

Chapter 23 - LIVING WAGE REQUIREMENTS IN CITY CONTRACTS AND GRANTS

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1:811. - Purposes.

The purposes of this Chapter are (1) to increase the quality and reliability of services procured for the City or provided to City inhabitants by contractors, vendors, and grantees by promoting higher productivity and retention of employees working on City contracts and grants; (2) to use City spending to encourage the development of jobs paying wages above the poverty level; (3) to use City spending and procurement of services to require covered employers that provide services to the City or that receive certain other forms of financial assistance from the City for providing services to City inhabitants pay their employees a "Living Wage," that is, a wage sufficient to meet their employees' basic subsistence needs; (4) to raise the income of low-income working people and their families employed by covered employers on City contracts or grants; (5) to permit hardship exemptions for certain non-profit employers from the provisions of this Chapter; (6) to provide incentives for covered employers to provide health insurance to their employees; (7) to monitor and enforce the requirements of this Chapter; and (8) for other purposes.

(Ord. No. 9-01, § 1, 3-5-01)

1:812. - Findings.

The City Council finds as follows:

- (1) According to economic research summarized in the Economic Policy Institute's August 2000 issue guide, "Higher Wages Lead to More Efficient Service Provision," payment of higher wages is associated with greater business investment in employee training, higher productivity, and lower employee turnover, and this Chapter is intended to promote better quality and reliability of services procured for the City or provided to City inhabitants by contractor/vendors and grantees by promoting higher productivity and retention of employees working on City contracts and grants;
- (2) This Chapter is adopted pursuant to the City's spending and procurement powers as set forth in the City Charter and provided under Article 7 of the 1963 Constitution and provides for payment of living wages only to employees of covered employers; further, this Chapter does not establish any generally applicable City minimum wage, or affect the wages paid by any business or individual that chooses not to provide services covered by this Chapter to the City, or not to accept City grants falling within this Chapter's coverage.
- (3) The Michigan League for Human Services found in its October 1998 report, "Economic Self-Sufficiency: A Michigan Benchmark," that a family of three required at that time, on average, \$2,724.00 a month to pay for housing, food, child care, health care, transportation, clothing, household supplies, a telephone, and taxes, and this was at the time equivalent to an hourly wage of \$15.83 for households with a single worker and \$7.92 for households with two workers;
- (4) The Michigan County Social Services Association found in its 2000 "market basket survey" that a "minimal needs" budget for a family of three (3) in Michigan required \$15,222.00 per year (not including anything for health care benefit costs and assuming rent of only \$465.00 a month).

According to the U.S. Department of Housing and Urban Development, the fair market rent for a two bedroom apartment in Ann Arbor Metropolitan Statistical Area for 2000 was \$717.00 a month, and the fair market rent for a three-bedroom apartment was \$940.00 a month. This means that a family of three requires at least \$18,246.00 a year to meet a minimal needs budget in the Ann Arbor area, not including health care. This converts to an hourly wage of \$8.77 for a full-time, full-year employee;

- (5) Federal and state minimum wages, currently set at only \$5.15 an hour, mean that a full-time, full-year minimum wage employee earns only \$206.00 a week, or \$10,712.00 a year, while the 2000 United States Department of Health and Human Services federal poverty guideline was \$8,350.00 for a single person, \$11,250.00 for a two-person family, \$14,150 a year for a three-person family, and \$17,050.00 a year for a four-person family; and income near the poverty level is not a desirable standard of living sufficient to meet the subsistence needs of a family in Ann Arbor and its surrounding communities; and
- (6) Two studies of the effect of the living wage ordinance in Baltimore present evidence that indicates increased employee morale and productivity, and a decrease in employee turnover as a result of the living wage requirements ("Baltimore's Living Wage Law: An Analysis of the Fiscal and Economic Costs of Baltimore City Ordinance 442", Mark Weisbrot and Michelle Sforza-Roderick and "The Effects of the Living Wage in Baltimore", Christopher Niedt, Greg Rutiers, Dana Wise, and Erica Schoenberger).

