



Legislation Details (With Text)

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Title: Ordinance amending the City Code at Title One: Administrative, Article VII: Procedures, Chapter 161: Contracts, Section 161.35: Pittsburgh Living Wage by repealing the current language in its entirety and replacing the City Code with new language on Living Wage.

Sponsors: Reverend Ricky V. Burgess

Indexes: PGH. CODE ORDINANCES TITLE 01 - ADMINISTRATIVE

Code sections:

Attachments: 1. 2010-0351.doc

Date	Ver.	Action By	Action	Result
4/28/2010	1	Standing Committee	Held for Cablecast Post Agenda	Pass
4/20/2010	1	City Council	Read and referred	Pass

Ordinance amending the City Code at Title One: Administrative, Article VII: Procedures, Chapter 161: Contracts, Section 161.35: Pittsburgh Living Wage by repealing the current language in its entirety and replacing the City Code with new language on Living Wage.

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

Section 1. The City Code at Title One: Administrative, Article VII: Procedures, Chapter 161: Contracts, Section 161.35: Pittsburgh Living Wage, is hereby repealed in its entirety, and replaced with new language, as follows:

SEE ATTACHMENT

~~161.35. PITTSBURGH LIVING WAGE.~~

~~[(a) Title and Purpose.~~

~~(1) [Title.] Pittsburgh Living Wage Ordinance. This section shall be known as the "Pittsburgh Living Wage Ordinance."~~

~~(2) [Purpose.] The purpose of this section is to assure that employees of the City, City contractors, subcontractors and beneficiaries of tax, loan, grant and subsidy assistance or abatements provided by the City pay their employees a wage sufficient to meet the needs of a family of four (4) with two (2) full-time wage earners. This section is also designed to maximize access for low and moderate income Pittsburgh residents to the jobs that are created, maintained, or subsidized through City assistance.~~

~~(b) Definitions. For the purposes of this section, the following terms are defined as follows:~~

~~(1) APPLICABLE DEPARTMENT. Office of the Controller of the City of Pittsburgh, or such other City department or agency responsible for administering a contract for assistance.~~

(2) ASSISTANCE. Assistance shall include:

- a. Any grant, loan, tax incentive, bond financing, subsidy, or other form of assistance with a value of at least fifty thousand dollars (\$50,000.00), that a for-profit employer employing at least ten (10) employees, or any non-profit employer employing at least twenty-five (25) employees has received within any twelve-month period, by or through the authority or approval of the City of Pittsburgh and/or any authority, agency or public entity receiving assistance from the City of Pittsburgh, awarded after the effective date of this section. This provision explicitly exempts the URA neighborhood street face facade improvement program and public authority supported, primary retail projects downtown and within the neighborhood business districts.
- b. Any contracts or subcontracts with the City of Pittsburgh whose aggregate value for any twelve (12) months is equal to or greater than ten thousand dollars (\$10,000.00) that is entered into with a for-profit employer of at least ten (10) employees, or a non-profit employer of at least twenty-five (25) employees to provide goods and services, and that is awarded, renegotiated or renewed after the effective date of this section, except those covered by subsection (b)(2)a. above;
- c. Any contract or subcontract described in the preceding paragraph, awarded by a beneficiary, provided that the contract is awarded, renegotiated, or renewed after the effective date of this section provided further that the annual value of such contract or subcontract exceeds five thousand dollars (\$5,000.00) and be awarded to a for-profit employer of more than five (5) employees or a non-profit employer of more than fifteen (15) employees;
- d. Any lease or rental agreement awarded by a beneficiary, for the use of property or equipment that was purchased, improved or developed as the result of assistance as defined in paragraph (2)a., provided that the lease or rental agreement was signed or reached after the effective date of this section; and providing further that the leaseholder or renter be a for-profit employer of at least ten (10) employees or a non-profit employer of at least twenty-five (25) employees.
- e. Any lease or license, or any sublease or sublicense thereto, of or by an authority, agency or public entity receiving assistance from the City of Pittsburgh, on which services are rendered by employees of the lessee or licensee (or sublessee or sublicensee), provided that (1) the services are rendered on property at least a portion of which is visited by substantial numbers of the public on a frequent basis (including but not limited to parking facilities, transportation facilities, and public sports and entertainment venues), (2) the lease or license (or sublease or sublicense) was signed or reached after the effective date of this section, and (3) the leaseholder or licensee (or subleaseholder or sublicenseholder) is a for-profit employer of at least ten (10) employees or a non-profit employer of at least twenty-five (25) employees.
- f. For purposes of determining whether the assistance and employment thresholds contained in subsections (b)(2)a. through (b)(2)e. are met, all affiliates, controlled organizations, controlling organizations, and/or organizations having an identity of interest shall be treated as a single entity.
- g. Loans shall be considered assistance only to the extent that they are forgiven or discounted below the available market rate over the life of the loan. Tax credits incentives and abatements shall be considered assistance to the extent of the tax reduction realized by the recipient.

(3) BENEFICIARY. Beneficiary means any person or entity that is a recipient of "assistance."

(4) LIVING WAGE BOARD. Living wage board has the meaning stated in paragraph (e).

(5) COVERED EMPLOYER. Covered employer means the City of Pittsburgh, or a beneficiary of or an applicant for assistance that has not been granted an exemption from this section pursuant to subsection (g) of this section.

(6) COVERED EMPLOYEE. Covered employee means a person employed by a covered employer receiving assistance; provided, however, that persons who are employed pursuant to federal, state or local laws relating to prevailing wages shall be exempt from this section.

(7) LIVING WAGE. Living wage is defined in paragraph (e).

(8) PERSON. Person means one (1) or more of the following or their agents, employees, servants, representatives, and legal representatives: any individual, corporation (including any affiliate or successor corporation), partnership, joint venture, association, labor organization, educational institution, mutual

company, joint stock company, trust, unincorporated association, trustee, trustee in bankruptcy, receiver, fiduciary, or any other entity recognized at law by this Commonwealth.

