

Ordinance No.

Ordinance No. 2009-A-99

An Ordinance

To supplement the Codified Ordinances of Cleveland, Ohio, 1976, by enacting new Chapter 189 relating to the Cleveland Fair Employment Law.

By Councilmembers Polensek and Brady, Britt, Cimperman, Cinton, Coats, Dolan, Gordon, Jackson, Johnson, Jones, Lewis, Melena, O'Malley, Patnon, Robinson, Rybka, Sweeney, Westbrook, White, Willis.

WHEREAS, it is beneficial to the health and welfare of all citizens of the City of Cleveland that all workers are paid an hourly wage which enables them to live above the level of poverty and reduces the amount of taxpayer funded social service programs in the City of Cleveland; and

WHEREAS, this legislation provides for a fair employment wage for employees employed by persons or entities, which are awarded contracts by, for, or on behalf of the City of Cleveland and receive economic assistance in conjunction with such contracts; and

WHEREAS, some employers who receive financial assistance from the City do not provide reasonable health insurance to their employees, thereby negatively affecting work performance and absenteeism, resulting in a decrease in the quantity and quality of services rendered by such employees to the City and to the public; and

WHEREAS, the City is greatly concerned with the general health and welfare of its citizens and such interest is furthered when its citizens are provided reasonable health care insurance coverage; and

WHEREAS, when the City uses contractors or subsidizes businesses which do not provide health insurance to their employees, this often imposes the cost of their medical care on the City, county, state and federal governments, an impact that can be avoided only if employers provide health insurance in a reasonable form; and

WHEREAS, because employees are far likelier to be healthy and, therefore, more productive workers if their employers provide an adequate level of compensation, including reasonable health insurance for them and their dependents, this legislation both mandates the payment of a fair employment wage and provides incentives to encourage contractors with the City to provide health insurance benefits to their employees; and

WHEREAS, the purpose of this legislation is to provide for a fair employment wage and promote health insurance benefits for workers employed by employers receiving assistance from the City and, as a result, enhance the welfare of workers in the City of Cleveland; and

WHEREAS, this ordinance constitutes a measure providing for the preservation of the public health, safety, and welfare of the citizens of the City of Cleveland; now, therefore,

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF CLEVELAND:

Section 1. That the Codified Ordinances of Cleveland, Ohio, 1976, are hereby supplemented by enacting Chapter 189, to read as follows:

Chapter 189

CLEVELAND FAIR EMPLOYMENT LAW

Section 189.01 Definitions

Section 189.02 Fair Employment Wage

Section 189.03 Compliance

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Section 189.04	Fair Employment Wage Board
Section 189.05	Monitoring and Enforcement
Section 189.06	Exemptions
Section 189.07	Evaluation
Section 189.08	Severability
Section 189.09	Effective Date

<u>Section 189.01</u>	<u>Definitions</u>
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For the purposes of this chapter, the following words, phrases and terms are defined as follows:

- (a) "Applicable Department" means the City department administering Service Contracts or the City department to which a person or entity applies for Assistance.
- (b) "Assistance" means any form of City financial assistance, except for financial assistance provided for the development, rehabilitation or other means of providing residential housing, that is awarded, renegotiated or renewed after the effective date of this Ordinance. Assistance covered by this Chapter includes but is not limited to: grants; economic development loans; tax credits; incentives and abatements; subsidies; and bonds. For purposes of determining coverage under this Chapter, financial assistance shall be valued to the extent the recipient of the assistance derives a monetary benefit from the City. For instance, loans shall be considered Assistance only to the extent 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. For purposes of this Chapter, Assistance does not include financial assistance which is received from another government or other entity with the City acting only as a conduit or fiscal agent for the funds, where the City exercises no control over the identity of any recipient or of the terms of the contract. Community Development Block Grant Funds are not considered conduit funds under this section and, to the extent they otherwise qualify, are included as Assistance and are covered by this Chapter.
- (c) "City" means the City of Cleveland and all City divisions, departments, and offices.
- (d) "Covered Employee" means:
 - (1) Any person employed by or working as a trainee, except as otherwise provided in subsection (4)(B) below, for a "Covered Employer" who is a for-profit contractor or subcontractor on a City Service Contract;
 - (2) Any person employed by or working as a trainee for a "Covered Employer" who is a not-for-profit contractor or subcontractor on one or more City Service Contracts if such person expends at least half of his or her time performing services pursuant to such Service Contract(s); or