(Ord. No. 9-01, § 1, 3-5-01)

1:813. - Definitions.

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

- (1) *Contractor/vendor* is a person or entity that has a contract with the City primarily for the furnishing of services where the total amount of the contract or contracts with the City exceeds \$10,000.00 for any 12-month period. "Contractor/vendor" does not include:
 - (a) A person or entity that has a contract with the City primarily for the purchase of goods or property, or for the lease of goods or property to or from the City; or
 - (b) A person or entity that has a contract with the city funded by the community events budget.
- (2) *Covered employee* means a person employed by a covered employer to perform services which are covered or funded by the contract with or grant from the City; provided, however, that persons who are employed pursuant to federal, state or local laws relating to prevailing wages shall be exempt from this chapter.
- (3) *Covered employer* means a contractor/vendor or grantee that has not been granted an exemption from this chapter pursuant to Section 1:817.
- (4) *Employee* means an individual who provides personal services performed for wages under any contract calling for the performance of personal services, whether written or oral, express or implied. The term "employee" does not include any individual who volunteers to perform services for an employer if:
 - (a) The individual receives no compensation or is paid expenses, reasonable benefits, or a nominal fee to perform the services for which the individual volunteered; and
 - (b) Such services are not the same type of services which the individual is employed to perform for such employer.
- (5) *Employee health benefits* or *health benefits* means providing health care benefits for employees (or employees and their dependents) at employer cost or making an employer contribution toward the purchase of such health care benefits for employees (or employees and their dependents), provided that the employer cost or contribution equals no less than \$1.00 an hour for the average work week of such employee, and provided further that any employee payment or contribution toward health care shall not exceed 50 cents an hour for the average work week for such employee.
- (6) *Grant* means any form of financial assistance to a "Grantee" as set forth and defined in Section 1:813(7). "Grant" does not include financial assistance used for the purchase or lease of property or other non-personnel costs.
- (7) *Grantee* is a person or entity that is a recipient of any financial assistance from the City in the form of any federal, state or local grant program administered by the City, revenue bond financing, tax increment financing, tax abatement, tax credit, direct grant, or any other form of financial assistance that exceeds \$10,000.00 for any 12-month period, including any contractors, subcontractors, or leaseholders of the grantee whose contract, subcontract or lease with the grantee exceeds \$10,000.00 for any 12-month period.
- (8) *Living wage* means a wage equal to the levels established in Section 1:815.
- (9) *Person* means any individual, copartnership, corporation, association, club, joint adventure, estate, trust, and any other group or combination acting as a unit, and the individuals constituting such group or unit.

(10) \$10,000.00 for any 12-month period is computed by taking the total amount of the contract, grant or loan and dividing it by the number of months the contract, grant or loan covers.

(Ord. No. 9-01, § 1, 3-5-01; Ord. No. 08-10, § 1, 4-7-08)

1:814. - Applicability.

- (1)** This Chapter shall apply to any person that is a contractor/vendor or grantee as defined in Section 1:813 that employs or contracts with five (5) or more individuals; provided, however, that this Chapter shall not apply to a non-profit contractor/vendor or non-profit grantee unless it employs or contracts with ten (10) or more individuals.
- (2)** This Chapter shall apply to any grant, contract, or subcontract or other form of financial assistance awarded to or entered into with a contractor/vendor or grantee after the effective date of this Chapter and to the extension or renewal after the effective date of this Chapter of any grant, contract, or subcontract or other form of financial assistance with a contractor/vendor or grantee.

(Ord. No. 9-01, § 1, 3-5-01)

1:815. - Living wages required.

