efforts.

The most important beneficiaries of this proposal would of course be local workers, who would gain a clear point of contact in city administration to address a broad range of workplace concerns.

Option 12: Create an Office of Labor Protection

City Council and the Mayor should explore the possibility of establishing an Office of Labor Protection. Its responsibilities could include:

- Enforcement of the City's Service Worker Prevailing Wage Ordinance and Paid Sick Days Act, as well as the Pennsylvania Prevailing Wage Act for construction-based work
- Fielding complaints of unfair labor practices or wage and hour violations to the local NLRB
- Fielding complaints of discrimination to the Commission on Human Relations
- Creating and distributing resources about employee rights and the union organizing process
- Gathering and building the City's local employment data, including job creation tracking from publicly subsidized developments
- Providing mediation between the City and its collective bargaining units
- Conducting outreach to employers and workers to build awareness and compliance, especially in traditionally neglected communities
- Leading efforts to achieve race and gender equity in the City workforce

While routine enforcement could be handled by this new office, the Controller's Office should retain certain functions. As an independent party in city government, the Controller's Office is well suited to oversee the hearing process established by the prevailing wage ordinance, for example, and should continue to verify that covered contracts include the appropriate prevailing wages before they are approved.

Appendix

Exhibit A:
URA Board Minutes 09/12/2019
Passage of URA Service Worker Wage Policy

18. Service Worker Prevailing Wage Policy

a. Presentation and approval of Policy

Ms. Walker requested Board approval of the above item.

Ms. Kate Wrenshall, Senior Counsel stated that In 2010, the City of Pittsburgh adopted a Service Worker Prevailing Wage Ordinance, governing payment of wages to certain classifications of workers performing services on certain City contracts and projects. The URA is proposing to adopt its own version of this policy that tailors it to fit the URA's programming.

Policy Overview

Requires payment of at least "prevailing wages" to Building Service Employees, Food Service Employees, Hotel Employees, and Grocery Employees (as those terms are defined in the City of Pittsburgh Code of Ordinances § 161.38(I)) for recipients of specified classes of funding in excess of \$100,000.00, including:

- Grants;
- Specified loan products;
- Bond financing;
- Infrastructure Improvements; and
- Below-market sale or lease of property.

The policy applies to projects above particular size thresholds (e.g., commercial developments in excess of 100,000 square feet, residential developments of at least 50 units, etc.).

The policy also requires entities with whom the URA contracts in excess of \$50,000.00 per year to pay "prevailing wages."

Enforcement of the policy is delegated to the Controller for the City of Pittsburgh.

Mr. Williamson stated that the original legislation was passed in 2010. He stated that public dollars and contracts should not be subsidizing employers who pay poverty wages. He stated that with this policy there will be a requirement in place to pay workers enough to live in this City, and employers to pay prevailing wages that are market rate for jobs across the City of Pittsburgh. He stated that this policy is an extension of City law and supported by Governor Wolf. He stated that any developer who obtains RACP funding through the URA will have to comply with the City's Ordinance to pay its employees, at least the same as other workers in the job market.

Upon a motion to approve by Mr. Gainey, seconded by Mr. Lavelle, the following resolution was adopted by those present, except Mr. Williamson, who abstained:

RESOLUTION NO. 241 (2019)

RESOLVED: The Service Worker Prevailing Wage Policy is hereby approved.

Exhibit B: **URA Service Worker Prevailing Wage Policy**

Urban Redevelopment Authority of Pittsburgh **Service Workers Prevailing Wage Policy**

Purpose:

It is the policy of the URA to promote inclusive growth and quality job creation. This Service Workers Prevailing Wage Policy (the "Policy") furthers this goal by requiring businesses and institutions that use public money or are paid with public money to pay wages that reflect the local wage scale.

Definitions:

(a) "Complex" shall mean two (2) or more buildings that are commonly owned and/or operated and either (a) in close physical proximity; or (b) developed pursuant to a common development plan or financed pursuant to a common plan of financing. All affiliates, commonly-controlled entities, controlling entities, agents, successors, and assigns shall be considered to be a single entity for the purposes of determining common ownership, management, or operation.

