

No. 13

EFFECTIVE- June 8, 2001

Ordinance amending the Pittsburgh Code, Title I--Administrative, Chapter 161--Contracts, adding section 161.33--Pittsburgh Living Wage, requiring employers who receive city contracts and/or city assistance to pay employees a minimum living wage, creating the Living Wage Board, providing for enforcement, due process, and penalties for violations.

Whereas, the City of Pittsburgh provides grants, loans, tax incentives, contracts and other forms of taxpayer assistance, such as tax increment financing, to non-public entities that result in the creation, or maintenance of a wide variety of employment opportunities; and

Whereas, the City of Pittsburgh has limited taxpayer resources to expend; and

Whereas, the use of taxpayer dollars to promote the retention and creation of living wage jobs will increase consumer income, decrease levels of poverty, invigorate neighborhood businesses and reduce the need for taxpayer-funded social programs in other areas; and

Whereas, the City of Pittsburgh's payment of prevailing wage rates for City public works projects has been tremendously beneficial for Pittsburgh workers and their families, Pittsburgh neighborhoods, and the area economy;

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF PITTSBURGH:

That the City Code of Pittsburgh is hereby amended by adding a Section 161.33, Title I--Administrative, Chapter 161--Contracts, adding Section 161.33--Pittsburgh Living Wage, as follows:

Section 1. Title and Purpose

(a) Pittsburgh Living Wage Ordinance--This Chapter shall be known as the "Pittsburgh Living Wage Ordinance."

(b) The purpose of this Ordinance is to assure that employees of the City, City contractors, subcontractors and Beneficiaries of tax, loan, grant and subsidy assistance or abatements provided by the City pay their employees a wage sufficient to meet the needs of a family of four with two full-time wage earners. This Ordinance is also designed to maximize access for low-and moderate-income Pittsburgh residents to the jobs that are created, maintained, or subsidized through City assistance.

Section 2. Definitions

For the purposes of this Ordinance, the following terms are defined as follows:

(a) "Applicable Department"--Office of the Controller of the City of Pittsburgh, or such other City department or agency responsible for administering a contract for Assistance.

(b) "Assistance"--shall include:

(1) any grant, loan, tax incentive, bond financing, subsidy, or other form of assistance with a value of at least \$50,000, that a for-profit employer employing at least 10 employees, or any non-profit employer employing at least 25 employees has received within any 12 month period, by or through the authority or approval of the City of Pittsburgh and/or any Authority, Agency or Public Entity receiving Assistance from the City of Pittsburgh, awarded after the effective date of this Ordinance. This provision explicitly exempts the URA neighborhood street face façade improvement program and Public Authority supported, primary retail projects downtown and within the neighborhood business districts.

(2) any contracts or subcontracts with the City of Pittsburgh whose aggregate value for any twelve (12) months is equal to or greater than \$10,000 that is entered into with a for-profit employer of at least 10 employees, or a non-profit employer of at least 25 employees to provide goods and services, and that is awarded, renegotiated or renewed after the effective date of this Chapter, except those covered by 2(b)(1) above;

(3) any contract or subcontract described in the preceding paragraph, awarded by a Beneficiary, provided that the contract is awarded, renegotiated, or renewed after the effective date of this Chapter provided further that the annual value of such contract or subcontract exceeds \$5,000 and be awarded to a for-profit employer of more than 5 employees or a non-profit employer of more than 15 employees;

(4) any lease or rental agreement awarded by a Beneficiary, for the use of property or equipment that was purchased, improved or developed as the result of Assistance as defined in paragraph (b)(1), provided that the lease or rental agreement was signed or reached after the effective date of this Chapter; and providing further that the leaseholder or renter be a for-profit employer of at least 10 employees or a non-profit employer of at least 25 employees.

(5) Any lease or license, or any sublease or sublicense thereto, of or by an Authority, Agency or Public Entity receiving Assistance from the City of Pittsburgh, on which services are rendered by employees of the lessee or licensee (or sublessee or sublicensee), provided that (1) the services are rendered on property at least a portion of which is visited by substantial numbers of the public on a frequent basis (including but not limited to parking facilities, transportation facilities, and public sports and entertainment venues), (2) the lease or license (or sublease or sublicense) was signed or reached after the effective date of this Chapter, and (3) the leaseholder or licensee (or subleaseholder or sublicenseholder) is a for-profit employer of at least 10 employees or a non-profit employer of at least 25 employees.