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- (3) Any person employed by a Covered Employer who is a Recipient of Assistance from the City.
- (4) The following are not "Covered Employees" for purposes of this Chapter:
- (A) an individual who provides solely volunteer services that are uncompensated except for reimbursement of expenses such as meals, parking or transportation;
 - (B) an individual in a job training program where job training and classroom instruction is being provided to clients in order to develop new specialized skills for employment and the individual would be considered a client of the program even though the individual receives compensation;
 - (C) an individual employed in public construction work that is subject to the provisions of state or federal law pertaining to wage rates for public works employment;
 - (D) employees covered by a collective bargaining agreement or the Railway Labor Act;
 - (E) employees of commercial retail establishments;
 - (F) persons not employed in the State of Ohio;
 - (G) persons under eighteen (18) years of age;
 - (H) employees of residential/single and multi-family housing projects;
 - (I) persons employed by a Covered Employer who, on average, work less than thirty (30) hours per week, other than seasonal employees employed by the City of Cleveland.
- (e) "Covered Employer" means the following:
- (1) Any person or entity that is a Recipient of Assistance from the City that has an aggregate value at least \$75,000 that has not been granted an exemption from this Chapter pursuant to Section 189.06 and is either:
 - (A) a for-profit employer having at least twenty (20) employees at the time of execution of agreement with the City;
 - (B) a not-for-profit employer of having at least 50 employees at the time of execution of agreement with the City and the salary ratio between the highest paid and lowest paid employees at such not-for-profit is more than five (5) to one (1).
- As used in this division, "aggregate value" means the actual dollar benefit received from Assistance over the term of the Assistance.
- (2) Any company or person that is a tenant or leaseholder of a Recipient of Assistance and that occupies property or uses equipment or property that is improved or developed as a result of Assistance; and is either:

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- (A) a for-profit employer of having at least twenty (20) employees at the time of execution of agreement with the City;
 - (B) a not-for-profit employer having at least 50 employees at the time of execution of agreement with the City and if the salary ratio between the highest paid and lowest paid employees at such not-for-profit is more than five (5) to one (1).
 - (3) A contractor or subcontractor of a Recipient of Assistance providing service in the project or matter for which the Recipient of Assistance has received Assistance.
 - (4) Any person or entity that has entered into one or more Service Contracts, as defined in this section, with the City that have an aggregate value of at least \$25,000, that has not been granted an exemption from this chapter pursuant to Section 189.06 and is either:
 - (A) a for-profit employer of having at least twenty (20) employees at the time of execution of agreement with the City;
 - (B) a not-for-profit employer having at least 50 employees at the time of execution of agreement with the City and if the salary ratio between the highest paid and lowest paid employees at such not-for-profit is more than five (5) to one (1).
- Any Subcontractor of a covered Service Contractor performing services pursuant to the Service Contract.
- (f) "Fair Employment Wage" has the meaning stated in Section 189.02 of this Ordinance.
 - (g) "Fair Employment Wage Board" ("FEWB)" has the meaning stated in Section 189.04 of this Ordinance.
 - (h) "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 and all other entities recognized at law by the State of Ohio.
 - (i) "Recipient of Assistance" means:
 - (1) Any person or entity who enters into one or more contracts with the City for Assistance, as defined in this section;
 - (2) Any person or entity that is a direct recipient of Assistance, as defined in this section;
 - (j) "Service Contract" means any contract or subcontract between a person, business or corporation and the City of Cleveland that primarily involves the furnishing of services to the City (as opposed to the purchase of goods or other property or the leasing of property), and shall be limited to the following categories of services: food service, janitorial, security services, parking lot attendants, home health care, health care aides, waste management, automotive repair services, landscaping, towing contracts, building and maintenance services, carpentry, clerical services, urban forestry, housekeeping, street maintenance and repair, and sidewalk maintenance and repair. This includes services performed on City-owned premises including the following City-owned locations: airports, parking lots, municipal parks,

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recreational facilities, and City-owned buildings. Contracts that are primarily for the purchase of goods or other property are not considered Service Contracts for purposes of this Chapter.

- (k) "Service Contractor" means a person who enters into a Service Contract with the City.
- (l) "Subcontractor" means any person who enters into a contract with a Service Contractor that is a Covered Employer under subsection (e)(2) of this section to assist the Service Contractor in performing a City Service Contract.