(b) "Contractors" shall mean any entity that enters into a contract with the URA for an amount equal or greater than \$50,000.00 per year,

(c) "Covered Employee" is defined in a separate section of this policy entitled "Covered Employee",

(d) "Funding Recipients" shall mean entities and their affiliates, successors, and assigns that receive funds, including a grant, a loan, bond financing, Infrastructure Improvements, below-market sale or lease of property, from the URA when the funds are (1) valued at more than \$100,000.00, and (2) used for a Project as defined in this Policy,

(e) "Infrastructure Improvements" shall mean construction or alteration of public infrastructure related to a Project,

(f) "Institution" shall mean a group of buildings or structures that are under common or related ownership, that are located in a contiguous area, notwithstanding rights-of-ways; that contain two (2) or more different uses as integral parts of the functions of the organization, such that different structures contain different primary uses; and that contain a combined minimum of one hundred thousand (100,000) total square feet of gross floor area.

(h) "Prevailing Wage" shall mean:

1. for building service and food service employee (a) the aggregate of (i) the higher of either the wage paid to the median number of employees in the job classification at similar locations (as defined below) in the City of Pittsburgh, or the wages determined by the Secretary of Labor for the job classification under the Service Contract Act, 41 U.S.C § 351 et seq.; and (ii) the higher of either the additional benefits given to the median number

of employees in the job classification at similar locations in the City of Pittsburgh, which shall be converted to an hourly wage supplement, or the additional benefits determined by the Secretary of Labor for the job classification under the Service Contract Act, 41 U.S.C. § 351 et seq.; and (b) the greater amount of either (i) the paid leave provided to the median number of employees in the job classification at similar locations in the City of Pittsburgh, which shall not be converted to an hourly wage supplement, or (ii) the paid leave determined by the Secretary of Labor for the job classification under the Service Contract Act, 41 U.S.C. §351 et seq.

2. for hotel employee (a) the aggregate of (i) the wage paid to the median number of employees in the job classification in hotels of at least one hundred thousand (100,000) square feet in the City of Pittsburgh; and (ii) the additional benefits given to the median number of employees in the job classification in hotels of at least one hundred thousand (100,000) square feet in the City of Pittsburgh, which shall be converted to an hourly wage supplement; and (b) the paid leave provided to the median number of employees in the job classification in hotels of at least one hundred thousand (100,000) square feet in the City of Pittsburgh, which shall not be converted to an hourly wage supplement.
3. for grocery employee the (a) aggregate of (i) the wage paid to the median number of employees in the job classification in grocery stores in the City of Pittsburgh having grocery space of at least thirty thousand (30,000) square feet; and (ii) the additional benefits given to the median number of workers in the job classification at grocery stores in the City of Pittsburgh having grocery space of at least thirty thousand (30,000) square feet, which shall be converted to an hourly wage supplement; and (b) the paid leave provided to the median number of employees in the job classification in grocery stores in the City of Pittsburgh having retail space of at least thirty thousand (30,000) square feet, which shall not be converted to an hourly wage supplement.

(h) "Project" shall mean:

- i. a sports stadium, performance hall, amphitheater, shopping mall, commercial office building, commercial office Complex (as defined in the definition section), hotel or motel, parking facility, distribution center, warehouse or other industrial facility of at least one hundred thousand (100,000) square feet;
- ii. a residential building of at least fifty (50) units;
- iii. a mixed-use building of at least one hundred thousand (100,000) square feet containing any combination of commercial office space, residential units, and hotel or motel units;

- iv. a store having grocery sales floor area (selling items which are commonly found in a grocery store) space of at least twenty-five thousand (25,000) square feet;
- v. a library;
- vi. cultural institutions such as museums; and/or
- vii. institutions of higher education.

The determination of the minimum square footage and minimum units shall be updated to reflect any expansion of the Project, including any additional phases in a multi-phase Project.