(6) For purposes of determining whether the assistance and employment thresholds contained in paragraphs 2(b)(1) through 2(b)(5) are met, all affiliates, controlled organizations, controlling organizations, and/or organizations having an identity of interest shall be treated as a single entity.

(7) Loans shall be considered assistance only to the extent that 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.

(c) "Beneficiary" means any Person or entity that is a recipient of "Assistance".

(d) "Living Wage Board" has the meaning stated in Section 5.

(e) "Covered Employer" means the City of Pittsburgh, or a Beneficiary of or an applicant for Assistance that has not been granted an exemption from this Ordinance pursuant to Section 7 (Seven) of this Chapter.

(f) "Covered Employee" means a Person employed by a Covered Employer receiving Assistance; provided, however, that persons who are employed pursuant to

federal, state or local laws relating to prevailing wages shall be exempt from this Chapter.

(g) "Living Wage" is defined in Section 3.

(h) "Person" means one or more of the following or their agents, employees, servants, representatives, and legal representatives: any individual, corporation (including any affiliate or successor corporation), partnership, joint venture, association, labor organization, educational institution, mutual company, joint stock company, trust, unincorporated association, trustee, trustee in bankruptcy, receiver, fiduciary, or any other entity recognized at law by this Commonwealth.

Section 3. Living Wage

(a) Applicability—

(i) The City of Pittsburgh shall pay no less than the Living Wage to its employees

(ii) Covered Employers receiving City subsidies (Assistance as defined in Section 2(b)(1)) shall pay no less than the Living Wage to employees performing work on or related to the property, business, or project which is the subject of the Assistance for as long as the subsidy remains in effect. With respect to one-time grants of Assistance, the Covered Employer shall be subject to the requirements of this Ordinance for a period equal to one (1) year for every \$50,000 of Assistance.

(iii) Covered Employers holding City contracts or subcontracts (receiving Assistance as defined in 2(b)(2) and 2(b)(3)) shall pay no less than the Living Wage to employees —during any week in which the employee performs work related to the contract or subcontract.

(iv) Covered Employers who lease or sublease property from the City, or a Beneficiary (Assistance as defined in Section 2(b)(4) and Section 2(b)(5)), shall pay no less than the Living Wage to their employees during any week in which the employee performs work on or related to the leased property.

(b) Amount of Wage--The Living Wage shall be calculated on an hourly basis and shall be sufficient to meet the needs of a family of four with two full time wage earners. The applicable rate as of the effective date of the ordinance shall be \$9.12 per hour for all Covered Employees who receive full individual health insurance from their employer or an employer contribution equivalent to no less than \$1.50 per hour toward the cost of health insurance. The Living Wage for Covered Employees who do not receive such health insurance contributions from their employer shall be \$10.62 per hour. (Covered Employees who are employed part-time or who job share, and receive partial health benefits from their employer, shall be paid no less than \$9.12 per hour, as long as the employer's health contribution is equivalent to no

less than \$1.50 per hour). For Covered Employees in occupations in which it is customary to receive a portion of compensation through tips, the Living Wage shall be adjusted by an allowance for tips equal to the applicable employee allocation standard specified by the Internal Revenue Service.

(c) The Living Wage shall be upwardly adjusted from its then-existing level annually, no later than June first, by an amount equal to the increase in the Annual Average Consumer Price Index for All Urban Consumers (CPI), Pittsburgh SMSA, as published by the Bureau of Labor Statistics, United States Department of Labor as calculated at the immediately preceding year-end.

(d) Phase-in for Non-Profit Organizations.--A non-profit organization which is a party to a contract or series of contracts with the City of Pittsburgh, or any subcontract thereto (Assistance as defined in Sections 2(b)(2) and 2(b)(3) herein), as of the effective date of this Ordinance, shall be subject to from the requirements of this Ordinance according to the following schedule:

(i) Within one year of the effective date of this Ordinance, upon renewal or extension of the contract(s) or subcontract(s) with the City of Pittsburgh, the non-profit organization must reduce the gap between the hourly wage of any of its employees who are earning less than the Living Wage (as defined in Section 3 herein) and the Living Wage by no less than 15% (i.e., if the organization pays some of its employees \$1 per hour less than the Living Wage, the organization would be required to increase the hourly wage for those employees by \$0.15).

