



## Text File

**Introduced:** 1/19/2010

**Bill No:** 2010-0025, **Version:** 1

**Committee:** Committee on Finance and Law

**Status:** Died due to expiration of legislative council session

Presented by Mr. Peduto

Ordinance amending the Pittsburgh Code, Title I-Administrative Chapter 161-Contracts, to require contractors who provide building service and food services to the City of Pittsburgh to pay prevailing wages to employees employed pursuant to such contracts, and to require that building service, food service, grocery, and hotel employees employed on projects receiving City subsidies be paid prevailing wages.

**Be it resolved by the Council of the City of Pittsburgh as follows:**

**Section 1.** The City of Code of Pittsburgh, Title I, Article VII, Section is hereby amended to read as follows:

### § 161.05 SPECIFICATIONS

- (a) Every contract shall comply with County of Allegheny and Commonwealth of Pennsylvania laws, ordinances, and regulations pertaining to the Pennsylvania Prevailing Wage Act of August 15, 1961; P.L. 987, No. 442, as amended August 9, 1963, P.L. 653, No. 342, 43 P.S. §165-1 et seq. (West 1992 & Supp. 2004), and with the City of Pittsburgh Service Worker Prevailing Wage Ordinance, Title I, Article VII, Section 161.40.

### § 161.16 REQUIRED PROVISIONS IN CONTRACTS

\*\*\*

- (e) Every contract shall contain a provision stating the contractor and all of its subcontractors shall pay at least the applicable prevailing wages as shall have been determined by the City Controller pursuant to the City of Pittsburgh Service Worker Prevailing Wage Ordinance, Title I, Article VII, Section 161.40(I)(B), and as shall have been determined by the Secretary of Labor and Industry to the workers employed in the performance of any contract for public work subject to the Pennsylvania Prevailing Wage Act approved August 15, 1961, P.L. 987, No. 442, as amended August 9, 1963, P.L. 653, No. 342, 43 P.S. § 165-1 *et seq.* (West 1992 & Supp. 2004), and the regulations issued pursuant thereto. Every contract shall contain a provision stating there may be withheld from any sums due to the contractor or subcontractor so much as may be necessary to pay the workers employed in the performance of any contract subject to City of Pittsburgh Service Worker Prevailing Wage Ordinance, Title I, Article VII, Section 161.40(I)(B), or for public work subject to the Pennsylvania Prevailing Wage Act approved August 15, 1961, P.L. 987, No. 442, as amended August 9, 1963, P.L. 653, No. 342, 43 P.S. § 165-1 *et seq.* (West 1992 & Supp. 2004), and the

---

regulations issued pursuant thereto the difference between the wages required by the contract to be paid and the wages actually paid to such employees, and the City Controller may make such payments directly to the appropriate workers.

The prevailing minimum wages for each craft classification of workers needed to perform the contract subject to the City of Pittsburgh Service Worker Prevailing Wage Ordinance, Title I, Article VII, Section 161.40(I)(B), and the public work contract subject to the Pennsylvania Prevailing Wage Act approved August 15, 1961 P.L. 987, No. 442, as amended August 9, 1963, P.L. 653, No. 342, 43 P.S. § 165-1 *et seq.* (West 1992 & Supp. 2004), and the regulations issued pursuant thereto shall be incorporated into and made a part of the contract. This shall not be construed to limit workers from performing work in different classifications.

Every contract shall contain a provision stating the contractor shall require all subcontractors to comply with and be bound by all provisions of this section as if they, themselves, were contractors.

Every contract shall contain a clause that requires a contractor to comply with § 197.08(c).

**Section 2.** The City Code of Pittsburgh Title I, Article VII, Section 161 of the Pittsburgh Code is hereby amended to by adding Section 161.40-City of Pittsburgh Service Worker Prevailing Wage Ordinance:

I. Prevailing Wages Required.

- A. Building service and food service employees shall be paid at least the prevailing wage according to their job classification for all work performed pursuant to a City service contract.
- B. Building service, food service, hotel, and grocery employees shall be paid at least the prevailing wage according to their job classification for all work performed on projects that will receive a City subsidy beginning after the effective date of this ordinance, which was not subject to agreement prior to the effective date, provided such employees work on the project at least 10 hours per week per year on an annual average.

II. Definitions.

- A. “Building service employee” shall mean a person performing work in connection with the care and maintenance of property, including but not limited to watchman, security officer, concierge, doorperson, cleaner, janitor, custodian, superintendent, porter, engineer, maintenance person, handyperson, elevator operator, elevator starter, window cleaner, and groundskeeper. This shall not be construed to limit building service employees from performing more than one job function.
- 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. This shall not be construed to limit food service employees from performing more than one job function and shall exclude employees directly employed by independently owned or operated restaurants, other than cafeterias.