(i) "Similar locations" for (a) building service workers in commercial or institutional buildings, shopping malls, and sports stadiums shall mean commercial office buildings of at least one hundred thousand (100,000) square feet; (b) building service workers in residential buildings shall mean residential buildings of at least fifty (50) units; and (c) for food service workers shall mean cafeterias in commercial office or institutional buildings of at least one hundred thousand (100,000) square feet.

Policy:

The URA shall require payment of at least Prevailing Wages to Building Service, Food Service, Hotel, and Grocery Employees by: (a) Contractors, and (ii) Funding Recipients. All such Prevailing Wages shall be based on job classification for all work performed, provided such employees work on the Project or Contract at least fifty (50) hours per year.

Affect:

Two groups will be covered by this Prevailing Wage Policy:

1. Contractors: entities that enter into contracts with the URA for an amount equal or greater than \$50,000.00 per year, and
2. Funding Recipients: entities and their affiliates, successors, and assigns that receive funds, including a grant, a loan, bond financing, Infrastructure Improvements, below-market sale or lease of property, from the URA when the funds are
 - a. valued at more than \$100,000.00, and
 - b. used for one of the following projects ("Projects"):
 - i. a sports stadium, performance hall, amphitheater, shopping mall, commercial office building, commercial office Complex (as defined in the

definition section), hotel or motel, parking facility, distribution center, warehouse or other industrial facility of at least one hundred thousand (100,000) square feet;

- ii. a residential building of at least fifty (50) units;
- iii. a mixed-use building of at least one hundred thousand (100,000) square feet containing any combination of commercial office space, residential units, and hotel or motel units;
- iv. a store having grocery sales floor area (selling items which are commonly found in a grocery store) space of at least twenty-five thousand (25,000) square feet;
- v. a library;
- vi. cultural institutions such as museums; and/or
- vii. institutions of higher education.

The determination of the minimum square footage and minimum units shall be updated to reflect any expansion of the Project, including any additional phases in a multi-phase Project.

Business Operations:

This policy requires Prevailing Wage to be paid during business operations – this is not a construction prevailing wage policy. Funding Recipients shall be obligated to pay Covered Employees a Prevailing Wage during the operation of their business. Contractors shall be obligated to pay Covered Employees a Prevailing Wage during the term of the contract.

Covered Employees:

(a) “Building Service Employee” shall mean a person performing work in connection with the care and maintenance of a building or real property, including, but not limited to, watchman, security officer, concierge, doorman, cleaner, janitor, custodian, superintendent, porter, engineer, maintenance person, handyperson, elevator operator, window cleaner, and groundskeeper.

(b) “Food Service Employee” shall mean a person performing work in connection with the preparation and service of food and beverages, including but not limited to cafeteria attendant, line attendant, cook, preparatory cook, butcher, baker, server, cashier, catering worker, dining attendant, dishwasher, food or merchandise vendor, pantry worker, waiter, and waitress, but shall exclude employees directly employed by independently-owned restaurants other than cafeterias.

(c) “Grocery Employee” Shall mean a person performing work in connection with the preparation and selling of merchandise in grocery stores, including but not limited to chief meat

cutter, assistant chief meat cutter, meat cutter, apprentice meat cutter, wrapper, manager, assistant manager, lead, front-end coordinator, clerk, chef, cook, baker, cake decorator, and receiver.

(d) "Hotel Employee" shall mean a person performing work in connection with the care and maintenance of hotels and servicing of hotel guests, including but not limited to housekeeper, kitchen employee, laundry employee, room attendant, house attendant, public area attendant, turndown attendant, bell attendant, door attendant, driver, telephone operator, server, bus attendant, bartender, cashier, host, concierge, reservation attendant, and front desk attendant.

Enforcement of Prevailing Wage:

Enforcement of this policy shall be delegated to the Controller for the City of Pittsburgh. The provisions set forth in Sections 161.38(III)-(VII) of the Pittsburgh Code of Ordinances (City of Pittsburgh Service Worker Prevailing Wage Ordinance) shall be incorporated herein. Notwithstanding the foregoing or anything to the contrary herein, the URA reserves the right to enforce this policy through any available means.

Effective Date:

This policy shall take effect January 1, 2020.
