

INTRODUCTORY NO. 362 A

Ordinance No.

Amending The City Code To Adopt Guidelines
For Wage Rates For The Employees Of Companies
Awarded Service Contracts And Business Assistance, As Amended

WHEREAS, the City of Rochester awards millions of dollars in contracts for services, and loans and grants to assist business development each year that result in the creation or retention of a wide variety of employment opportunities;

WHEREAS, it is in the public interest for the City of Rochester to ensure that the City shall receive the greatest level of services and economic returns from contracts for services by ensuring that respondents to solicitations to bid offer compensation levels sufficient to ensure that workers hired are of high motivation and excellent quality in order to promote high productivity;

WHEREAS, these contracts, loans, and grants are paid for by taxpayer dollars and should be used to promote the creation of jobs that will increase city residents' income, decrease levels of poverty, support neighborhood businesses and reduce the need for taxpayer funded programs in other areas;

WHEREAS, according to the U.S. Department of Housing and Urban Development, the City of Rochester experienced an increase in the poverty rate between 1989 and 1995 from 23.5 percent to 28.3 percent, in spite of a national economic expansion that began in 1992; and, according to the 1990 U.S. census, 36 percent of the City's children live in poverty; and, according to the New York State Department of Education, 89.2 percent of the City's public school children qualified for and participated in the federal free and reduced lunch program during the 1997-98 school year, a measure of low family income;

WHEREAS, the City of Rochester has outlined in its comprehensive plan "Rochester 2010: the Renaissance Plan", a commitment to promote economic and community development, with the overall intention of alleviating poverty and improving the quality of life for all its residents;

WHEREAS, the U.S. Department of Health and Human Services has established the 2000 poverty guideline for a family of four at \$17,050, which divided by a typical 2000 hour work year produces an hourly wage of \$8.52, demonstrating that the federal minimum-wage of \$5.15 is insufficient to adequately house, clothe, and feed such a family; and

WHEREAS, it is the belief of this Council that working families should not be forced to live in poverty and the City should not subsidize poverty level wages; and

COVERED EMPLOYEE means a person employed either part-time or full-time by the

WHEREAS, the City's Business Assistance Program is intended to create a more level playing field, enabling the City to compete fairly for job-creating businesses against surrounding towns within the area that do not have the problems of constrained sites and environmental contamination that often exist in older manufacturing areas, and

WHEREAS, the City cannot afford to be placed at a further competitive disadvantage as a result of mandatory higher wages that are not similarly required in the other jurisdictions within Monroe County.

NOW, THEREFORE, BE IT ORDAINED by the Council of the City of Rochester as follows:

Section 1. Chapter 8A of the Municipal Code, Purchasing and Property Management, is hereby amended by adding the following new Section 8A-18:

Section 8A-18. Rochester Living Wage Ordinance.

A. Title and Purpose.

This Section shall be known as the "Rochester Living Wage Ordinance". The purpose of this Section is to ensure that employees of substantial city contractors and subcontractors[, and recipients of substantial city business assistance loans and grants] earn an hourly wage that is sufficient for a family to live at or above the federal poverty guideline.

B. Definitions

The following definitions shall apply throughout this Section:

BUSINESS ASSISTANCE means any grant or loan of at least fifty thousand dollars (\$50,000.) realized by or through the authority or approval of the City, excluding welfare-to-work, job training or youth employment programs.

BUSINESS ASSISTANCE BENEFICIARY means any direct recipient of at least fifty thousand dollars (\$50,000.) of Business Assistance.

CASUAL EMPLOYEE means an occasional employee without regular or set hours, or an employee regularly working fewer than twenty (20) hours a week.

CITY means the City of Rochester.

CONTRACTOR means any person that enters into a service contract with the City except other governmental units.

COVERED EMPLOYEE means a person employed either part-time or full-time by the

Covered Employer who directly expends [or would directly expend] his or her time on [the contract] a Service Contract with the City, for the time said person actually spends on the Service Contract, or a person employed either part-time or full-time by a Business Assistance Beneficiary at a workplace which has received Business Assistance from the City; provided, however, that persons who are employed in construction work covered pursuant to federal or state prevailing wage laws shall be exempt from this Section, as shall participants in welfare-to-work, job training or youth employment programs, and workers with disabilities, full-time students, messengers, learners, student-learners and apprentices for whom the Covered Employer has received a certificate to pay special minimum wages pursuant to Section 14 of the Federal Fair Labor Standards Act (FLSA)(29 U.S.C. 214). "Covered Employee" shall not include a Casual Employee or Seasonal Employee.