(c) Living Wage.

(1) Applicability.

a. The City of Pittsburgh shall pay no less than the living wage to its employees

b. Covered employers receiving City subsidies (assistance as defined in subsection (b)(2)a.) shall pay no less than the living wage to employees performing work on or related to the property, business, or project which is the subject of the assistance for as long as the subsidy remains in effect. With respect to one-time grants of assistance, the covered employer shall be subject to the requirements of this section for a period equal to one (1) year for every fifty thousand dollars (\$50,000.00) of assistance.

c. Covered employers holding City contracts or subcontracts (receiving assistance as defined in subsections (b)(2)b. and c.) shall pay no less than the living wage to employees during any week in which the employee performs work related to the contract or subcontract.

d. Covered employers who lease or sublease property from the City, or a beneficiary (assistance as defined in subsections (b)(2)d. and e.), shall pay no less than the living wage to their employees during any week in which the employee performs work on or related to the leased property.

(2) Amount of wage. The living wage shall be calculated on an hourly basis and shall be sufficient to meet the needs of a family of four (4) with two (2) full-time wage earners. The applicable rate as of the effective date of this section shall be nine dollars and twelve cents (\$9.12) per hour for all covered employees who receive full individual health insurance from their employer or an employer contribution equivalent to no less than one dollar and fifty cents (\$1.50) per hour toward the cost of health insurance. The living wage for covered employees who do not receive such health insurance contributions from their employer shall be ten dollars and sixty-two cents (\$10.62) per hour. (Covered employees who are employed part-time or who job share, and receive partial health benefits from their employer, shall be paid no less than nine dollars and twelve cents (\$9.12) per hour, as long as the employer's health contribution is equivalent to no less than one dollar and fifty cents (\$1.50) per hour). For covered employees in occupations in which it is customary to receive a portion of compensation through tips, the living wage shall be adjusted by an allowance for tips equal to the applicable employee allocation standard specified by the Internal Revenue Service.

(3) [Adjustments.]. The living wage shall be upwardly adjusted from its then-existing level annually, no later than June first, by an amount equal to the increase in the Annual Average Consumer Price Index for All Urban Consumers (CPI), Pittsburgh SMSA, as published by the Bureau of Labor Statistics, United States Department of Labor as calculated at the immediately preceding year-end.

(4) Phase-in for non-profit organizations. A non-profit organization which is a party to a contract or series of contracts with the City of Pittsburgh, or any subcontract thereto (assistance as defined in subsections (b)(2)b. and c. herein), as of the effective date of this section, shall be subject to from the requirements of this section according to the following schedule:

a. Within one (1) year of the effective date of this section, upon renewal or extension of the contract(s) or subcontract(s) with the City of Pittsburgh, the non-profit organization must reduce the gap between the hourly wage of any of its employees who are earning less than the living wage (as defined in subsection (c) herein) and the living wage by no less than fifteen (15) percent (i.e., if the organization pays some of its employees one dollar (\$1.00) per hour less than the living wage, the organization would be required to increase the hourly wage for those employees by fifteen cents (\$0.15)).

b. Within two (2) years of the effective date of this section, upon renewal or extension of the contract(s) or subcontract(s) with the City of Pittsburgh, the non-profit organization must reduce the gap between the hourly wage of its employees who are earning less than the living wage and the living wage by no less than thirty-five (35) percent (i.e., using the previous example, the organization would be required to increase its employees hourly wage by an additional thirty-five cents (\$0.35), assuming the living wage has not increased from the previous year).

c. Within three (3) years of the effective date of this section, upon renewal or extension of the contract(s)

or subcontract(s) with the City of Pittsburgh, the non-profit organization must be in full compliance with the provisions of this section.

d. During each of the first three (3) years after the effective date of this section, no less than sixty (60) days prior to renewal or extension of the contract(s) or subcontract(s) with the City of Pittsburgh, the non-profit organization shall provide the applicable department with sufficient information to enable the applicable department to determine the non-profit organization's cost of complying with this section. Upon verifying the reasonableness and accuracy of the cost of compliance, the applicable department shall increase the non-profit organization's compensation under the contract(s) or subcontract(s) according to a formula to be established in the Annual Budget for the City of Pittsburgh. During the first year of phased in coverage under this section, the increased compensation from the applicable department shall be no less than one hundred (100) percent of the non-profit organization's reasonable cost of compliance.

e. During the second and third years of phased in coverage under this section, if the non-profit organization provides satisfactory evidence to the applicable department that its reasonable costs of complying with this section, minus compensation received from the applicable department and any other net increases in funding, are greater than one (1) percent of its total operating budget, the applicable department may extend implementation of phased in coverage under this section. Implementation shall only be extended to the extent necessary to bring the non-profit organization's reasonable cost of compliance within one (1) percent of its total operating budget. In no case may implementation be extended for more than three (3) one-year periods.

f. In order to qualify for the phased in coverage provided under this section, a non-profit organization must provide the applicable department with a current copy of the organization's articles of incorporation or similar documentation of non-profit status.

(5) Phase in for start-up and disadvantaged business enterprises. A start-up business shall be one (1) with less than five (5) years of operation. A DBE is one (1) with a certification as such from either a county, state, or federal agency.

(d) Compliance.

(1) Assistance to employers paying less than living wage barred. Prior to entering in any agreement between the City and a covered employer for any form of assistance, a covered employer must certify for the applicable department that it is paying each of its covered employees no less than the living wage, as defined in subsection (c)(2), and that it will grant the applicable department and the City Solicitor access to its workplace and to all books and records related to such employment. No beneficiary may enter into any contract, subcontract, lease, sublease, license or sublicense, involving assistance as defined in subsections (b)(2)c. through (b)(2)e. of this section, with any person unless such person executes a certification as described herein. Failure of a beneficiary or other person to execute a certification as required herein shall render an agreement or subagreement for assistance null and void.