Section 189.02 Fair Employment Wage

All Covered Employers shall pay no less than the Fair Employment Wage to Covered Employees. Determination of the Fair Employment Wage shall be in accordance with the following:

- (a) Amount of Fair Employment Wage:
 - (1) The Fair Employment Wage shall be calculated on an hourly basis and shall be at least \$ 8.20 per hour beginning January 1, 2001; \$8.70 beginning October 1, 2001; and \$9.20 beginning October 1, 2002. Thereafter, the Fair Employment Wage shall be adjusted by the City of Cleveland on an annual basis, beginning October 1, 2003 and each year thereafter in proportion to the Consumer Price Index for Northeast Ohio, as published by the Bureau of Labor Statistics, U.S. Department of Labor.
 - (2) Tipped employees, i.e., employees for whom a substantial portion of their compensation consists of tips or gratuities, shall be paid an hourly wage which, when combined with the compensation received in tips, will at least equal the Fair Employment Wage.
- (b) All employees working for the City shall be paid at least a Fair Employment Wage. Work being performed by City employees at the time of the effective date of this Chapter may not be contracted out unless the contractor pays employees performing that work the Fair Employment Wage or the current wages and benefits being paid to workers doing that or similar work, whichever is higher, regardless of the number of employees.
- (c) Any new jobs created by the City that are not currently being performed by City employees as of the effective date of this ordinance must be paid a fair employment wage if contracted out, regardless of the number of employees.
- (d) Health Care Incentives:
 - (1) In order to encourage Covered Employers to provide reasonable health care coverage to their employees, the City shall provide the following incentives to Covered Employers:
 - (A) Applicable Departments shall consider the fact that a Service Contractor provides or agrees to provide during the course of the Service Contract reasonable health care insurance to Covered Employees working 30 or more hours a week as a factor in determining the lowest and best or lowest responsible bid for any Service Contract. If a Service Contractor can demonstrate that it has offered reasonable health care insurance to its employees but as a group the employees have refused the health care insurance coverage, the Service Contractor is entitled to the same consideration and treatment in the bidding process as a Service Contractor

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who provides or agrees to provide reasonable health care insurance. The Division of Purchases and Supplies shall promulgate regulations for the evaluation of bids and proposals that provide for meaningful consideration of the offering of reasonable health care insurance in determining the lowest and best or lowest responsible bid. Such regulations must be reviewed and approved by Cleveland City Council.

- (B) Applicable Departments shall offer additional financial incentives to Recipients of Assistance who will provide reasonable health care insurance to their Covered Employees working 30 or more hours a week during the term of the contract for Assistance. Examples of such incentives include: more favorable terms for a loan, such as a lower interest rate; a higher percentage of taxes to be credited or abated; a higher amount for a grant, etc. Whether or not such incentives have been offered; the reasons for offering or not offering such incentives; the terms of such incentives, if offered; and any evidence of the intent of the proposed Recipient of Assistance to provide reasonable health care insurance shall be a part of the information provided by the Applicable Department to Cleveland City Council for consideration in connection with any ordinance authorizing a contract for Assistance.

- (2) In order to qualify a Covered Employer for an incentive as provided in the previous section, the reasonable health care insurance provided to employees must be comparable to a family health care insurance plan provided by the City to its employees.
- (3) Evidence of the offer or provision or the intent to provide or offer reasonable health care insurance benefits qualifying a Covered Employer for such incentives shall be submitted to the Applicable Department upon request.

Section 189.03 Compliance

- (a) All bids, proposals and applications for City Service Contracts or for Assistance shall contain the following:
- (1) the number of persons employed by the applicant for a service contractor or assistance and, if different, the number of persons who will be employed if the applicant obtains the contract;
- (2) whether the employer provides or offers to provide health care insurance for its employees and the basic outlines of any health care plan;
- (3) a sworn declaration signed by a duly authorized officer of a Covered Employer stating that the applicant will comply with the requirements of this Ordinance.
- (4) as to any applicant awarded a contract for Assistance, such information will be provided to City Council for consideration in connection with any ordinance authorizing such contract. The information will be maintained in the Council legislative file for the ordinance and shall be provided by the Applicable Department to the Fair Employment Wage Board.

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- (5) As to any applicant awarded a service contract, the following information shall be provided to the Clerk of City Council; amount of the contract, name of the contractor, service to be provided, and a sworn affidavit stating that all covered employees are being paid a Fair Employment Wage.

- (b) All City Service Contracts and Assistance Agreements subject to this Chapter shall contain the following language:

This agreement is subject to the City of Cleveland Fair Employment Wage Chapter 189 of the Codified Ordinances and requires, among other things, that unless specific exemptions apply, Covered Employers, as defined, under contracts with the City and recipients of City financial assistance, as defined, shall provide payment of a minimum level of compensation to employees. Failure to comply with that Chapter and/or any implementing regulations may result in termination of the contract or debarment from future contracts or financial assistance.