COVERED EMPLOYER means any person who is a contractor or subcontractor directly involved in providing a service to the City pursuant to a Service Contract as defined herein.

PERSON means one or more of the following or their agents, employees, representatives, and legal representatives: individuals, corporations, partnership, joint ventures, associations, labor organizations, educational institutions, mutual companies, joint-stock companies, trust, un-incorporated organizations, trustees in bankruptcy, receivers, fiduciaries, and all other entities recognized at law by the City.

SEASONAL EMPLOYEE means an employee hired temporarily for a period not to exceed ninety consecutive (90) days at any given time within a six (6) month period.

SERVICE CONTRACT means (1) a contract awarded to a contractor by the City primarily for furnishing services to or for the City (excluding the purchase of goods or other property, [or] the leasing of property, or the development, redevelopment or rehabilitation of real property) and (2) that involves an expenditure by the City to the contractor of at least fifty thousand dollars (\$50,000), or the retention by the contractor of fees of at least fifty thousand dollars (\$50,000), during a period of one (1) year. Said \$50,000 threshold shall not include funds provided by the City to be passed through to eligible participants in Federal- or State-funded programs. For the purposes of this section "Service Contract" shall not include any contract awarded through competitive bidding pursuant to General Municipal Law Section 103. "Service Contract" shall include unit price contracts that are designated by the City, where, based on experience or expected level of work, the City anticipates an expenditure to the contractor of at least fifty thousand dollars (\$50,000) during a period of one (1) year. "Service Contract" shall not include separate contracts in amounts of less than fifty thousand dollars (\$50,000) with the same contractor for different services which may involve a total expenditure by the City to the contractor of more than fifty thousand dollars (\$50,000) during a period of one (1) year. However, contracts may not be segmented to fall under the threshold, and multiple contracts with the same contractor for the same services shall be aggregated to determine the total expenditure for

purposes of application of this Section. Where an amendatory agreement or additional agreement with the same contractor causes the total expenditure to exceed fifty thousand dollars (\$50,000) during a period of one (1) year, this Section shall apply to the amendatory agreement or additional agreement.

SUBCONTRACTOR means any person other than an employee that enters into a contract with a contractor to assist the primary contractor in performing a service contract, [and] including any temporary employment agency that enters into a contract with a contractor or Business Assistance Beneficiary to provide employees to assist the primary contractor in performing a service contract or to perform services for a Business Assistance Beneficiary at a workplace which has received Business Assistance from the City.

C. Living Wage

(1) Applicability.

Covered Employers and Business Assistance Beneficiaries shall pay no less than a Living Wage to their Covered Employees, which, for Covered Employees working on a Service Contract, shall be for the time directly expended on the Service Contract.

(2) Amount of Wage.

The Living Wage shall be calculated on an hourly basis as paying \$8.52 to Covered Employees who are offered health insurance benefits by the Covered Employer or Business Assistance Beneficiary and \$9.52 to Covered Employees who are not offered health insurance benefits by the Covered Employer or Business Assistance Beneficiary.

(3) Revision Process.

This Section shall be reviewed and evaluated two years after adoption in order to evaluate the effectiveness of the legislation in terms of its policy goals, and monitoring and enforcement procedures. The amount of the Living Wage shall be increased annually to reflect inflation as captured by the unadjusted Consumer Price Index for All Urban Consumers (CPI-U), U.S. City Average, as published by the Bureau of Labor statistics of the U.S. Department of Labor. The first indexing adjustment shall occur [January] July 1, 2002, in proportion to the increase of the U.S. City Average of the CPI-U at the immediately preceding [October 31] April 30 over the year earlier [October 31] April 30; and shall be adjusted every [January] July 1 thereafter.

(4) No Reduction in Wage Rates or Hours.

Nothing in this Section shall require or authorize any Covered Employer or Business Assistance Beneficiary to reduce wages or work hours of any Covered Employee, and

a Covered Employer or Business Assistance Beneficiary shall not reduce wages or work hours as a result of coverage by this Section, and this Section shall not be construed so as to [shall not] reduce wages [set by a collective bargaining agreement or] required under any prevailing wage law.