(ii) Within two years of the effective date of this Ordinance, upon renewal or extension of the contract(s) or subcontract(s) with the City of Pittsburgh, the non-profit organization must reduce the gap between the hourly wage of its employees who are earning less than the Living Wage and the Living Wage by no less than 35% (i.e., using the previous example, the organization would be required to increase its employees= hourly wage by an additional \$0.35, assuming the Living Wage has not increased from the previous year)

(iii) Within three years of the effective date of this Ordinance, upon renewal or extension of the contract(s) or subcontract(s) with the City of Pittsburgh, the non-profit organization must be in full compliance with the provisions of this Ordinance.

(iv) During each of the first three years after the effective date of this Ordinance, no less than 60 days prior to renewal or extension of the contract(s) or subcontract(s) with the City of Pittsburgh, the non-profit organization shall provide the Applicable Department with sufficient information to enable the Applicable Department to determine the non-profit organization's cost of complying with this Section. Upon verifying the reasonableness and accuracy of the cost of compliance, the Applicable Department shall increase the non-profit organization's compensation under the contract(s) or subcontract(s) according to a formula to be established in the Annual Budget for the City of Pittsburgh. During the first year of phased in coverage under this Section, the increased compensation from the Applicable Department shall be no less than 100% of the non-profit organization's reasonable cost of compliance.

(v) During the second and third years of phased in coverage under this Section, if the non-profit organization provides satisfactory evidence to the Applicable Department that its reasonable costs of complying with this Section, minus compensation received from the Applicable Department and any other net increases in funding, are greater than 1% of its total operating budget, the Applicable Department may extend implementation of phased in coverage under this Section. Implementation shall only be extended to the extent necessary to bring the non-profit organization's reasonable cost of compliance within 1% of its total operating budget. In no case may implementation be extended for more than three one-year periods.

(vi) In order to qualify for the phased in coverage provided under this Section, a non-profit organization must provide the Applicable Department with a current copy of the organization's articles of incorporation or similar documentation of non-profit status.

(e) Phase in for start-up and Disadvantaged Business Enterprises a start-up business shall be one with less than 5 years of operation. A DBE is one with a certification as such from either a county, state, or federal agency.

Section 4 Compliance

(a) Assistance to Employers Paying Less Than Living Wage Barred--Prior to entering in any agreement between the City and a Covered Employer for any form of Assistance, a Covered Employer must certify for the Applicable Department that it is paying each of its Covered Employees no less than the Living Wage, as defined in Section 3(b),), and that it will grant the Applicable Department and the City Solicitor access to its workplace and to all books and records related to such employment. No Beneficiary may enter into any contract, subcontract, lease, sublease, license or sublicense, involving Assistance as defined in Sections 2(b)(3) through 2(b)(5) of this Ordinance, with any person unless such person executes a certification as described herein. Failure of a Beneficiary or other person to execute a certification as required herein shall render an agreement or subagreement for Assistance null and void.

(b) 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. The records shall contain the following:

- (i) name and address of each employee, the job title, union membership status and job classification;
- (ii) the number of hours worked each day, the gross wages, deductions made, and net wages paid;
- (iii) a copy of the Social Security records, and evidence of payment thereof;
- (iv) a record of fringe benefit payments including contributions to approved plans, funds or programs and/or additional cash payments; and
- (v) any such other data as may be required by the Applicable Department or the Living Wage Board from time to time.

(c) Compliance Documentation from Covered Employers--All payment vouchers and other requests for payment of Assistance submitted by a Covered Employer must be accompanied by the following:

- (i) the identity of the contract or project under which the Covered Employer receives Assistance, including the identification number for the request for proposals or other solicitation, if any;
- (ii) the identity of the subcontract, sublease, or sublicense, if any;
- (iii) a unique number or other means of identifying each Covered Employee;

(iv) for each Covered Employee, the number of weeks that the employee performed work on or related to the contract or project;

(v) for each Covered Employee, the gross wage (both hourly and total) paid during each week that the employee performed work on or related to the contract or project;

(vi) for each Covered Employee, the average gross wage (both hourly and total) paid during each week that the employee performed work for the Covered Employer that was not on or related to the contract or project, if applicable;

(vii) for each Covered Employee, a statement indicating whether the employee received employer-provided health insurance benefits during each week that the employee performed work on or related to the contract or project;

(viii) the job classification, race, gender, zip code and union representation status of each Covered Employee;

(ix) the name, address, and telephone number of a local compliance person for the Covered Employer;

(x) a signed statement by an officer having authority to bind the Covered Employer affirming that the above information is true and correct, under penalty of law.