- (c) 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 years following termination of the Covered Employer's agreement with the City. The records shall contain the following for each Covered Employee:

- (1) his or her name and address, job title and classification;
- (2) the number of hours worked each day, gross wages earned, deductions made, and net wages paid;
- (3) a record of contributions to health care plans; and
- (4) any such other data the Applicable Department or Cleveland City Council may require.

- (d) Access

Upon demand by the Applicable Department, Covered Employers shall provide to such department access to the Payroll Records required to be maintained by this section, and will permit representatives of such department to observe work being performed upon the work site and to interview employees as deemed necessary by the department to monitor compliance or to investigate a charge of noncompliance with the terms of this Chapter.

- (e) Notice Requirements

- (1) Covered Employers shall be required to provide notice to Covered Employees of their rights arising from this Chapter. The notice will be provided by the FEWB and must be posted in a conspicuous place frequented by Covered Employees in the Covered Employer's workplace(s).

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- (2) Covered Employers shall inform employees making less than twelve dollars (\$12.00) per hour, or such amount as may be modified from time to time by federal law, of their possible right to the federal Earned Income Credit ("EIC") under § 32 of the Internal Revenue Code of 1954, 26 U.S.C. § 32, as may be amended from time to time, and shall make available to employees forms informing them about the EIC and forms required to secure advance EIC payments from the employer within 30 days of employment. The forms shall be provided to the eligible employees in English, Spanish and other languages spoken by a significant number of employees.
- (3) Covered employer shall establish a goal that at least 40% of persons newly hired to perform work on service contracts or contracts receiving Assistance shall be residents of the City of Cleveland.
- (f) Compliance with Federal Labor Laws.

Covered Employers must comply with all applicable federal labor laws, including the National Labor Relations Act.

Section 189.04 Fair Employment Wage Board

- (a) The Fair Employment Wage Board (FEWB) shall review the effectiveness of the living wage ordinance to ensure that the community is informed on whether those companies that are receiving public assistance, government loans, and service contracts from the City are adhering to the ordinance. The FEWB shall make recommendations to the Cleveland City Council, when appropriate, regarding issues pertaining to the living wage policy.
- (b) The FEWB shall be composed of two representatives from the business community, two representatives from labor organizations, one representative from community groups, one representative from the Mayor's office and one representative from Cleveland City Council. The FEWB members shall be appointed to the FEWB by the Mayor, subject to the approval of City Council. Each FEWB member shall be a resident of the City of Cleveland. No person shall be a appointed to the Fair Employment Wage Board who has any interest in a contract, loan, grant or other financial assistance from the City of Cleveland.
- (c) The Mayor shall initially appoint three members of the FEWB for one-year terms, two members to two-year terms, and two members for a three-year term. Thereafter, all members shall serve three-year terms. Members may serve more than one term.
- (d) At the beginning of each year the FEWB members shall elect a chairperson and vice chairperson by majority vote. The FEWB shall hold meetings quarterly and in special sessions as called by the chairperson or by a majority of the members. All meetings of the FEWB shall be open to the public. All meetings will allow for public testimony on compliance with the Fair Employment Wage Chapter and minutes of all meetings shall be taken.
- (e) The FEWB shall be provided with and shall review:

- (1) All reports on compliance filed by Applicable Departments as provided by this Chapter;
- (2) The results of any investigations of Covered Employers as provided by this Chapter;

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- (3) All applications for exemptions from coverage filed by recipients of Assistance and Service Contractors as provided by this Chapter.

The FEWB shall provide recommendations regarding such matters to City Council.

- (f) The FEWB shall monitor, analyze and study information provided by the City to ensure that Covered Employees whose employers are receiving incentives for the offer or provision of health care insurance are receiving or being offered substantially equivalent health care benefits as are provided to City employees.

Section 189.05 Monitoring and Enforcement

(a) Monitoring and Reporting

- (1) Assistance. Semi-annually the Applicable Department shall inspect the Payroll Records of each Covered Employer receiving Assistance to determine whether the Covered Employer is in compliance with the requirements of this Chapter. Semi-annually, the Applicable Department shall file a report with the Fair Employment Wage Board and with the Clerk of City Council stating whether each Covered Employer receiving Assistance inspected by the Department within the preceding six months is in compliance and, if not, the specific reasons that cause the determination of noncompliance.