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(5) Notifying Employees of their Potential Right to the Federal Earned Income Credit.

Covered Employers and Business Assistance Beneficiaries shall inform employees making less than \$12 per hour of their possible right to the Federal Earned Income Credit (EIC) under Section 32 of the Internal Revenue Code of 1954, 26 U.S.C. 32, and shall make available to employees information about the EIC and how to obtain forms required to secure advance EIC payments from the employer.

(6) Tipped Employees.

Covered Employers who elect to receive credit for tips received by Covered Employees in accordance with the provisions of the FLSA may also include as wages under this Section an additional amount on account of tips received by a Covered Employee provided that the tip amount is at least equal to the difference between the wages paid the Covered Employee and the Living Wage. The additional amount on account of tips may not exceed the value of the tips actually received by the Covered Employee. This subsection shall not apply to any Covered Employee unless such employee has been informed by the Covered Employer that his or her direct wages shall be less than the Living Wage provided that the amount of tips plus direct wages received by such employee at least equals the Living Wage, and provided that all tips received by such employee have been retained by the employee. This subsection shall not be construed to prohibit the pooling of tips among employees who customarily and regularly receive tips. If a Covered Employee's tips combined with the Covered Employer's direct wages do not equal the Living Wage, the Covered Employer must make up the difference. It is the responsibility of the Covered Employer to prove, upon request by the City, the payment of at least a Living Wage in combined direct wages and tips to the Covered Employee. FLSA requirements shall be applied to determine eligibility for including tips as wages and calculating the total amount of wages and tips.


D. Employer Responsibility, Compliance and Sanctions.

(1) Application for Contract or Business Assistance.

Every proposal or application for a Service Contract or Business Assistance shall include a written commitment by the applicant to pay all Covered Employees a Living Wage as defined by this Section and shall include a list of job titles and wage levels of all Covered Employees in each of the years for which the Contract or Business Assistance is sought.



(2) Reports from Covered Employers and Business Assistance Beneficiaries.

 Covered Employers and Business Assistance Beneficiaries shall provide to the City publicly available annual reports of job titles and wage rates of Covered Employees during the term of the Service Contract or Business Assistance. For Service Contracts or Business Assistance [contracts] of less than one year, Covered Employers and Business Assistance Beneficiaries shall provide such reports at the beginning and end of the contract or Business Assistance.

(3) Compliance, Enforcement and Sanctions.

(a) Covered Employer and Business Assistance Beneficiary Cooperation.

The Covered Employer or Business Assistance Beneficiary shall permit representatives from the City to observe the work being performed at its place of work; furthermore, the Covered Employer or the Business Assistance Beneficiary shall permit said representatives to interview employees and to examine its books and records relating to employment and payroll to determine if the Covered Employer or the Business Assistance Beneficiary is in compliance with the provisions of this Section. Covered Employers and Business Assistance Beneficiaries shall maintain for a period of at least three (3) years all necessary records to document the wages paid to each Covered Employee, and the time expended by each Covered Employee on a Service Contract.

(b) Posting.

Every Covered Employer and Business Assistance Beneficiary shall post and keep in conspicuous places on their premises, where notices to employees and applicants for employment are customarily posted, a notice supplied by the City informing employees of their rights under this Section. Included in this posting shall be a phone number at the City that Covered Employees may call to lodge complaints. If the Covered Employer or Subcontractor is a temporary employment agency, this notice shall be mailed to all Covered Employees before or in conjunction with the receipt of the Covered Employees' first paycheck.

(c) Grievance Procedure.

A Covered Employee who believes that his or her employer is not complying with requirements of this Section has the right to file a complaint with the City. Complaints by Covered Employees of alleged violations shall be made within [three] one year[s] of the date of the violation and shall be investigated promptly by the City. Written and oral statements made by a Covered Employee shall be treated as confidential and shall not be disclosed to the Covered Employer or Business Assistance Beneficiary without the consent of the employee. While protection of the employee's confidentiality shall be a priority for the City, this provision shall not prevent the City from informing the Covered Employer of the name of the Covered Employee and the basis of the

complaint in order access information necessary to investigate the complaint.