(2) Maintenance of payroll records. Each covered employer shall maintain payrolls for all covered employees and basic records related thereto and shall preserve them for a period of three (3) years. The records shall contain the following:

- a. Name and address of each employee, the job title, union membership status and job classification;
- b. The number of hours worked each day, the gross wages, deductions made, and net wages paid;
- c. A copy of the Social Security records, and evidence of payment thereof;
- d. A record of fringe benefit payments including contributions to approved plans, funds or programs and/or additional cash payments; and
- e. Any such other data as may be required by the applicable department or the living wage board from time to time.

(3) Compliance documentation from covered employers. All payment vouchers and other requests for payment of assistance submitted by a covered employer must be accompanied by the following:

- a. The identity of the contract or project under which the covered employer receives assistance, including the identification number for the request for proposals or other solicitation, if any;
- b. The identity of the subcontract, sublease, or sublicense, if any;

- e. ~~A unique number or other means of identifying each covered employee;~~
- d. ~~For each covered employee, the number of weeks that the employee performed work on or related to the contract or project;~~
- e. ~~For each covered employee, the gross wage (both hourly and total) paid during each week that the employee performed work on or related to the contract or project;~~
- f. ~~For each covered employee, the average gross wage (both hourly and total) paid during each week that the employee performed work for the covered employer that was not on or related to the contract or project, if applicable;~~
- g. ~~For each covered employee, a statement indicating whether the employee received employer-provided health insurance benefits during each week that the employee performed work on or related to the contract or project;~~
- h. ~~The job classification, race, gender, zip code and union representation status of each covered employee;~~
- i. ~~The name, address, and telephone number of a local compliance person for the covered employer;~~
- j. ~~A signed statement by an officer having authority to bind the covered employer affirming that the above information is true and correct, under penalty of law.~~

(4) ~~[Payment vouchers and other requests for payment.] To the extent that the covered employer has already supplied any of the information required in this section to be provided to the applicable department, a payment voucher or other request for payment of assistance need only refer to the submission in which the applicable department may locate the necessary information.~~

(5) ~~[Documentation required.] No assistance may be paid to a covered employer unless the covered employer provides the documentation required by this section.~~

(6) ~~Applicable department duties. It shall be the responsibility of the applicable department to examine promptly all payment requests and supporting documentation for compliance. The applicable department shall cause investigations to be made as may be necessary to determine whether there has been compliance with the provisions of this section.~~

(7) ~~Employment agreement for assistance.~~

a. ~~For the purposes of this paragraph, the following terms are defined as follows:~~

1. ~~Employment agreement means a written agreement between the City of Pittsburgh and any proposed or current beneficiary that is negotiated before assistance is approved.~~

2. ~~Low and moderate income means persons with incomes that are less than eighty (80) percent of median income for a family of four (4) in the Pittsburgh Standard Metropolitan Statistical Area.~~

b. ~~Except in cases of bona fide emergency (i.e., one (1) which seriously threatens the public health, welfare or safety; endangers property; or would otherwise cause serious injury to the City, such that there is an immediate and serious need for supplies, services or construction) as determined by the applicable department, at least twenty-one (21) days before assistance is awarded or an agreement to provide assistance is signed, the person seeking an award of assistance shall submit to the Office of the City Controller a confidential notice packet for their application for assistance which shall include the following:~~

1. ~~The identity of the contract or project under which the covered employer receives assistance, including the identification number for the request for proposals or other solicitation, if any;~~

2. ~~The name, address, and phone number of a local contact person for the covered employer;~~

3. ~~A workforce profile of the prospective beneficiary, including, but not limited to, number of employees who are employed within the City of Pittsburgh;~~

4. ~~A written summary of past efforts to hire low and moderate income residents of Pittsburgh;~~

5. ~~A statement of projected employment needs under the anticipated award;~~

6. ~~A written commitment to pay all covered employees a living wage, unless otherwise provided;~~

7. ~~A statement of the projected wage levels for all covered employees in each of the five (5) subsequent years;~~

8. ~~A written plan for the training of low and moderate income Pittsburgh residents for skilled positions, including signed agreements from any third parties to be responsible for training;~~

9. Numerical goals for filling new hire positions with low- and moderate-income Pittsburgh residents;
 10. The total cost to the City of the assistance, including both expenditures by the City, as well as revenue not collected as a result of the assistance;
 11. A projection of the net increase or decrease in jobs by job classification and wage rates that will result from the assistance.
- (8) Posting requirements. All covered employers shall be required to provide notice to covered employees' of their rights arising from this section. The notice will be provided by the City of Pittsburgh, and must be posted in a conspicuous place frequented by covered employees in the covered employer's workplace(s).
- (9) Contract and lease requirements. Beneficiaries shall notify the applicable department of any contract, subcontract, lease, sublease, license or sublicense (assistance as defined in subsection (b)(2)c. through (b)(2)e. of this section) entered into with any person. Beneficiaries shall include compliance with this section as a condition of any such subagreement for assistance.
- (e) Citizen Participation.
- (1) Composition. The mayor shall appoint the living wage board which shall be comprised of seven (7) members, as follows:
- Five (5) of the members of the committee shall be chosen from nominations submitted by City Council from, but not limited to, the following organizations. The committee shall include at least one (1) representative from each organization.
- a. Community-based organizations operating solely within the City of Pittsburgh and registered with the Department of City Planning;
 - b. The Western Pennsylvania Living Wage Campaign;
 - c. The Greater Pittsburgh Chamber of Commerce;
 - d. The Allegheny County Labor Council
 - e. And neighborhood-based Merchants' associations.
- (2) [Term.] Members of this committee shall serve a three-year term.
- (3) Purpose. The purpose of the living wage board shall be to review the effectiveness of this section at creating and retaining living wage jobs in Pittsburgh, and in securing access to living wage jobs for low- and moderate-income Pittsburghers.
- (4) Meetings. The living wage board shall meet quarterly and in special session as required. All meetings of the living wage board shall be open to the public. All meetings will allow for public testimony on the uses of the City assistance generally, and on specific instances of assistance or proposed assistance as received or sought by individual enterprises.
- (5) [Access to records; etc.] Pursuant to its responsibilities above, the living wage board shall, upon request, have access to any records, data, and information that covered employers are required by this section to maintain.
- (6) Officers and procedures. Living wage board shall have the power to develop procedures and designate officers as is necessary for the completion of its responsibilities as set forth in this section.
- (7) Living wage board annual report. Within sixty (60) days after the receipt of the annual City assistance reports required to be submitted pursuant to subsection (f)(1) of this section, the living wage board shall evaluate the effectiveness of this section and shall submit a report of its findings to the City Council. The annual report shall include:
- a. The information specified in subsection (f)(2) of this section;
 - b. A summary of the ascertainable impact of each City subsidy program (assistance as defined in subsections (b)(2)a. and b.) on the creation and retention of living wage jobs.
 - c. The living wage board in consultation with the City Clerk shall publicize and conduct a formal, cable cast public hearing in council chambers in order to receive comments and testimony regarding the impact and effects of this section; and shall include a summary in their annual report.
- (f) City Assistance Programs.
- (1) Each applicable department shall submit a City assistance report with the City Controller, and submit