(d) To the extent that the Covered Employer has already supplied any of the information required in this Section to be provided to the Applicable Department, a payment voucher or other request for payment of Assistance need only refer to the submission in which the Applicable Department may locate the necessary information.

(e) No Assistance may be paid to a Covered Employer unless the Covered Employer provides the documentation required by this Section.

(f) Applicable Department Duties— It shall be the responsibility of the Applicable Department to examine promptly all payment requests and supporting documentation for compliance. The Applicable Department shall cause investigations to be made as may be necessary to determine whether there has been compliance with the provisions of this Chapter.

~~(g) Covered Employer to Cooperate—The Covered Employer shall permit City representatives and members of the Living Wage Board to observe work being performed upon the work site, to interview employees and to examine the books and records relating to the payrolls being investigated to determine whether or not the Covered Employer is in Compliance with this Chapter.~~

(h-g) Employment Agreement for Assistance—

(1) For the purposes of this paragraph, the following terms are defined as follows:

(i) "Employment Agreement"--means a written agreement between the City of Pittsburgh and any proposed or current Beneficiary that is negotiated before assistance is approved.

(ii) "Low-and moderate-income"--means persons with incomes that are less than 80 percent of median income for a family of four in the Pittsburgh Standard Metropolitan Statistical Area.

(2) Except in cases of bona fide emergency (i.e., one which seriously threatens the public health, welfare or safety; endangers property; or would otherwise cause serious injury to the City, such that there is an immediate and serious need for supplies, services or construction) as determined by the Applicable Department, at least twenty-one (21) days before Assistance is awarded or an agreement to provide Assistance is signed, the person seeking an award of Assistance shall submit to the Office of the City Controller a confidential notice packet for their application for Assistance which shall include the following:

(i) the identity of the contract or project under which the Covered Employer receives Assistance, including the identification number for the request for proposals or other solicitation, if any;

(ii) the name, address, and phone number of a local contact person for the Covered Employer;

(iii) a workforce profile of the prospective Beneficiary, including, but not limited to, number of employees who are employed within the City of Pittsburgh;

- (iv) a written summary of past efforts to hire low and moderate-income residents of Pittsburgh;
- (v) a statement of projected employment needs under the anticipated award;
- (vi) a written commitment to pay all Covered Employees a living wage, unless otherwise provided;
- (vii) a statement of the projected wage levels for all Covered Employees in each of the five subsequent years;
- (viii) a written plan for the training of low-and moderate-income Pittsburgh residents for skilled positions, including signed agreements from any third parties to be responsible for training;
- (ix) numerical goals for filling new hire positions with low- and moderate-income Pittsburgh residents;
- (x) the total cost to the City of the Assistance, including both expenditures by the city, as well as revenue not collected as a result of the Assistance;
- (xi) a projection of the net increase or decrease in jobs by job classification and wage rates that will result from the Assistance.

(Hh) Posting Requirements--all Covered Employers shall be required to provide notice to Covered Employees' of their rights arising from this ordinance. The notice will be provided by the City of Pittsburgh, and must be posted in a conspicuous place frequented by Covered Employees in the Covered Employer's workplace(s).

(i) Contract and Lease Requirements.--Beneficiaries shall notify the Applicable Department of any contract, subcontract, lease, sublease, license or sublicense (Assistance as defined in Sections 2(b)(3) through 2(b)(5) of this Ordinance) entered into with any person. Beneficiaries shall include compliance with this Ordinance as a condition of any such subagreement for Assistance.

Section 5. Citizen Participation

(a) Composition. The Mayor shall appoint the Living Wage Board which shall be comprised of seven members, as follows:

(1) Five of the members of the Committee shall be chosen from nominations submitted by City Council from, but not limited to, the following organizations. The Committee shall include at least one representative from each organization.

- (a) Community-based organizations operating solely within the City of Pittsburgh and registered with the Department of City Planning;
- (b) The Western Pennsylvania Living Wage Campaign;
- (c) The Greater Pittsburgh Chamber of Commerce;
- (d) The Allegheny County Labor Council
- (e) And neighborhood-based Merchants' associations.