- (1)** Every contractor/vendor or grantee, as defined in Section 1:813, shall pay its covered employees a living wage as established in this Section.
 - (a)** For a covered employer that provides employee health care to its employees, the living wage shall be \$8.70 an hour, or the adjusted amount hereafter established under Section 1:815(3).
 - (b)** For a covered employer that does not provide health care to its employees, the living wage shall be \$10.20 a hour, or the adjusted amount hereafter established under Section 1:815(3).
- (2)** In order to qualify to pay the living wage rate for covered employers providing employee health care under subsection 1:815(1)(a), a covered employer shall furnish proof of said health care coverage and payment therefor to the City Administrator or his/her designee.
- (3)** The amount of the living wage established in this Section shall be adjusted upward no later than April 30, 2002, and every year thereafter by a percentage equal to the percentage increase, if any, in the federal poverty guidelines as published by the United States Department of Health and Human Services for the years 2001 and 2002. Subsequent annual adjustments shall be based upon the percentage increase, if any, in the United States Department of Health and Human Services poverty guidelines when comparing the prior calendar year's poverty guidelines to the present calendar year's guidelines. The applicable percentage amount will be converted to an amount in cents by multiplying the existing wage under Section 1:815(1)(b) by said percentage, rounding upward to the next cent, and adding this amount of cents to the existing living wage levels established under Sections 1:815(1)(a) and 1:815(1)(b). Prior to April 1 of each calendar year, the City will notify any covered employer of this adjustment by posting a written notice in a prominent place in City Hall, and, in the case of a covered employer that has provided an address of record to the City, by a written letter to each such covered employer.

(Ord. No. 9-01, § 1, 3-5-01)

Note—Please refer to the City of Ann Arbor's Web page for current Living Wage rates at: <http://www.a2gov.org/government/financeadminservices/Pages/Home.aspx>

1:816. - Employees covered.

A covered employer shall pay each of its employees performing work on any covered contract or grant with the City no less than a living wage as defined in Section 1:815.

(Ord. No. 9-01, § 1, 3-5-01)

1:817. - Exemptions.

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

- (1)** Sweat equity contracts for home construction or rehabilitation grant will not subject the grantee to coverage under this Chapter. Housing construction or rehabilitation grants or contracts that are passed through to a contractor in their entirety are exempt from the provisions of this Chapter, even when the City participates in the selection of the contractor.
- (2)** For any contract or grant, the City Council may grant a partial or complete exemption from the requirements of this Chapter if it determines one of the following:
 - (a)** To avoid any application of this Chapter that would violate federal, state or local law(s); or
 - (b)** The application of this Chapter would cause demonstrated economic harm to an otherwise covered employer that is a non-profit organization, and the City Council finds that said harm

outweighs the benefits of this Chapter; provided further that the otherwise covered non-profit employer shall provide a written plan to fully comply with this Chapter within a reasonable period of time, not to exceed three years, and the City Council then agrees that granting a partial or complete exemption is necessary to ameliorate the harm and permit the non-profit organization sufficient time to reach full compliance with this Chapter.

- (3) A loan shall be considered a grant under this ordinance only to the extent that a loan is provided at below market interest rates and then only the difference between the amount of the loan and the present value of the payments thereunder, discounted over the life of the loan, shall be treated as financial assistance under this ordinance.
- (4) A payment of funds for the purpose of purchasing services, property, or goods on behalf of individuals being assisted by a covered employer or potentially covered employer (sometimes known as a "pass through" grant) that is used for said purchases shall not be considered a grant; such funds shall be considered a grant only to the extent that any such funds are retained by the covered employer or potentially covered employer to provide financial assistance and support to its own operations.

(Ord. No. 9-01, § 1, 3-5-01)

1:818. - Monitoring and enforcement.