said report to the City Council, the City Solicitor and living wage board within ten (10) working days following each calendar year.

(2) The report shall include:

a. For each assistance package or contract approved during the preceding calendar year:

1. The identity of the contract or project under which the covered employer receives assistance, including the identification number for the request for proposals or other solicitation, if any;

2. The name, address, and phone number of a local compliance person for the covered employer;

3. The total cost to the City of assistance provided to each beneficiary, including both expenditures by the City as well as revenue not collected as a result of the assistance;

4. The number of jobs within the City of Pittsburgh associated with the contract or project by job classification, wage rates, race, gender, zip code, and union representation status;

5. The net increases or decreases in jobs within the City of Pittsburgh associated with the contract or project by job classification, wage rates, race, gender, zip code and union representation status.

b. For all assistance packages or contracts approved by the applicable department during the preceding calendar year:

1. The aggregate number of jobs within the City of Pittsburgh by job classification, wage rates, race, gender, zip code and union representation status; and

2. The net increase or decrease in the aggregate number of jobs within the City of Pittsburgh, by job classification, wage rates, race, gender, zip code and union representation status.

(3) Creation of a task force to study the impact of living wage legislation on neighborhood based development and make recommendations to City Council no later than January 1, 2002. Task force should include community organization delegates, merchant groups, community development organizations, living wage representatives and representatives of City authorities;

(g) Exemptions.

(1) City Council may grant a partial or whole exemption from the requirements of this section.

(2) Grounds for granting exemptions:

a. General exemptions. Exemptions may be granted where application of this section to a particular form of assistance is found by the City Solicitor to violate a specific state or federal statutory, regulatory or constitutional provision or provisions and City Council approves the exemption on that basis.

b. Special employment exemption. Through December 31, 2004, covered employers employing summer youth, intern students, and seasonal (i.e., ninety (90) working days or less in a calendar year) employees, as well as positions and programs within the City government which are meant to provide supplemental income in addition to a senior citizen's social security shall be exempt from this section with respect to those employees. Effective January 1, 2005, this exemption shall no longer be in effect.

c. Beneficiaries offering training under the Job Partnership Training Act (JPTA)/Workforce Investment Act (WIA) shall be exempt as to those employees participating in the training program, for a period not to exceed six (6) months.

d. Peculiar harm exemption. Otherwise covered employers may seek exemption from application of this section where the covered employer can demonstrate a specific, peculiar harm that would be felt uniquely by the covered employer seeking the exemption, if the section were to be applied. Economic harm alone will not suffice to demonstrate hardship, unless it is of a type that would not affect any other actual competitor for the contract/subcontract/lease.

(3) Procedures. Requests for all exemptions shall be submitted directly to the living wage board. The committee will review the request and issue a recommendation. The request for exemption and the committee's recommendation will thereafter be forwarded to City Council and the administration for consideration.

(4) Contents. All exemption requests shall include the following:

a. The nature of the assistance to which this section applies;

b. The specific or official name of the assistance and assistance program, the statutory or regulatory authority for the granting of the assistance, and a copy of that authority;

- e. A statement of the grounds for exemption;
- d. The number of employees covered by the exemption.
- (5) In addition to the requirements in subsection (4) above, all requests for a youth employment exemption shall include the following:
 - a. Documentation that the covered employer is an organization that regularly employs individuals in a summer youth program, school-to-work program or other related seasonal work; and
 - b. For each employee for which an exemption is sought, the employee's age and the anticipated end date of employment.
- (6) In addition to the requirements in subsection (4) above, all requests for a job training exemption shall include the following:
 - a. For each employee for which an exemption is sought, documentation that the covered employer is providing training under the Job Training Partnership Act (JTPA)/Workforce Investment Act (WIA); and
 - b. For each employee for which an exemption is sought, the anticipated end date of training.
- (7) In addition to the requirements in subsection (4) above, all requests for an exemption for conflict with other legal requirements shall include the following:
 - a. The conflicting statutory, regulatory or constitutional provision(s) that make compliance with this section unlawful and a copy of each such provision; and
 - b. A factual explanation and legal analysis of how compliance with this section would violate the cited provision(s) and the legal consequences that would attach if this violation were to occur;
- (8) In addition to the requirements in subsection (4) above, peculiar harm exemption requests shall include the following:
 - a. A detailed explanation of how the payment of a living wage will cause peculiar harm, including supporting financial statements.
- (h) Enforcement.
- (1) Complaint procedures B. Any individual or organization (covered or non-covered), or other person who alleges direct harm as a result of non-compliance with this section, or the living wage board, may file a complaint with the applicable department, which shall provide a copy of the complaint to the living wage board and to each beneficiary involved within five (5) business days. Statements, written or oral, made by an employee, shall be treated as confidential and shall not be disclosed without the employee's consent.
- (2) Hearings. The living wage board shall determine the need for a public hearing on the complaint. If a hearing is deemed necessary, it shall be scheduled and conducted by the living wage board, through the assistance of the City Clerk, with thirty (30) days notice of the hearing provided to the City Solicitor, the covered employer, the complaining party or parties, and the applicable department.
- (3) Review and investigations. The applicable department shall review and investigate the charges, including any finding from the hearing and shall make a decision of compliance or noncompliance.
 - a. Covered employer to cooperate. The covered employer shall permit City representatives and members of the living wage board 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.
- (4) Finding of noncompliance. If at any time the applicable department, 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/notice of corrective action to the covered employer. The finding of noncompliance shall specify the areas of noncompliance, indicate such corrective action (including wage restitution) as may be necessary to achieve compliance, and impose deadlines for achieving compliance.
- (5) Dispute of finding of noncompliance. A covered employer may dispute a finding of noncompliance/notice of corrective action by requesting a hearing with the City Solicitor, within thirty (30) days of the date of the finding. The City Solicitor shall appoint a hearing officer, who shall affirm or reverse the finding of noncompliance based upon evidence presented by the applicable department and the covered employer. Where the finding of noncompliance/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/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.

