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Committee: Committee on Finance and Law

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Ordinance amending the Pittsburgh Code, Title One, Administrative, Article Seven, Procedures, Chapter 161, Contracts, by amending and supplementing Section 161.38, "City of Pittsburgh Service Worker prevailing Wage Ordinance."

Whereas, the City of Pittsburgh adopted, in 2010, the Service Worker Prevailing Wage Ordinance ("Ordinance") to ensure that when the public moneys of the City are used to procure goods, services or to assist in improvements that the service and retail employees employed as a result are paid appropriate wages; and,

Whereas, Council has determined that gaps exist in the Ordinance which prevent employees whose jobs should be covered under the Ordinance from equal treatment; and,

Whereas, the City assists a multitude of private interests in the development, redevelopment or rehabilitation of their properties in the name of economic development, some of which were heretofore unrecognized by the Ordinance; and,

Whereas, Council desires to update the Ordinance to reflect its' determination.

Be it resolved that the Council of the City of Pittsburgh hereby enacts as follows:

Section 1. The Pittsburgh Code of Ordinances, Title One - Administrative, Article Seven - Procedures, Chapter 161 - Contracts, is hereby amended and supplemented as follows:

CHAPTER 161: - CONTRACTS

§ 161.38 - 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 or related to projects that will receive a City subsidy approved after this ordinance takes effect, provided such employees work on the project at least fifty (50) hours per year. With respect to building service and food service employees, developers, owners, managers, and contractors shall be obligated to ensure that such employees are paid a prevailing wage.

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.
- 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. *"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.
- 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.
- E. *"Building service work"* for purposes of subsection II(G) shall mean work in connection with the care and maintenance of ***any type of building, including but not limited to*** (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. The determination of the minimum square footage and minimum number of units shall be made at the time the contract is put out for bid.
- 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 ***any type of building, including but not limited to*** (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. "Food service work" shall not include direct employment in independently-owned restaurants other than cafeterias. The determination of the minimum square footage shall be made at the time the contract is put out for bid.
- 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 any grant, 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 property, or other form of financial assistance related to a project with an aggregate value of at least one hundred thousand dollars (\$100,000.00) but shall not include an educational or training

grant. For purposes of determining whether the assistance threshold is met, all affiliates, controlled organizations, controlling organizations, and/or organizations having an identity of interest with the assistance recipient shall be treated as a single entity. Market value shall be determined by a third party that shall not include the City or the City subsidy recipient.

- I. "City" shall mean the City of Pittsburgh and any related City agency, department, or authority.
- J. "Project" for purposes of Section I(B) shall mean any of the following: (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 building of at least one hundred thousand (100,000) square feet containing commercial office space and residential units; (4) a hotel or motel of at least one hundred thousand (100,000) square feet; (5) a building of at least one hundred thousand (100,000) square feet containing hotel or motel units and residential units; (6) a building of at least one hundred thousand (100,000) square feet containing hotel or motel units and commercial office space; (7) 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; (8) a shopping mall of at least one hundred thousand (100,000) square feet; **[and]** (9) a sports stadium, performance hall or amphitheater larger than one hundred thousand (100,000) square feet **[.]** ; ***(10) a library; (11) a college or university of at least one hundred thousand (100,000) square feet; (12) a museum and other cultural institution of at least one hundred thousand (100,000) square feet; (13) a distribution center, warehouse or other industrial facility of at least one hundred thousand (100,000) square feet; and (14) a parking facility of at least one hundred thousand (100,000) square feet. The determination of the minimum square footage and minimum units shall be updated to reflect any expansion of the Project, including any additional phase in a multi-phase Project. "Complex" shall mean two (2) or more buildings that are commonly owned managed 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, 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.*** The determination of the minimum square footage and minimum units shall be updated to reflect any expansion of the Project, including any additional phase in a multi-phase Project. "Complex" shall mean two (2) or more buildings that are commonly owned managed 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, 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.
- 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 median number of 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 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 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 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.
- (4) For all classifications of employees described above in subsections (1)-(3), the prevailing wage shall mean the higher of either the prevailing wage determined pursuant to subsections (1)-(3), or the wage required by any other provision in the Pittsburgh Code of Ordinances for such classification.

L. "*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.

M. "*Complex*" shall mean two (2) or more buildings that are commonly owned managed 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, 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.

- N. "*Covered Employer*" shall mean any employer obligated to pay employees a prevailing wage pursuant to the City Code of Pittsburgh Title I, Article VII, Section 161.38(I)(A) and (B).

III. *Periodic Wage Determinations.*

The Controller shall issue prevailing wage determinations at least once every 12 months, and as frequently as necessary to reflect any increases in the prevailing wage, and shall post such determinations on the official City web site. Wage rates of employees shall be increased accordingly, and in the case of City service contracts, the contractor's billable rate under the City service contract shall be increased accordingly.

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 yearly 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 yearly with the Controller or the Controller's authorized agent certifying that all workers have been paid no less than the wage required by their 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. Social security numbers shall be kept confidential by the Controller, unless otherwise required by law.
- C. The Controller must notify in writing all covered employers at least once every twelve (12) months of their obligation to file annually the Federal Form WH-347. The notification must include a copy of Federal Form WH-347 with instructions for completing the form, the dates that the completed form is due throughout the proceeding twelve (12) months, contact information for an employee within the Office of the Controller where questions can be referred, a notice of the penalties that can be assessed if the covered employer becomes non-compliant, and a poster no smaller than standard letter size that includes the name, address and telephone number of the Controller, the applicable prevailing wages for the job classifications at the covered employer, 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. The controller's failure to provide the previously described written notification to covered employers does not relieve covered employers of their obligation under this law.
- D. 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.* **The Controller shall provide a complaint form on the official City website.** Any individual or organization 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 within sixty (60) days of the complaint being filed, including a determination of whether an employer is covered by this law. 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. Failure of The Controller to issue a finding of compliance or noncompliance does not relieve the covered employer of their obligations under this law.
- 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 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 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 employer may dispute a finding of retaliation or discrimination by requesting a hearing as provided in subsection D. above.
- H. Violation by a subcontractor of a covered employer shall also be deemed a violation by the covered employer.

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 (3) 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; (4) attorneys fees; and (5) 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, order 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 payment of a fine in the amount of no less than thirty thousand dollars (\$30,000.00).

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.