- (2) Service Contracts. As to Service Contractors who are Covered Employers, enforcement of the provisions of this Chapter will primarily depend on charges of noncompliance filed by Covered Employees who will have been informed of their rights through posting of the notice of such rights and such other educational efforts as may be undertaken by the FEWB. Such charges will result in investigations by the Applicable Department, as described below.

- (b) Any person, including a Covered Employee who alleges that his or her employer is not complying with the requirements of this Chapter, may allege that a violation of this section has occurred by filing a charge of noncompliance with the Applicable Department within 180 days of the alleged violation or knowledge thereof. Such charge shall state, in writing and under oath, the name and address of the person making the charge, the name and address of the employer(s) alleged to have committed the violation of this Chapter and the particular facts thereof and such other information as may be required. Upon the filing of a charge of noncompliance, the Applicable Department shall acknowledge the receipt of the charge, and shall forward the charge to the Clerk of Council. A copy of the charge shall also be forwarded to the FEWB.

- (c) Investigations. The Applicable Department shall initiate an investigation to determine whether a violation of this Chapter has occurred under any of the following circumstances:

- (1) Upon receiving a charge of noncompliance;
- (2) If the Department's review of information maintained or reported by a Covered Employer indicates that the Covered Employer may have violated this Chapter;
- (3) The Department has other reason to believe that a Covered Employer may have violated this Chapter.

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- (d) Any investigation shall be completed within thirty days of the occurrence triggering the investigation. To the extent permitted by law, the City shall not make public in any manner and shall retain as confidential all information obtained as a result of the preliminary investigation. At the completion of the investigation, the Director of the Applicable Department shall take one of the following actions:
- (1) Notify the charging party, if any, the FEWB and the Covered Employer that it is not probable that a violation of this Chapter has been or is being engaged in and that a complaint will not issue in the matter; or
 - (2) Notify the charging party, if any, the FEWB and the Covered Employer that it is probable that a violation of this Chapter has occurred, initiate a complaint against the Covered Employer and schedule it for informal methods of conciliation pursuant to Division (e) of this Section.
- (e) Conciliation. If the investigation leads to a finding by the Director of the Applicable Department of probable cause to believe that a Covered Employer is in noncompliance with this Chapter, the Director shall attempt to conciliate the matter. The Director shall send out notice to the Covered Employer(s), the affected Covered Employee(s) and to the FEWB with a time and date set for the conciliation meeting. The conciliation meeting must be scheduled to occur within fifteen working days of completion of the investigation, though for good cause shown it can be rescheduled. If the investigation resulted from a filed charge of noncompliance, a conciliation agreement may be not be entered without the consent of both the Covered Employer and the charging party. If the investigation was initiated by the Applicable Department on its own, the Director has authority to enter into a conciliation agreement.
- (f) Hearing. If conciliation does not result in a settlement of the complaint, the Director of the Applicable Department shall appoint a Hearing Officer to conduct a hearing on the complaint. Any Hearing Officer shall be either a member of Ohio's Judiciary or an attorney licensed to practice in Ohio. The Hearing Officer shall schedule a hearing with a 30-day notice of the hearing provided to the Covered Employer, Covered Employee(s) or other charging parties, if any, the Clerk of City Council and the FEWB. In conducting such hearings, the Hearing Officer shall be empowered to subpoena witnesses, compel their attendance, administer oaths, take sworn testimony and require the production for examination of any documents relating to the complaint.
- (g) After the conclusion of the hearing, the Hearing Officer shall report his or her findings to the Director within fifteen (15) days. The Director may adopt, reject or modify the findings of the Hearing Officer. Within seven days after receipt of the findings of the Hearing Officer, the Director shall render a decision in the form of a written order which shall include findings of fact, a statement as to whether the Covered Employer has violated this Chapter and such remedial actions as the Director may order. The order shall be served upon the parties by certified mail within fifteen (15) days of the date of the decision. A copy of the decision shall be provided to the FEWB and the Clerk of City Council.
- (h) Appeals
- Any Covered Employer or Employee who objects to any decision of the Director of the Applicable Department relative to enforcement of this Chapter may appeal such decision to the Common Pleas Court or as otherwise provided by law.