(6) [Monitoring of covered employers; requirements, etc.] The applicable department shall monitor the covered employer's progress in satisfying the requirements of a notice of corrective action. No assistance may be paid to a covered employer until the applicable department determines that the requirements of any notice of corrective action have been satisfied.

(7) Referral for imposition of sanctions. If the applicable department determines that a covered employer has willfully or repeatedly (more than twice in a three-year period) failed to comply with this section, or has failed to comply for more than sixty (60) days after a notice of corrective action has become final, the applicable department shall (in addition to issuing a finding of noncompliance pursuant to subsection (4), above) refer the matter to the City Solicitor for the imposition of sanctions. The City Solicitor shall investigate the referral and may require the production by the covered employer of such evidence as is necessary to resolve the matter. If the City Solicitor finds that a covered employer has willfully or repeatedly failed to comply with this section, it may impose any or all of the sanctions provided in subsection (i)(1), below. If the City Solicitor finds that a covered employer has failed to comply for more than sixty (60) days after a notice of corrective action has become final, it shall impose the sanctions provided in subsection (i)(2), below. A covered employer may dispute the imposition of sanctions by requesting a hearing as provided in subsection (h)(5), above. In such a case, no person who participated in the decision to impose sanctions may serve as hearing officer.

(8) Referral for criminal investigation. If at any time the applicable department or City Solicitor determine 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 City Solicitor shall refer the matter to the district attorney for criminal investigation.

(9) Enforcement powers. If necessary for the enforcement of this section, the presiding officer of the living wage board shall submit to City Council a report and formal request for the issuance of 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 City Solicitor may 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.

(10) Retaliation and discrimination barred. A covered employer shall not discharge, reduce the compensation or otherwise discriminate against any employee for making a complaint to the employer, its agents, the applicable department, or the City Solicitor, or otherwise asserting his or her rights under this section, participating in any of its proceedings or using any civil, statutory or collective bargaining remedies to enforce his or her rights under this section. The City Solicitor shall investigate allegations of retaliation or discrimination. If, after notice and an opportunity for a hearing, the allegations are found to be true, the City Solicitor may order appropriate relief, including restitution, and reinstatement of a discharged employee with back pay to the date of the violation. Nothing in this section will be construed to conflict with, interfere with or supersede any rights collectively bargained for by any union represented covered employees. A covered employer may dispute a finding of retaliation or discrimination by requesting a hearing as provided in subsection (5) above.

(11) [Activity with intent to evade coverage prohibited; business justification, etc.] A covered employer shall not engage in any activity with the intent of evading the coverage of this section. Prohibited activities include, but are not limited to, business reorganization, subcontracting, or subleasing, where such activity has the effect of limiting or avoiding the coverage of this section, unless the covered employer demonstrates to the satisfaction of the City Controller and the City Solicitor that there is a compelling independent business

justification for such activity.

(i) Sanctions.

(1) In the event that the City Solicitor or a designated hearing officer shall determine that any covered employer willfully or repeatedly (more than twice in a three-year period) failed to comply with this section, the City Solicitor or a designated hearing officer may order any or all of the following penalties and relief:

a. Fines in the sum of five hundred dollars (\$500.00) for each week for each employee found to have not been paid in accordance with this section;

b. Wage restitution for each affected employee;

c. 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;

d. Rescission of any contract or grant of assistance; and

e. Ineligibility for future City assistance for three (3) years or until all penalties and restitution has been paid in full, whichever is longer. Said ineligibility shall apply to the covered employer and to any affiliate, controlled organization, controlling organization, reconstituted organization, and/or organization having an identity of interest with the covered employer.

(2) In the event the City Solicitor 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 City Solicitor, county or hearing officer, in addition to the sanctions that may be imposed pursuant to subsection (1), above, shall order the following penalties:

a. A directive to the applicable department to withhold any payments due to the covered employer for the satisfaction of wage restitution and/or fines;

b. Rescission of any contract or grant of assistance; and

c. Ineligibility for future assistance for a period of three (3) years or until all penalties and restitution have been paid in full, whichever is longer. Said ineligibility shall apply to the covered employer and to any affiliate, controlled organization, controlling organization, reconstituted organization and/or organization having an identity of interest with the covered employer.

(3) Remedies herein non-exclusive. No remedy set forth in this section is intended to be exclusive or a prerequisite for asserting a claim for relief to enforce any rights granted under this section in a court of law.

(4) Private right of action. Any covered employee, or any person who was formerly employed by a beneficiary, may bring an action to enforce the provisions of this section to recover back pay and benefits, attorneys fees and costs, in any court of competent jurisdiction.

(5) This section shall not be construed to limit an employee's civil remedies under any federal, state, or local laws relating to employment.

(6) Nothing in this section shall be construed to conflict with, interfere with or supersede any rights collectively bargained for by any union representing covered employees.