- C. “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. This shall not be construed to limit hotel employees from performing more than one job function.
- D. “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. This shall not be construed to limit grocery employees from performing more than one job function.
- E. “Building service work” for purposes of subsection II(G) shall mean work in connection with the care and maintenance of (1) commercial office and institutional buildings of at least one hundred thousand (100,000) square feet; (2) commercial office and institutional complexes totaling at least one hundred thousand (100,000) square feet; and (3) residential buildings of at least fifty (50) units or more. This section applies to employees of the owner and not employees of tenants or independent contractors performing service work.
- F. “Food service work” for purposes of subsection II(G) shall mean work in connection with the preparation and service of food and beverages in cafeterias in (1) commercial office and institutional buildings of at least one hundred thousand (100,000) square feet; and (2) commercial office and institutional complexes totaling at least one hundred thousand (100,000) square feet. This section applies to employees of the owner and not employees of tenants or independent contractors performing these services, other than cafeterias.
- G. “City service contract” shall mean any contract for the performance of building service or food service work entered into by (1) the City with any contractor, and (2) any contractor to perform building service or food service work for the City. “City service contract” shall also mean any subcontract for building service or food service work, regardless of whether the primary contract is for such work.

- H. "City subsidy" shall mean support from the City of Pittsburgh which in aggregate is equal to or greater than \$100,000 and is equal to or greater than 10% of the total cost of the project and is provided in the form of either a
- (1) Grant
  - (2) Loan that is forgiven or discounted below the applicable federal rate for comparably termed instrument
  - (3) Bond financing except when such financing is used
    - (a) to support the installation, reconstruction or maintenance of public infrastructure in the public right-of-way
    - (b) to support the construction of below market housing
    - (c) not discounted below the applicable federal rate for a comparably termed instruction
  - (4) Below market sale or lease where the market value is determined by a third-party appraisal
  - (5) Infrastructure improvements excluding the installation, reconstruction or maintenance of any public infrastructure in the public right-of-way or to be dedicated as a public right-of-way.

The assistance threshold shall be considered met if the aggregate cost of support from the City of Pittsburgh invested directly into the project is at least \$100,000 and when divided by the total cost of the project is equal to or greater than 10% of the total cost of the project.

- I. "City shall mean the City of Pittsburgh and any City department.
- J. "Project" for purposes of Section I(B) shall mean (1) a commercial office building of at least one hundred thousand (100,000) square feet, or a commercial office complex totaling at least one hundred thousand (100,000) square feet; (2) a residential building of at least fifty (50) units; (3) a hotel or motel of at least one hundred thousand (100,000) square feet; (4) a grocery store having retail space of at least thirty thousand (30,000) square feet solely for the sale of grocery store food items as determined to be tax exempt by the Pennsylvania Department of Revenue; (5) a shopping mall of at least one hundred thousand (100,000) square feet; and (6) a sports stadium.
- K. "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 majority of similar (full time versus part time) employees in the "job classification" at similar locations 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 majority of similar (full time versus part time) 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 majority of similar (full time versus part time) 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 Contractor Act, 41 U.S.C. §351 et seq.

“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.

(2) for hotel employee (a) the aggregate of (i) the wage paid to the majority of similar (full time versus part time) 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 majority of similar (full time versus part time) 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 majority of similar (full time versus part time) 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 majority of similar (full time versus part time) 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 solely for the sale of grocery store food items as setforth in section 2 J; and (ii) the additional benefits given to the majority of similar (full time versus part time) employees in the job classification at grocery stores in the City of Pittsburgh having retail space of at least thirty thousand (30,000) square feet solely for the sale of grocery store food items as setforth in Section 2 J., which shall be converted to an hourly wage supplement; and (b) the paid leave provided to the majority of similar (full time versus part time) 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 solely for the sale of grocery store food items as setforth in Section 2 J., which shall not be converted to an hourly wage supplement.

L. "Complex" shall mean contiguous buildings owned by the same entity or related entities.

M. Prevailing wages shall be applicable to City subsidized projects for the duration of the subsidized financing, or in the case of grants, below-market sale of property, and/or applicable infrastructure improvements, for a period of ten years.

### III. Periodic Wage Determinations.

The Controller shall issue prevailing wage determinations at least annually, and as frequently as necessary to reflect any increases in the prevailing wage, and shall post such determinations on the official City web site.

IV. Required Recordkeeping and Notice Posting.

- A. Every covered employer shall keep an accurate record showing the name, address, job classification, wages and benefits paid or provided, and number of hours worked for each employee. The record shall be preserved for two (2) years from date of final payment. The records shall be available for inspection by the Controller or the Controller's authorized agent at all reasonable hours, and the covered employer shall permit the agents to interview employees during hours on the job.
- B. Every covered employer shall file each month Federal Form WH-347 or its equivalent which shall specify for each employee the employee's name, address, Social Security Number, job classification, hourly wage rate paid, the number of hours worked each day, the number of hours worked each week, all deductions made from gross pay, and net weekly pay, with the Controller or the Controller's authorized agent. Every covered employer shall file a statement each week with the Controller or the Controller's authorized agent certifying that all workers have been paid no less than required by contract, or if any wages remain unpaid to set forth the amount of wages due and owing to each worker respectively, and that the job classification for each employee conforms with the work performed.
- C. Every covered employer shall post at the job site in an area easily accessible by all employees the name, address and telephone number of the Controller, the applicable prevailing wages for the job classification, and a statement advising workers that if they have been paid less than the prevailing wage rate they may notify the Controller and request an investigation.