(b) Members of this committee shall serve a three-year term.

(c) Purpose--The purpose of the Living Wage Board shall be to review the effectiveness of this Ordinance at creating and retaining living wage jobs in Pittsburgh, and in securing access to living wage jobs for low- and moderate-income Pittsburghers.

(d) Meetings--The Living Wage Board shall meet quarterly and in special session as required. All meetings of the Living Wage Board shall be open to the public. All meetings will allow for public testimony on the uses of the City Assistance generally, and on specific instances of Assistance or proposed assistance as received or sought by individual enterprises.

(e) Pursuant to its responsibilities above, the Living Wage Board shall, upon request, have access to any records, data, and information that Covered Employers are required by this Ordinance to maintain.

(f) Officers and Procedures -- The Living Wage Board shall have the power to develop procedures and designate officers as is necessary for the completion of its responsibilities as set forth in this section.

(g) Annual Report – Within sixty (60) days after the receipt of the annual City Assistance Reports required to be submitted pursuant to Section 6(a) of this ordinance, The Living Wage Board shall evaluate the effectiveness of this ordinance and shall submit a report of its findings to the City Council.

Living Wage Board Annual Report

(g) Annual Report – Within sixty (60) days after the receipt of the annual City Assistance Reports required to be submitted pursuant to Section 6(a) of this ordinance, The Living Wage Board shall evaluate the effectiveness of this

ordinance and shall submit a report of its findings to the City Council. The Annual Report shall include:

- (1) The information specified in Section 6(b) of this Ordinance:
- (2) A summary of the ascertainable impact of each City subsidy program (Assistance as defined in Section 2(b)(1) and 2(b)(2)) on the creation and retention of Living Wage jobs.
- (3) The Living Wage Board in consultation with the City Clerk shall publicize and conduct a formal, cable cast public hearing in Council Chambers in order to receive comments and testimony regarding the impact and effects of this Ordinance; and shall include a summary in their Annual Report.

Section 6. City Assistance Programs

- (a) Each Applicable Department shall submit a City Assistance Report with the City Controller, and submit said report to the City Council, the City Solicitor and Living Wage Board within ten (10) working days following each calendar year.
- (b) The report shall include:
 - (1) for each Assistance package or contract approved during the preceding calendar year:
 - (i) the identity of the contract or project under which the Covered Employer receives Assistance, including the identification number for the request for proposals or other solicitation, if any;
 - (ii) the name, address, and phone number of a local compliance person for the Covered Employer;
 - (iii) the total cost to the City of Assistance provided to each Beneficiary, including both expenditures by the City as well as revenue not collected as a result of the Assistance;
 - (iv) the number of jobs within the City of Pittsburgh associated with the contract or project by job classification, wage rates, race, gender, zip code, and union representation status
 - (v) the net increases or decreases in jobs within the City of Pittsburgh associated with the contract or project by job classification, wage rates, race, gender, zip code and union representation status.

(2) for all Assistance packages or contracts approved by the Applicable Department during the preceding calendar year:

- (i) the aggregate number of jobs within the City of Pittsburgh by job classification, wage rates, race, gender, zip code and union representation status; and
- (ii) the net increase or decrease in the aggregate number of jobs within the City of Pittsburgh, by job classification, wage rates, race, gender, zip code and union representation status.

(c) Creation of a task force to study the impact of Living Wage legislation on neighborhood based development and make recommendations to City Council no later than January 1, 2002. Task force should include community organization delegates, merchant groups, community development organizations, Living Wage representatives and representatives of city authorities;

Section 7. Exemptions

(a) City Council may grant a partial or whole exemption from the requirements of this Chapter.

(b) Grounds for Granting Exemptions:

(1) General Exemptions. Exemptions may be granted where application of this Chapter to a particular form of Assistance is found by the City Solicitor to violate a specific state or federal statutory, regulatory or constitutional provision or provisions and City Council approves the exemption on that basis.

~~(2) Youth Employment Exemption -- Through Year 2004, Covered Employers employing summer youth, student interns, and season employees (i.e. 90 working days or less in a calendar year) shall be exempt from this Ordinance with respect to those employees. Effective January 1, 2005, Section 7(b)(2) will no longer be in effect.~~

(2) Special Employment Exemption -- Through December 31, 2004, Covered Employers employing summer youth, intern students, and seasonal (i.e., 90 working days or less in a calendar year) employees, as well as positions and programs within the city government which are meant to provide supplemental income in addition to a senior citizen's social security shall be exempt from this Ordinance with respect to those employees. Effective January 1, 2005, this exemption shall no longer be in effect.