(d) Duties of the City

It shall be the responsibility of the City to create guidelines for investigating and handling grievances under this Section; to examine the pay rolls, as necessary, to determine compliance and cause investigations to be made, as necessary, to monitor compliance with the provisions of this Section.

The City shall promptly investigate complaints alleging non-compliance by Covered Employers and Business Assistance Beneficiaries. The Contracting Agency may, in accordance with the powers herein granted, require the production by the employer of such evidence as required to determine compliance.

(e) Covered Employer or Business Assistance Beneficiary May Dispute Finding of Non-Compliance.

A Covered Employer or Business Assistance Beneficiary may dispute a finding of non-compliance by requesting a hearing with a representative of the City. A Covered Employer or Business Assistance Beneficiary must request such a hearing within sixty (60) days after receiving notice of a finding of non-compliance.

(f) Sanctions.

A Covered Employer or Business Assistance Beneficiary found to be in violation of any provision in this Section shall be sanctioned as follows:

(i) [First violation.] The City shall [W]ithhold payment of so much of any amount due in Business Assistance or on a Service Contract or on any other contract in effect with the same Covered Employer or Business Assistance Beneficiary which is equal to the alleged underpayment to a Covered Employee, order wage restitution for each affected employee, and serve a written notice of violation on the Covered Employer or Business Assistance Beneficiary.

(ii) [Second violation.] For willful or repeated violations, the City shall additionally [Withhold payment of any amount due, wage restitution for each affected employee,] impose a fine not to exceed one hundred dollars (\$100) per day on the Covered Employer or Business Assistance Beneficiary for each employee found to be paid less than the Living Wage, and may order the Covered Employer or Business Assistance Beneficiary to repay Business Assistance awarded by the City and any amounts paid on Service Contracts for services not yet rendered[,] terminate [ion of] ongoing Service Contracts or Business Assistance, and declare the Covered Employer or Business Assistance Beneficiary ineligible [ineligibility] for further City Service Contracts or Business Assistance for three (3) years, [and until all amounts are paid] after which time the Covered Employer or Business Assistance Beneficiary may be eligible for

reinstatement if all underpayments and fines are paid.

All sanctions will be a matter of public record.

(g) Retaliation and Discrimination Barred.

A Covered Employer or Business Assistance Beneficiary shall not discharge, reduce compensation or otherwise discriminate against any employee because that employee made a complaint or otherwise asserted his or her rights under this Section, or participated in any of its proceedings. The Contracting Agency shall investigate allegations of retaliation or discrimination and shall, if found to be true, after notice and hearing, order appropriate relief, including restitution and reinstatement of the discharged employee with back pay to the date of the violation.

(h) Enforcement.

The City or any person aggrieved by a violation of this Section may bring an action in any court of competent jurisdiction and in the event that the City or aggrieved person prevails in such action, the court may award damages and reasonable costs and attorney fees, and if said action is brought by an individual for underpayment of wages, the court shall also award said individual an additional amount as liquidated damages equal to twenty-five percent of the wages found to be due.

[(i) Nothing contained herein shall operate to affect or impair any existing Service Contracts or Business Assistance, except that any amendment or modification of such Service Contracts or Business Assistance occurring on or after the enactment of this Section shall be subject to the conditions specified in this Section.]

E. Exemptions.

(1) Service Contracts and Business Assistance in existence prior to the [enactment] effective date of this Section shall be exempt from this Section, except that any amendment or modification of such Service Contracts and Business Assistance occurring on or after the effective date of this Section shall be subject to the conditions specified in this Section.

(2) Welfare-to-work, youth employment programs, and job training programs shall be exempt from this Section as it relates to the pay scale of participating youth workers aged twenty-one (21) or younger, or to participants in a bona fide job-training program or welfare-to-work program.

(3) This Section shall not apply to Covered Employees compensated in accordance with the terms of a collective bargaining agreement.

F. 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.

Section 2. The provisions of this ordinance that relate to Business Assistance and Business Assistance Beneficiaries shall take effect upon enactment of substantially similar legislation by Monroe County as determined by the Mayor; all other provisions of [T]this ordinance shall take effect [January] on July 1, 2001.

Bracketed material deleted; underlined material added.

Section 2. This resolution shall take effect immediately.