(7) Injunctive relief shall be available in any court of competent jurisdiction to compel a predecessor contractor to produce a list of employees for the purpose of determining eligibility under the provisions of this section, to enforce a decision of a hearing officer, or to enforce any other provision of this section.

(j) Community Jobs.

(1) First source hiring agreement. Covered employers who receive economic development assistance from the City (assistance as defined in subsection (b)(2)a. of this section) shall, prior to the receipt of such assistance, provide the applicable department with one (1) or more signed first source hiring agreements between the covered employer and the City of Pittsburgh CareerLinks System. The first source hiring agreement shall stipulate that:

a. For any job opening to be filled in connection with any project for which the covered employer receives assistance, the covered employer shall notify a member of the CareerLinks System covered of the availability of the position, including a job description, wages, benefits, period of employment, and minimum

qualifications;

b. ~~For any such job opening, the covered employer shall not advertise, announce, or recruit for open positions covered by the agreement, without having first notified a member of the CareerLinks System.~~

c. ~~For any such job opening, the covered employer shall hire from among qualified individuals referred by a member of the CareerLinks System;~~

d. ~~For any such job opening, the covered employer shall not hire from a source other than a member of the CareerLinks System covered by the agreement, unless the covered employer can demonstrate that no qualified applicants were referred within a period of fifteen (15) days after the date of notification;~~

(2) ~~Protection of union jobs. In no instance shall a covered employer employ individuals pursuant to this section where such employment would result in the displacement of its employees already covered by a collective bargaining agreement. Nor shall a covered employer construe this section as requiring or authorizing the covered employer to refuse to bargain in good faith for the extension or renewal of a collective bargaining agreement covering its employees.~~

(k) ~~Responsible and Harmonious Labor Practices Encouraged. In order to prevent disruption of goods and services being provided to or on behalf of the City of Pittsburgh and its residents, the City of Pittsburgh shall, to the greatest extent feasible, give preference for assistance to businesses that engage in responsible and harmonious labor relations.~~

(l) ~~Union Neutrality. Beneficiaries of City of Pittsburgh Assistance, as that term is defined in paragraph (b) of this section, shall not use City funds to support or oppose unionization, including but not limited to, preparation or distribution of materials which advocate for or against unionization; hiring or consulting legal counsel or other consultants to advise the beneficiary about how to assist, promote or deter union organizing or how to impede a union which represents the beneficiary's employees from fulfilling its representational responsibilities; holding meetings to influence employees about unionization; planning or conducting activities by supervisors to assist, promote or deter union activities; or defending against unfair labor practice charges brought by federal or state enforcement agencies.~~

(m) ~~Liberal Interpretation of Coverage. This section shall be liberally construed so as to effectuate its purposes of promoting the retention and creation of jobs and improving the economic conditions of Pittsburgh residents. Any disputes as to whether an employer or a particular type of assistance is covered by this section shall be resolved by application of a rebuttable presumption of coverage.~~

(n) ~~Severability. In the event any provision of this section shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provisions hereof.~~

(o) ~~Authorities, Agencies and Other Public Entities. All contracts, cooperation agreements, and other agreements entered into between the City and any authority, agency or public entity after the effective date of this section shall require the authority, agency or public entity to comply with the provisions of this section (including the employment and monetary thresholds contained herein) in connection with any program funded in whole or in part with City assistance as defined in subsections (b)(2)a. through e. of this section.~~

(p) ~~Further Regulatory Guidelines. The mayor and administration are hereby authorized to promulgate at his/her discretion additional regulatory guidelines in order to effectuate this section.~~

(q) ~~[Effective date.] This section shall be effective on April 1, 2002.~~

~~(Am. Ord. 13-2001, §§ 1-17, eff. 1-1-02 Am. Ord. 33-2001, § 1, eff. 12-31-01; Am. Ord. 9-2002, § 1, eff. 4-10-02)~~

Editor's note: Am. Ord. 13-2001, §§ 1-17, effective Jan. 1, 2002, amended the Code by adding provisions designated as § 161.33. Inasmuch as there already exist provisions so designated, Am. Ord. 13-2001 has been codified herein as § 161.35 at the discretion of the editor. However, it should be noted that Am. Ord. 9-2002, § 1, effective April 10, 2002, provides, "The implementation of Section 161.33 [161.35] Title I Administrative, Chapter 161 is delayed until such time that Allegheny County implements a legally enforceable Living Wage Ordinance." See the Code Comparative Table.}]

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§ 161.35. PITTSBURGH LIVING WAGE

(a) Title and Purpose.

The purpose of the ordinance is to improve the quality of services to beneficiaries of City contracted agencies and to assure that City employees, employees of City service contractors, subcontractors, and employees and contractors of City financial assistance earn an hourly wage that is sufficient to live with dignity and to achieve economic self-sufficiency. The City contracts with many businesses and organizations to provide services to the public, and provides financial assistance to developers for the purpose of promoting economic development and job growth. Such public expenditures should also be spent to set a community economic standard that permits workers to live out of poverty. The City Council finds that the use of City funds to provide living wage jobs will decrease poverty, increase consumer income, invigorate neighborhood businesses and reduce the need for taxpayer funded social service programs.

This chapter shall be known and may be cited as the "City of Pittsburgh Living Wage Ordinance." The purpose of this ordinance is to protect the public health, safety and welfare. It does this by requiring that public funds be expended in such a manner as to facilitate individual self-reliance by employees of City contractors, lessees, recipients of City financial aid and their respective subcontractors.

(b) Findings.

The City of Pittsburgh awards contracts to private firms and other businesses to provide services to the public and to City Government; and

The City of Pittsburgh has a limited amount of taxpayer resources to expend; and

The use of taxpayer dollars to promote sustenance and creation of living wage jobs will increase consumer income, decrease levels of poverty and reduce the need for taxpayer-funded social programs in other areas; and

When City funds are used to contract for services, such contracts should demonstrate an effort to promote an employment environment that enhances the general quality of life within the community and maximizes the productive effect of the City's limited resources; and

The City's use of contractors that do not provide health insurance to their employees can result in imposing the costs of their medical care on the county, state and federal governments; and

That employees are far likelier to be healthy if their employer provides reasonable health insurance to them and their dependents; and

The payment of a minimum level of compensation as required by the chapter enacted by this Ordinance benefits these interests.