- (3) Beneficiaries offering training under the Job Partnership Training Act (JPTA)/ Workforce Investment Act (WIA) shall be exempt as to those employees participating in the training program, for a period not to exceed six months.
 - (4) Peculiar Harm Exemption: Otherwise Covered Employers may seek exemption from application of this ordinance where the Covered Employer can demonstrate a specific, peculiar harm that would be felt uniquely by the Covered Employer seeking the exemption, if the ordinance 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/lease.
- (c) Procedures-- Requests for all Exemptions shall be submitted directly to the Living Wage Board. The Committee will review the request and issue a recommendation. The request for exemption and the Committee's recommendation will thereafter be forwarded to City Council and the Administration for consideration.
- (d) Contents--All exemption requests shall include the following:
- (1) the nature of the Assistance to which this Chapter applies;
 - (2) the specific or official name of the Assistance and Assistance Program, the statutory or regulatory authority for the granting of the Assistance, and a copy of that authority;
 - (3) a statement of the grounds for exemption;
 - (4) the number of employees covered by the exemption;
- (e) In addition to the requirements in subsection (d) above, all requests for a youth employment exemption shall include the following:
- (1) documentation that the Covered Employer is an organization that regularly employs individuals in a summer youth program, school-to-work program or other related seasonal work; and
 - (2) for each employee for which an exemption is sought, the employee's age and the anticipated end date of employment.
- (f) In addition to the requirements in subsection (d) above, all requests for a job training exemption shall include the following:

- (1) for each employee for which an exemption is sought, documentation that the Covered Employer is providing training under the Job Training Partnership Act (JTPA)/ Workforce Investment Act (WIA); and
 - (2) for each employee for which an exemption is sought, the anticipated end date of training.
- (g) In addition to the requirements in subsection (d) above, all requests for an exemption for conflict with other legal requirements shall include the following:
- (1) the conflicting statutory, regulatory or constitutional provision(s) that make compliance with this Ordinance unlawful and a copy of each such provision; and
 - (3) a factual explanation and legal analysis of how compliance with this Ordinance would violate the cited provision(s) and the legal consequences that would attach if this violation were to occur;
- (h) In addition to the requirements in subsection (d) above, peculiar harm exemption requests shall include the following
- (l) a detailed explanation of how the payment of a Living Wage will cause peculiar harm, including supporting financial statements.

Section 8. Enforcement

- (a) Complaint procedures ~~B A complaint~~ Any individual or organization (Covered or non-Covered), or other person who alleges direct harm as a result of non-compliance with this Chapter, or the Living Wage Board, may be filed file a complaint with the Applicable Department, which shall provide a copy of the complaint to the Living Wage Board and to each Beneficiary involved within five business days. Statements, written or oral, made by an employee, shall be treated as confidential and shall not be disclosed without the employee=s consent.
- (b) Hearings--The Living Wage Board shall determine the need for a public hearing on the complaint. If a hearing is deemed necessary, it shall be scheduled and conducted by the Living Wage Board, through the assistance of the City Clerk, with 30 days notice of the hearing provided to the City Solicitor, the Covered Employer, the complaining party or parties, and the Applicable Department.

(c) Review and investigations--The Applicable Department shall review and investigate the charges, including any finding from the hearing and shall make a decision of compliance or noncompliance.

(1) Covered employer to Cooperate- The Covered Employer shall permit City representatives and members of the Living Wage Board 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 Chapter.

(d) Finding of Noncompliance--If at any time the Applicable Department, upon investigation of a complaint or upon independent investigation, finds that a violation of this Chapter has occurred, it shall issue a Finding of Noncompliance/Notice of Corrective Action to the Covered Employer. The Finding of Noncompliance shall specify the areas of noncompliance, indicate such corrective action (including wage restitution) as may be necessary to achieve compliance, and impose deadlines for achieving compliance.

(e) Dispute of Finding of Noncompliance.--A Covered Employer may dispute a Finding of Noncompliance/Notice of Corrective Action by requesting a hearing with ~~a Hearing Officer~~ the City Solicitor, within thirty (30) days of the date of the Finding. The City Solicitor 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/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/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

(f) The Applicable Department shall monitor the Covered Employer's progress in satisfying the requirements of a Notice of Corrective Action. No Assistance may be paid to a Covered Employer until the Applicable Department determines that the requirements of any Notice of Corrective Action have been satisfied.