- (1) Every covered employer shall agree to the payment of a living wage as a condition of entering into or renewing a covered contract or grant with the City, shall agree to post a notice regarding the applicability of this Chapter in every work place or other location in which employees or other persons contracted for employment are working, and shall agree to provide payroll records or other documentation as deemed necessary within ten (10) business days from the receipt of the City's request. All City contracts and grants covered by this Chapter shall provide that a violation of the living wage requirements of this Chapter shall be a material breach of the contract or grant. The Human Rights Office of the City shall monitor the compliance of each contractor/vendor or grantee under procedures developed by the Human Rights Office and approved by the City Administrator.
- (2) Each covered employer shall submit to the Human Rights Office of the City information regarding number of employees and applicable wage rates of its employees covered by this Chapter in such manner as requested by that office. At the request of the Human Rights Office, any contractor/vendor or grantee shall provide satisfactory proof of compliance with the living wage provisions of this Chapter.
- (3) Any person may submit a complaint or report of a violation of this Chapter to the Human Rights Office. Upon receipt of such a complaint or report, the Human Rights Office shall investigate to determine if there has been a violation.

(Ord. No. 9-01, § 1, 3-5-01)

1:819. - Penalties and enforcement.

- (1) A violation of any provision of this Chapter is a civil infraction punishable by a fine of not more than \$500.00 plus all costs of the action. The Court may issue and enforce any judgment, writ, or order necessary to enforce this Chapter, including payment to the affected employee or employees of the difference between wages actually paid and the living wage that should have been paid, interest, and other relief deemed appropriate.
- (2) Each day upon which a violation occurs shall constitute a separate violation.
- (3) In addition to enforcement under Subsections (1) and (2), the City shall have the right to modify, terminate, and/or seek specific performance of any contract or grant with an affected covered employer or to cancel, terminate or suspend the contract in whole or in part and/or to refuse any further payments under the contract or grant;
- (4) Nothing contained in this Chapter shall be construed to limit in any way the remedies, legal or equitable, which are available to the City or any other person for the correction of violations of this Chapter.

(Ord. No. 9-01, § 1, 3-5-01)

1:820. - Private actions for damages or injunctive relief.

- (1) An employee or person contracted for employment by a covered employer who is denied payment of the applicable living wage in violation of this Chapter may bring a civil action for appropriate injunctive relief or damages or both against the person(s) who acted in violation of this Chapter. No employee or person shall bring a civil action alleging a violation of this Chapter unless the employee or person has first provided a written allegation of the violation of this Chapter to the Human Rights Office and the covered employer no less than ninety (90) days prior to filing said civil action. After at least ninety (90) days have passed after the written allegation has been provided, the employee or person shall be free to proceed with a civil action. Any civil action under this Section must be brought within one year of the last date of the violation.

The last date of the violation shall be determined by the last paycheck received by the employee or person that did not contain the Living Wage.

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

(Ord. No. 9-01, § 1, 3-5-01)

1:821. - Other provisions.

- (1) No affected covered employer shall reduce the compensation, wages, fringe benefits, or leave available to any covered employee or person contracted for employment in order to pay the living wage required by this Chapter.
- (2) Nothing in this Chapter shall be construed to require the City to take action which would conflict with, interfere with, and/or supersede any provision of a collective bargaining agreement with any union representing City employees, which deals with the provision of health care to City employees.
- (3) No employee covered by a federal, state or local law requiring the payment of prevailing wages shall be covered by this Chapter.
- (4) This Chapter shall not be construed to apply to any person or entity that is a tax exempt religious, educational or charitable organization under state or federal law, but is not a contractor/vendor or grantee as defined in Section 1:813.
- (5) This Chapter shall not be applicable to the establishment and/or continuation of the following if developed specifically for youth, high school and/or college students:
 - (a) A bona fide training program;
 - (b) A non-profit summer program;
 - (c) A non-profit youth employment program;
 - (d) A work-study, volunteer/public service, or internship program.
- (6) The City Administrator will submit a report to City Council 2 years after the effective date of this Chapter, as first enacted, and every 2 years thereafter. The report will contain, for the 2 preceding years, information as to the amount of the increases required by Section 1:815(3), information as to the number of covered employers doing business with the City, and a summary report of all violations of this Chapter.

(Ord. No. 9-01, § 1, 3-5-01; Ord. No. 08-10, § 1, 4-7-08)