(c) Definitions. For the purposes of this section, the following terms are defined as follows:

- (1) **CITY** means the City of Pittsburgh, its agencies and Authorities

(2) **CITY FINANCIAL AID RECIPIENTS** means all persons or entities that receive from the City direct assistance in the form of grants, loans, or loan guarantees, in-kind services, waivers of City fees, real property or other valuable consideration in the amount of more than \$100,000 in any twelve (12)-month period. This term shall not include those who enjoy an economic benefit as an incidental effect of City policies, regulations, ordinances, or charter provisions.

(3) **SERVICE CONTRACTOR** means any person or entity that enters into a Service Contract as hereafter defined in an amount equal to or greater than ten thousand dollars (\$10,000.00).

(4) **EMPLOYEE** means any individual employed by an Employer unless he or she spends less than 20 percent of his or her work time on work arising from a Service Contract, City financial aid, or City lease, including subcontracts therefrom. No work may be reassigned in order to evade coverage under this Ordinance. For the purposes of determining whether an Employer employs more than six employees for the purpose of this Ordinance, such number shall be determined by the most recent payroll period unless the employer had less than seven employees during the preceding 8 payroll periods and will have less than seven during the next 8 payroll periods.

(5) **EMPLOYER** means those persons identified in (2), except that no person other than the City shall be deemed an Employer until they receive a new contract, lease, concession, franchise, or financial aid from or through the City. For these purposes the term "new" includes any arrangement entered into after this Ordinance was introduced, or any amendment, extension or renewal of a preexisting arrangement, or the City allowing continued occupancy by tenants with periodic tenancies (such as month-to-month tenants). A subcontractor shall be deemed to have received a new contract through the City when the person to whom it is subcontracting receives a new City contract, lease, franchise, or financial aid.

(6) **NON-PROFIT** shall mean a non-profit organization described in Section 501c of the Internal Revenue Code of 1954 which is exempt from taxation under Section 501(c) of that code.

(7) **PERSON** means any individual, proprietorship, partnership, joint venture, corporation, limited liability company, trust, association, or other entity that may employ individuals or enter into contracts.

(8) **SERVICE CONTRACT** means a contract given a contractor by the City for the furnishing of services to or for the City, except contracts where services are incidental to the delivery of products, equipment or commodities. Service contracts include but are not limited to security guard services, janitorial services, waste management, landscaping, parking attendant services and towing.

(9) **CREDIT FOR THE AMOUNT SPENT PROVIDING MEDICAL HEALTH BENEFITS TO SUCH EMPLOYEE** shall be defined as follows:

a. the actual hourly contribution made by the Employer for medical health benefits;

b. if the Employer is not making an hourly contribution, then the amount spent during the preceding month by such Employer on medical health benefits for such Employee divided by the hours worked, except that the Controller shall have discretion for good cause shown to allow an Employer to use an alternate method of determining its average hourly contribution;

c. if the amount contributed by the Employer varies between Employees (such as a greater contribution for family versus single coverage), then the Employer at its option may set the amount of the credit at the average it contributes for all Employees covered by this Ordinance

receiving health benefits;

d. if the Employer is self-insured and Employees covered by this Ordinance are pooled with other workers, then if the Employer finds it impractical to determine the amount spent on health benefits just for Employees covered by this Ordinance, then the Employer may approximate this calculation on the basis of the best data reasonably available and approved by the City Controller for example, using the average spent by the Employer for its entire workforce).

(d) *Employers Subject to the Requirements of this Chapter.* The persons and entities described below shall comply with the minimum compensation standards established by this Chapter if they employ more than six (6) employees:

(1) The City of Pittsburgh, including all its agencies, departments and offices and Authorities.

(2) For-profit Service Contractors which receive contract(s) for \$10,000 or more from the City in a twelve-month period.

(3) Non-profit Service Contractors which receive contracts from the City of \$100,000 or more in a twelve-month period.

(4) Recipients of City leases, concessions, or franchises which employ twenty-five (25) or more employees and have \$350,000 or more in annual gross receipts.

(5) City financial aid recipients which receive more than \$100,000 in loans or other cash and/or non-cash assistance in any twelve-month period. Compliance shall be required for a period of five (5) years following receipt of this aid.

(6) Subcontractors or subtenants of any of the persons described in subparagraphs '2' through '5' and which have \$50,000 or more in annual gross receipts.

(7) Public agencies, which receive contract(s) for \$10,000 or more from the City in a twelve-month period.

(e) *Waivers.*

(1) Any Employer which contends that it is unable to pay all or part of the living wage must provide a detailed explanation in writing to the City Controller who may recommend a waiver to the City Council.

(2) The explanation must set forth the reasons for its inability to comply with the provisions of this chapter, including a complete cost accounting for the proposed work to be performed with the financial assistance sought, including wages and benefits to be paid all employees, as well as an itemization of the wage and benefits paid to the five highest paid individuals employed by the employer.

(3) The employer must also demonstrate that the waiver will further the interests of the City of Pittsburgh in creating training positions which will enable employees to advance into permanent living wage jobs or better and will not be used to replace or displace existing positions or employees or to lower the wages of current employees.

(4) City Council may grant a waiver only upon a finding and determination that the employer has demonstrated economic hardship and that waiver will further the interests of the City of Pittsburgh in providing training positions which will enable employees to advance into permanent living wage jobs or better.

(5) However, no waiver will be granted if the effect of the waiver is to replace or displace existing positions or employees or to lower the wages of current employees.

(6) Waivers from the chapter are disfavored and will be granted only where the balance of competing interests weighs clearly in favor of granting the waiver.