(g) Referral for Imposition of Sanctions--If the Applicable Department determines that a Covered Employer has willfully or repeatedly (more than twice in a 3-year period) failed to comply with this Ordinance, or has failed to comply for more than sixty (60) days after a Notice of Corrective Action has become final, the Applicable Department shall (in addition to issuing a Finding of Noncompliance pursuant to Section 10(c), above) refer the matter to the City Solicitor for the imposition of sanctions. The City Solicitor shall investigate the referral and may require the production by the Covered Employer of such evidence as is necessary to resolve the matter. If the City Solicitor finds that a Covered Employer has willfully or repeatedly failed to comply with this Ordinance, it may impose any or all of the sanctions provided in Section 9(a), below. If the City Solicitor finds that a Covered Employer has failed to comply for more than sixty (60) days after a Notice of Corrective Action has become final, it shall impose the sanctions provided in Section 9(b), below. A Covered Employer may dispute the imposition of sanctions by requesting a hearing as provided in Section 8(e), above. In such a case, no person who participated in the decision to impose sanctions may serve as Hearing Officer.

(h) Referral for Criminal Investigation -- if at any time the Applicable Department or City Solicitor determine 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 City Solicitor shall refer the matter to the District Attorney for criminal investigation.

(i) Enforcement Powers--If necessary for the enforcement of this Chapter, the presiding officer of the Living Wage Board shall submit to City Council a report and formal request for the issuance of 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 City Solicitor may 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.

(j) Retaliation and Discrimination Barred--A Covered Employer shall not discharge, reduce the compensation or otherwise discriminate against any employee for making a complaint to the employer, its agents, the Applicable department, or the City Solicitor, or otherwise asserting his or her rights under this Chapter, participating in any of its proceedings or using any civil, statutory or collective bargaining remedies to enforce his or her rights under this Chapter. The City Solicitor shall investigate allegations of retaliation or discrimination. If, after notice and an opportunity for a hearing, the allegations are found to be true, the City Solicitor may order appropriate relief, including restitution, and reinstatement of a discharged employee with back pay to the date of the violation.

Nothing in this section will be construed to conflict with, interfere with or supersede any rights collectively bargained for by any Union represented Covered Employees. . A Covered Employer may dispute a finding of retaliation or discrimination by requesting a hearing as provided in paragraph (e) above.

- (k) A Covered Employer shall not engage in any activity with the intent of evading the coverage of this Chapter. Prohibited activities include, but are not limited to, business reorganization, subcontracting, or subleasing, where such activity has the effect of limiting or avoiding the coverage of this Chapter, unless the Covered Employer demonstrates to the satisfaction of the City Controller and the City Solicitor that there is a compelling independent business justification for such activity.

Section 9 Sanctions

- (a) In the event that the City Solicitor or a designated Hearing Officer shall determine that any Covered Employer willfully or repeatedly (more than twice in a 3-year period) failed to comply with this Chapter, the City Solicitor or a designated Hearing Officer may order any or all of the following penalties and relief:
 - (1) Fines in the sum of \$500 for each week for each employee found to have not been paid in accordance with this Chapter;
 - (2) Wage restitution for each affected employee;
 - (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) Rescission of any contract or grant of Assistance; and
 - (5) Ineligibility for future City Assistance for three years or until all penalties and restitution has been paid in full, whichever is longer. Said ineligibility shall apply to the Covered Employer and to any affiliate, controlled organization, controlling organization, reconstituted organization, and/or organization having an identity of interest with the Covered Employer.

(b) In the event the City Solicitor 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 City Solicitor County or Hearing Officer, in addition to the sanctions that may be imposed pursuant to paragraph (a), above, shall order the following penalties:

(1) A directive to the Applicable Department to withhold any payments due to the Covered Employer for the satisfaction of wage restitution and/or fines;

(2) Rescission of any contract or grant of Assistance; and

(3) Ineligibility for future Assistance for a period of three years or until all penalties and restitution have been paid in full, whichever is longer. Said ineligibility shall apply to the Covered Employer and to any affiliate, controlled organization, controlling organization, reconstituted organization and/or organization having an identity of interest with the Covered Employer

(c) Remedies Herein Non-Exclusive--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.