V. Enforcement.

- A. Complaint procedure. Any individual may file a complaint with the Controller for any violation of this section.
- B. Review and investigation. The Controller shall review and investigate the complaint and shall make a finding of compliance or noncompliance. The covered employer shall permit authorized agents of the Controller to observe work being performed upon the work site, to interview employees, and examine the books and records relating to the payrolls being investigated to determine whether or not the covered employer is in compliance with this section.
- C. Finding of noncompliance. If at any time the Controller, upon investigation of a complaint or upon independent investigation, finds that a violation of this section has occurred, it shall issue a finding of noncompliance and notice of corrective action to the covered employer. The finding of noncompliance shall specify the areas of noncompliance, indicate such corrective action as may be necessary to achieve compliance, and impose deadlines for achieving compliance.
- D. Dispute of finding of noncompliance. A covered employer may dispute a finding of noncompliance

**Committee:** Committee on Finance and Law**Status:** Died due to expiration of legislative council session

---

and notice of corrective action by requesting a hearing within thirty (30) days of the date of the finding. The Controller shall appoint a hearing officer, who shall affirm, revise, modify, or reverse the finding of noncompliance based upon evidence presented by the applicable department and the covered employer. Where the finding of noncompliance and notice of corrective action requires wage restitution, the covered employer must, as a precondition to a request for a hearing, provide evidence that such wages have either been paid or placed into an escrow account for the satisfaction of the judgment of the hearing officer. A covered employer who does not request a hearing, or who fails to pay or escrow wages as provided herein, waives the right to dispute a finding of noncompliance. A finding of noncompliance and notice of corrective action shall become final if either the covered employer fails to request a hearing within thirty (30) days as provided in this paragraph, or the hearing officer affirms such finding after a hearing.

- E. Referral for criminal investigation. If at any time the applicable department or Controller determines that a criminal violation may have occurred, including but not limited to a violation of the prohibition against unsworn falsification of statements to authorities, the applicable department or Controller shall refer the matter to the district attorney for criminal investigation.
- F. Subpoena powers. If necessary for the enforcement of this section, the Controller may issue subpoenas to compel the attendance and testimony of witnesses and production of books, papers, records and documents relating to payroll records necessary for hearing, investigations, and proceedings. In case of disobedience of a subpoena, the Controller shall apply to a court of appropriate jurisdiction for an order requiring the attendance and testimony of witnesses and the production of books, papers, records and documents, and other relief as the court deems appropriate.
- G. Retaliation barred. A covered employer shall not discharge, reduce the compensation or otherwise retaliate against any employee for making a complaint to the covered employer, its agents, the applicable department, or the Controller, to enforce his or her rights under this section. The Controller shall investigate allegations of retaliation or discrimination. If, after notice and an opportunity for a hearing, the allegations are found to be true, the Controller shall order appropriate relief, including reinstatement of a discharged employee with back pay. A covered may dispute a finding of retaliation or discrimination by requesting a hearing as provided in subsection D. above.

#### VI. Sanctions.

- A. In the event the Controller or hearing officer determines that a covered employer has failed to comply for more than sixty (60) days after a notice of corrective action has become final, or in the event the hearing officer determines that any portion of a covered employer's dispute of a finding of noncompliance is frivolous or was brought for the purpose of delaying compliance, the Controller or hearing officer shall order the following penalties and relief: (1) wage restitution for the affected employee(s); (2) liquidated damages in the amount of three times the wages owed; (3) a directive to the applicable department to withhold any payments due the covered employer, and to apply such payments to the payment of fines or the restitution of wages; and (4) rescission of any City service contract.

- B. In the event that the Controller or hearing officer determines that a covered employer has willfully or more than twice in a three-year period failed to comply with this section, the Controller or hearing officer, in addition to the sanctions that may be imposed pursuant to subsection (A), shall (1) in the case of a City service contract, recommend debarment of the contractor pursuant to Section 161.22(b)(4); and (2) in the case of a project receiving a City subsidy, order the rescission of any subsidy, and render the employer ineligible for future City subsidies for a period of three (3) years, or until all penalties and restitution has been paid, whichever is longer.

VII. Regulation.

The Controller may issue regulations to implement the provisions of this section.

VIII. Severability.

In the event any provision of this section shall be held invalid or unenforceable in any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provisions thereof

**Section 3.** Effective date. This ordinance shall take effect thirty days after the City Controller certifies prevailing wage determinations are in place and certifies the office is prepared to enforce the ordinance and Allegheny County has approved similar prevailing wage legislation.