

ORDINANCE NO. 1554

AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF BOZEMAN, MONTANA, PROVIDING THAT THE BOZEMAN MUNICIPAL CODE BE AMENDED BY ADDING A NEW CHAPTER TO BE NUMBERED CHAPTER 2.96 PROVIDING FOR A LIVING WAGE TO EMPLOYEES OF THE CITY OF BOZEMAN AND TO EMPLOYEES OF BUSINESSES AND OTHER RECIPIENTS OF FINANCIAL ASSISTANCE FROM THE CITY OF BOZEMAN.

BE IT ORDAINED by the City Commission of the City of Bozeman, Montana:

Section 1

That the Bozeman Municipal Code be amended by adding a new Chapter 2.96, to read:

**"Chapter 2.96
Quality Jobs and Living Wage**

2.96.010 Title and Purpose

This ordinance shall be known as the "City of Bozeman Quality Jobs and Living Wage Ordinance." The purpose of this ordinance is to prescribe a living wage for City employees and to prescribe that businesses receiving certain financial assistance from the City pay employees a minimum level of compensation.

2.96.020 Definitions

As used in this chapter, the following terms shall have the meanings:

- A. "City" means the City of Bozeman and all its agencies, departments and offices.
- B. "Covered regular employee" shall mean any employee regularly employed for twenty (20) or more hours per week by the City or by a Recipient of financial assistance from the City. Covered regular employee does not include part-time, seasonal, temporary, short-term, or probationary employees, or an employee who is also an owner under a Chapter S or C corporation.
- C. "Financial assistance" means financial support from the City of Bozeman for any of the following City programs:
 - 1. Community Development Block Grant Economic Development Revolving Loan Fund (CDBG Revolving Loan); and
 - 2. Tax Incentive Program for New Industry or Expanding Industry Under M.C.A. §15-24-1401, *et seq.* (Tax abatement).
- D. "Health benefits" means an offer by the Recipient or City to its employees to pay at least \$1.00 per hour towards the provision of health care benefits for employees or for employees and their

dependents. The health benefits described herein shall be increased by an amount equal to the increase in the Consumer Price Index (CPI-U) for the Western Region for expenditure category medical care for the twelve month period ending in the previous November.

E. "Living wage" means a wage calculated on an hourly basis equal to \$8.50 with health benefits or \$9.50 without health benefits paid to a covered regular employee; a wage calculated on an hourly basis equal to \$8.07 with health or without health benefits paid to a probationary employee; a wage calculated on an hourly basis equal to \$8.0618 with health benefits or without health benefits paid to a seasonal employee; a wage calculated on an hourly basis equal to \$ 7.4933 with health benefits or without health benefits paid to a temporary employee; and a wage calculated on an hourly basis equal to \$7.4933 with health benefits or without health benefits paid to a short-term employee . Beginning on or after January 1, 2004, the living wage described herein shall be increased at the beginning of the fiscal year of the City or Recipient, or annually, each year thereafter by an amount equal to the change in the most recent Consumer Price Index, Class "B" and "C" for the Western Region.

F. "Part-time employee" means an employee regularly employed for less than twenty (20) hours per week by the the City or by a Recipient of financial assistance from the City. Part-time employee does not include seasonal, temporary, short-term, or probationary employees.

G. "Probationary employee" means a current regular employee designated as probationary and one who has not been employed for a period of more than six (6) months from the most recent date of hire. Neither this definition nor payment of probationary employees a living wage is intended to establish a shorter probationary period than established by the City or Recipient receiving financial assistance from the City nor intended to preclude the extension of a probationary period by the City or Recipient receiving financial assistance from the City.

H. "Recipient" means any person, entity, joint venture, joint stock company, partnership, association, club, company, corporation, business, trust, governmental entity, or organization.

I. "Seasonal employee" means a regular employee who is designated as seasonal, who performs duties interrupted by the seasons, and who may be recalled without the loss of rights or benefits accrued during the preceding season.

J. "Short-term worker" means a person who:

a. is hired by an agency for an hourly wage established by the agency;

- b. may not work for the agency more than 90 days in a continuous 12-month period;
 - c. is not eligible for regular status;
 - d. may not be hired into another position by the agency without a competitive selection process; and
 - e. is not eligible to earn the leave and holiday benefits or group insurance benefits.
- K. "Temporary employee" means an employee who:
- 1. Is designated as a temporary employee for a definite period of time not to exceed twelve (12) months;
 - 2. Performs temporary duties or regular duties on a temporary basis;
 - 3. Is not eligible for regular status;
 - 4. Is terminated at the end of the employment period; and
 - 5. Is not eligible to become a regular employee without a competitive selection process.

2.96.030 Living Wage for City Employees

On and after July 1, 2002, the City shall pay to employees a living wage, except as provided by section 2.96.060 and except for any employee that is a member of a bargaining unit that has not negotiated a new collective bargaining agreement since the effective date of this Ordinance.

2.96.040 Living Wage for Employees of Recipient of Financial Assistance

On and after July 1, 2002, any Recipient receiving financial assistance the Tax Abatement Program shall pay its employees a living wage. On or after July 1, 2002, any Recipient receiving financial assistance under the CDBG Revolving Loan program with less than 15 employees shall pay its employees a living wage within three (3) years of receiving financial assistance. On or after July 1, 2002, any Recipient receiving financial assistance under the CDBG Revolving Loan program with 15 or more employees shall pay its covered employees a living wage. This section applies only to Recipients that make application and receive financial assistance after the effective date of this ordinance. It does not apply to Recipients receiving financial assistance on or before the effective date of this Ordinance.