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(i) Sanctions

Any covered employer found not to be in compliance with the provisions of this Chapter or who has submitted false or fraudulent information may be subject to one or more of the following sanctions imposed by the City of Cleveland:

- (1) Withholding of payments, either in whole or in part, until the Covered Employer cures the default or is in full compliance with this chapter.
- (2) Termination, suspension or cancellation of the contract in whole or in part.
- (3) Denial of the right of the Covered Employer to bid on future contracts for no more than five (5) years after the violation is found.
- (4) In the case of Assistance, to refund any sums disbursed by the City.
- (5) The filing of a complaint with any pertinent federal agency.

No remedy set forth in this Chapter is intended to be exclusive or a prerequisite for asserting a claim for relief to enforce any rights granted under this chapter in a court of law.

- (j) Retaliation and Discrimination Barred. During the term of the contract, a Covered Employer shall not discharge, reduce the compensation or otherwise discriminate against any employee for making a complaint to the City or otherwise asserting his or her rights under this chapter, participating in any of its proceedings or using any remedies to enforce his or her rights under this Chapter. A person who believes he or she has been retaliated against in violation of this section may file a charge of noncompliance with the Clerk of City Council, as provided in subsection (b) of this section. Such charge shall be processed, investigated and, if necessary, conciliated and heard according to the procedure set forth in this. If, after a hearing, the allegations of retaliation are found to be true, the Director of the Applicable Department shall order appropriate sanctions, including the denial of the right to bid on future City contracts for a specified time period, as provided in subsection (i) of this section.

- (k) This Chapter shall not prevent the City or any person from exercising any right or seeking any remedy to which that person might otherwise be entitled, or from filing any complaint with any other agency or court of law or equity.

- (l) No criminal penalties shall attach for any violation of this Chapter.

Section 189.06 Exemptions

- (a) Construction and Prevailing-Wage Exemption

Nothing in this chapter shall apply to jobs in public construction work that are subject to federal and/or state law pertaining to wage rates or covered by prevailing wage agreements or collective bargaining agreements.

- (b) Granted Exemptions

- (1) Cleveland City Council may, through passage of legislation, grant a partial or whole exemption from the requirements of this Chapter on the following grounds:

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(A) A hardship exemption for otherwise Covered Employers that can demonstrate a specific, particular harm that would be felt uniquely by the Covered Employer if this chapter 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 or lease. The following types of specific particular harm may provide grounds for a hardship exemption:

- (i) a loss of profitability that will result in the elimination of jobs;
- (ii) a loss in profits that will substantially impact the Covered Employer's long-term stability;
- (iii) as to not-for-profit community or social service agencies or organizations, a substantial hindrance in the ability to deliver service.

(2) Procedures. Application for an exemption shall be made to the Applicable Department. If the need for the exemption is known to the applicant at the time it applies or during the term of the contract for a Service Contract or Assistance, the application for the exemption should be submitted with the application for the Service or Assistance Contract.

(A) The Director of the Applicable Department shall review and make a determination on the application within ten (10) days and respond to the applicant in writing, setting forth the reasons for the determination.

(i) Notice of the request for an exemption shall be forwarded to the Fair Employment Wage Board and the Clerk of Cleveland City Council.

(ii) A copy of the Director's determination regarding the application for the hardship exemption shall be forwarded to the Fair Employment Wage Board and the Clerk of Cleveland City Council.

(B) Should the exemption be recommended by the Director, the Director shall cause legislation to be drafted and acted upon by Cleveland City Council granting the exemption. At such time, the Director shall forward to Council along with the recommendation all supporting documents and other materials, including those supplied by the applicant for the exemption, as provided in the next section. If the exemption is recommended and Council adopts the recommendation before the Service or Assistance contract is entered into, the legislation authorizing such contract shall include a provision granting the exemption.

(3) Contents of Exemption Request

(A) Hardship Exemption requests shall include:

- (i) the lower wage to be paid by the Covered Employer;
- (ii) a detailed explanation of how the payment of the Fair Employment Wage will cause particular harm; and
- (iii) supporting financial statements and/or other documents.

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Section 189.07 Evaluation

After a three (3) year period from the effective date of this ordinance, an evaluation on the impact of this ordinance shall be done. The Mayor, City Council, and the FEWB shall decide on who shall perform the evaluation and the scope of the evaluation. After one (1) year following the effective date of this ordinance, Cleveland City Council shall hold a hearing for the purpose of reviewing this legislation.

Section 189.08 Severability

In the event any provision of this Chapter is held unconstitutional or invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

Section 189.09 Effective Date

The Fair Employment Wage Ordinance shall be effective on January 1, 2001.

Section 2. That this ordinance shall take effect and be in force from and after the earliest period allowed by law.