(7) If waivers are to be granted, partial waivers are favored over blanket waivers. Moreover, any waiver shall be granted for no more than one year. At the end of the year, the employer may reapply for a new waiver which may be granted subject to the same criteria for granting the initial waiver.

(8) The City Council of the City of Pittsburgh reserves the right to waive the requirements of this chapter upon a finding and determination of the City Council that a waiver is in the best interests of the City of Pittsburgh. The City Council may also waive the requirements of this Chapter during an emergency due to war or natural or human made disasters.

(9) All of the provisions of this chapter, or any part hereof, may be waived by a bona fide collective bargaining agreement, but only if the waiver is explicitly set forth in such agreement in clear and unambiguous terms.

(f) *Compensation Required to be Paid to Employees.* Except as otherwise provided in this Ordinance, an Employer subject to this Chapter shall provide its covered Employees the following minimum compensation:

(1) Living Wage: The Employer shall pay each Employee an hourly wage, excluding benefits, at least 150% of the state minimum wage.

(2) Minimum Benefits Standard. To the extent the employer provides health benefits to any of its employees, the Employer shall provide each full-time, non-temporary, non-seasonal covered Employee health benefits at least as valuable as the least valuable health benefits that are provided to any other full-time employees of the Employer.

(3) Additional compensation permissible. Nothing in this Chapter shall be construed to limit an employer's discretion to provide greater compensation to its employees.

(g) *Required Contract Provisions.*

Every City contract, lease, license, concession agreement, franchise agreement or agreement for financial aid with an employer described in Section (d) or amendment thereto shall contain provisions requiring it to comply with the requirements of this chapter as they exist on the date when the employer entered its agreement with the City or when such agreement is amended. Such contract provisions shall address the employer's duty to promptly provide to the City documents and information verifying its compliance with the requirements of this Ordinance, and sanctions for non-compliance. Such contract provisions shall also require the employer to notify each of its affected employees with regards to the wages that are required to be paid pursuant to this ordinance.

(h) Exemptions. The requirements of this Chapter shall not be applicable to the following employees:

(1) An employee participating in a temporary job-training program approved by the City in which a significant component of the employee's training consists of acquiring specialized knowledge, abilities, skills or job readiness (e.g., the importance of proper work attire, punctuality and workplace demeanor.)

(2) An employee who is under 21 years of age employed by a non-profit entity for after-school or summer employment or as a trainee for a period not longer than 120 days.

(3) An employee employed on a temporary project which will not exceed six months in duration.

(4) Any disabled employee who

a. is covered by a current sub-minimum wage certificate issued to the employer by the U. S. Department of Labor; or

b. would be covered by such a certificate but for the fact that the employer is paying a wage equal to or higher than the minimum wage.

(5) An employee for whom application of the requirements of this ordinance is prohibited by state or federal law.

(6) An employee subject to a bona fide collective bargaining agreement where the waiver of the provisions of this Ordinance are set forth in clear and unambiguous terms in such an agreement.

(7) City employees during their first six months of employment which is considered a training or probationary period.

(i) Retaliation and Discrimination Prohibited. It shall be unlawful to retaliate or discriminate against any person on account of his having claimed a violation of this Chapter.

(j) Employee Complaints to the City.

(1) A person who alleges violation of any provision of the requirements of this Chapter may report such acts to the City. The City Controller may establish a procedure for receiving and investigating such complaints and take appropriate enforcement action.

(2) Any complaints received shall be treated as confidential matters, to the extent permitted by law.

(k) Private Right of Action.

(1) A person aggrieved by a violation of this Chapter may bring an action against an employer and obtain the following remedies:

a. Back pay for each day during which the employer failed to pay the compensation required by this Chapter.

b. Reinstatement, compensatory damages and punitive damages, to the extent such punitive damages are permitted by law.

c. Reasonable attorney's fees and costs.

(2) Notwithstanding any provision of this Ordinance or any other ordinances to the contrary, no criminal penalties shall attach for any violation of this article.

(3) No remedy set forth in this Ordinance is intended to be exclusive or a prerequisite for asserting a claim for relief to enforce any rights hereunder in a court of law. This Ordinance shall not be construed to limit an employee's right to bring a common law cause of action for wrongful termination.

(4) Nothing in this Ordinance shall be interpreted to authorize a claim for damages against the City based upon another employer's failure to comply with this ordinance.

(l) *Responsible Bidding and Use of City Funds and Facilities.*

Prior to commencement of the contract's term or execution by the City, each Contractor covered by the bill's requirements will certify to the satisfaction of the City that its employees are paid the living wage standard as provided by the Chapter. As part of any bid, application or proposal for any agreement or contract, or other funding arrangement with the City covered by this Chapter, the submitter shall include an acknowledgement, in a form acceptable to the City, of the terms of this Chapter and intent to comply therewith.

(m) *Labor Relations Neutrality.*

No employer covered by Section shall use any City funds or property to assist, promote or deter union organizing. Nothing herein shall be construed as a promise by the City to actively monitor contractor compliance.

(n) *Phase In for Non-Profits and for Part-time City Employees.*

(1) All 501(c) non-profit organizations subject to the provisions of this Ordinance shall be exempted from its wage requirements for the first three years following its enactment, unless they agree with the City to comply earlier.

(2) The provisions of this Ordinance shall not apply to part-time city employees for the first six months following its enactment.

Section 2. Severability.

If any section, subsection, subdivision, paragraph, sentence, clause or phrase of this Ordinance is for any reason held to be unconstitutional or invalid, such a decision shall not affect the validity of the remaining portions of this Ordinance. The City Council hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause or phrase of this Ordinance irrespective of the unconstitutionality or invalidity of any section, subsection, subdivision, paragraph, sentence, clause or phrase.

Section 3. Effective Date.

This ordinance shall become effective thirty (30) days from and after the date of its passage.

Section 4. Prior Ordinance Repealed

Ordinance Number 13 of 2001, as amended by ordinance 33 of 2001 and ordinance 9 of 2002, is hereby repealed