2.96.050 Proof of Wages and Benefits and Other Requirements

A. Each Recipient of financial assistance shall keep full and accurate payroll and benefits records for each covered employee. The City may demand and examine, and it shall be the duty of every recipient, and agent thereof, to keep and furnish to the City copies of payroll and benefits records which relate to wages paid to employees by recipients receiving financial assistance from the City. Annually or upon request by the City, the Recipient receiving financial assistance shall provide proof of wages and benefits for employees for the period for which assistance is being provided or five (5) years, whichever is longer.

B. Recipients of financial assistance shall execute an agreement with the City providing for the payment of living wages as provided in Section 2.96.040 to employees. The agreement shall contain a notice in substantially the following form:

"The Recipient agrees to pay all workers employed by the Recipient in the performance of this loan [or grant], a living wage as provided by Chapter 2.96 of the Bozeman Municipal Code. The Recipient agrees to make available for City inspection the recipient's payroll records relating to employees providing services under this loan [or grant]. If any payroll records of Recipient contain any false, misleading or fraudulent information, or if the Recipient fails to comply with any of the provisions of Bozeman Municipal Code Chapter 2.96, the City may withhold payments on the agreement, terminate, cancel or suspend the agreement in whole, or in part."

C. Failure to pay employees in accordance with this Chapter will constitute a breach of the agreement described in subsection B above and entitles the City to immediate and full repayment of any financial assistance provided to the Recipient of financial assistance or other remedies acceptable to the City.

D. Every Recipient of financial assistance shall post a notice of the current living wage posted at the site of the work in a permanent place where it can be easily seen and read by the persons employed. The notice shall also provide information of the means the reader may use to file a complaint of violation. In addition, copies of the current living wage requirement shall be supplied to any person employed at the request of such person and within a reasonable period of time after the request.

E. An employee may file a complaint alleging a recipient's violation of this section. All complaints shall be filed with the Director of Administrative Services for the City of Bozeman. The Director

of Administrative Services shall investigate the complaint and present his or her findings to the City Commission.

F. At the time of application, Recipients receiving financial assistance from the City will be advised that they can apply for a variance in accordance with Section 2.96.090.

2.96.060 Collective Bargaining Exemption

Except for Recipients covered under Section 2.96.040, all the provisions of this Chapter, or any part hereof, may be waived in a *bona fide* collective bargaining agreement, but only if the waiver is expressly set forth in such an agreement in clear and unambiguous terms.

2.96.070 Cuts and Non-Wage Benefits Prohibited

No Recipient of financial assistance will fund wage increases required by this ordinance, or otherwise respond to the provisions of this Chapter, by reducing the health benefits, insurance, pension, vacation or other non-wage benefits of any its employees.

2.96.080 Non-Impairment of Existing Contracts

Nothing contained herein shall operate to impair any existing contracts, except that the renewal, amendment or modification of such contracts occurring on or after the effective date of this ordinance shall be subject to this Chapter.

2.96.090 Variance

The City Commission, in its sole discretion, may grant a variance from this Chapter if:

A. A Recipient of financial assistance submits a plan to comply with this Chapter for ninety percent (90%) of employees upon receiving City financial assistance, for ninety five percent (95%) of employees within one (1) year, and for all employees within two (2) years of receiving financial assistance;
or

B. The City Commission determines that it would be in the public interest after a hearing that the Recipient of financial assistance should be granted a variance or a conditional variance from this Chapter.

2.96.100 Retaliation and Discrimination Barred

A Recipient of financial assistance from the City shall not discharge, reduce the compensation, or otherwise discriminate against any employee, any employee making a complaint or otherwise asserting his or her rights under this Chapter, or any employee participating in any investigation or proceedings.

2.96.110 Biennial Review

During the month of July 2004 and then every two years thereafter, the Commission shall review this chapter to determine whether any modifications to this chapter are necessary or whether this chapter should be repealed. Failure to review this chapter does not affect this chapter nor the requirement to pay a living wage."

Section 2

Repealer. All resolutions, ordinances and sections of the Bozeman Municipal Code and parts thereof in conflict herewith are hereby repealed.

Section 3

Savings Provision. This ordinance does not affect the rights and duties that matured, penalties that were incurred or proceedings that were begun before the effective date of this ordinance.

Section 4

Severability. If any portion of this ordinance or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions of this ordinance which may be given effect without the invalid provisions or application and, to this end, the provisions of this ordinance are declared to be severable.

Section 5

Effective Date. This ordinance shall be in full force and effect thirty (30) days after final adoption.

PASSED by the City Commission of the City of Bozeman, Montana on first reading at a regular session thereof held on the 3rd day of December 2001.

MARCIA B. YOUNGMAN, Mayor

ATTEST:

ROBIN L. SULLIVAN
Clerk of the Commission

PASSED, ADOPTED AND APPROVED by the City Commission of the City of Bozeman, Montana, on second reading at a special session thereof held on the 19th day of December 2001.




MARCIA B. YOUNGMAN, Mayor

ATTEST:



ROBIN L. SULLIVAN
Clerk of the Commission

APPROVED AS TO FORM:



PAUL J. LUWE
City Attorney