(d) Private Right of Action.--Any Covered Employee, or any person who was formerly employed by a Beneficiary, may bring an action to enforce the provisions of this Chapter to recover back pay and benefits, attorneys fees and costs, in any court of competent jurisdiction.

(e) This Chapter shall not be construed to limit an employee's civil remedies under any federal, state, or local laws relating to employment.

(f) Nothing in this Section shall be construed to conflict with, interfere with or supersede any rights collectively bargained for by any union representing Covered Employees.

(g) Injunctive relief shall be available in any court of competent jurisdiction to compel a Predecessor Contractor to produce a list of employees for the purpose of determining eligibility under Section 11(a)(2) of this Chapter, to enforce a decision of a hearing Officer, or to enforce any other provision of this Chapter.

Section 10. Community Jobs.

(a) First Source Hiring Agreement.--Covered Employers who receive economic development assistance from the City (Assistance as defined in Section 2(b)(1) of this Ordinance) shall, prior to the receipt of such Assistance, provide the Applicable Department with one or more signed First Source Hiring Agreements between the Covered Employer and the City of Pittsburgh CareerLinks System. The First Source Hiring Agreement shall stipulate that:

(1) for any job opening to be filled in connection with any project for which the Covered Employer receives Assistance, the Covered Employer shall notify a member of the CareerLinks System covered of the availability of the position, including a job description, wages, benefits, period of employment, and minimum qualifications;

(2) for any such job opening, the Covered Employer shall not advertise, announce, or recruit for open positions covered by the agreement, without having first notified a member of the CareerLinks System.

(3) for any such job opening, the Covered Employer shall hire from among qualified individuals referred by a member of the CareerLinks System;

(4) for any such job opening, the Covered Employer shall not hire from a source other than a member of the CareerLinks System covered by the agreement, unless the Covered Employer can demonstrate that no qualified applicants were referred within a period of fifteen (15) days after the date of notification;

(b) Protection of Union Jobs--In no instance shall a Covered Employer employ individuals pursuant to this Section where such employment would result in the displacement of its employees already covered by a collective bargaining agreement. Nor shall a Covered Employer construe this Section as requiring or authorizing the Covered Employer to refuse to bargain in good faith for the extension or renewal of a collective bargaining agreement covering its employees.

Section 11. Responsible and Harmonious Labor Practices Encouraged

In order to prevent disruption of goods and services being provided to or on behalf of the City of Pittsburgh and its residents, the City of Pittsburgh shall, to the greatest extent feasible, give preference for assistance to businesses that engage in responsible and harmonious labor relations.

Section 12. Union Neutrality

Beneficiaries of City of Pittsburgh Assistance, as that term is defined in Section 2 of this Chapter, shall not use City funds to support or oppose unionization, including but not limited to, preparation or distribution of materials which advocate for or against unionization; hiring or consulting legal counsel or other consultants to advise the Beneficiary about how to assist, promote or deter union organizing or how to impede a union which represents the beneficiary's employees from fulfilling its representational responsibilities; holding meetings to influence employees about unionization; planning or conducting activities by supervisors to assist, promote or deter union activities; or defending against unfair labor practice charges brought by federal or state enforcement agencies.

Section 13. Liberal Interpretation of Coverage

This Chapter shall be liberally construed so as to effectuate its purposes of promoting the retention and creation of jobs and improving the economic conditions of Pittsburgh residents. Any disputes as to whether an employer or a particular type of assistance is covered by this Chapter shall be resolved by application of a rebuttable presumption of coverage.

Section 14. Severability

In the event any provision of this Ordinance 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 15 Authorities, Agencies and Other Public Entities

All contracts, cooperation agreements, and other agreements entered into between the City and any Authority, Agency or Public Entity after the effective date of this Ordinance shall require the Authority, Agency or Public Entity to comply with the provisions of this Ordinance (including the employment and monetary thresholds contained herein) in connection with any program funded in whole or in part with City Assistance as defined in Sections 2(b)(1) through 2(b)(5) of this Ordinance.

Section 16 Further Regulatory Guidelines

The Mayor and Administration are hereby authorized to promulgate at his/her discretion additional regulatory guidelines in order to effectuate this ordinance.

Section ~~16~~ 17

This ordinance shall be effective on January 1, 2002.

