

City of Philadelphia



(Bill No. 050234)

AN ORDINANCE

Amending Title 17 of The Philadelphia Code, entitled "Contracts and Procurement," by enacting a new Chapter 17-1100, entitled "Philadelphia 21st Century Minimum Wage Standard," requiring a new minimum wage standard within the City of Philadelphia, all under certain terms and conditions.

THE COUNCIL OF THE CITY OF PHILADELPHIA HEREBY ORDAINS:

SECTION 1. Title 17 of The Philadelphia Code, entitled "Contracts and Procurement," is hereby amended by adding a new Chapter 17-1100, entitled "Philadelphia 21st Century Minimum Wage Standard," to read as follows:

CHAPTER 17-1300. PHILADELPHIA 21ST CENTURY MINIMUM WAGE STANDARD.

§17-1301. Purpose.

This chapter shall be known as the "Philadelphia 21st Century Minimum Wage Standard". The purpose of the chapter is to assure that as many employees as possible within the City of Philadelphia earn an hourly wage that enables them to live with more dignity and increased economic self-sufficiency. The City contracts with many businesses and organizations to provide services to the public, and provides financial assistance to developers for the purpose of promoting economic development and job growth. Such public expenditures should also be invested in a better community economic standard. The City Council of Philadelphia finds that the use of City funds to provide better wage jobs will decrease poverty, increase consumer income, invigorate neighborhood businesses and reduce the need for taxpayer funded social service programs. The new minimum wage standard is based on existing local and state job creation tax credit laws.

§17-1302. Definitions. The following words and phrases whenever used in this chapter shall be construed as defined in this section:

(1) "City." The City of Philadelphia and all City agencies.

(2) "City financial aid recipients." All persons or entities that receive from the City direct assistance in the form of grants, loans, or loan guarantees, tax incentives, in-kind services, waivers of City fees, or real property in the amount of more than \$100,000 in any twelve (12)-month period. This term shall not include those who enjoy an economic benefit as an incidental effect of City policies, regulations, ordinances, or charter provisions.

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(3) *"Service Contractor."* Any person or entity that enters into a Service Contract as hereinafter defined.

(4) *"Employee."* Any person who performs work for a covered Employer arising directly out of a Service Contract, City financial aid, the grant of a City lease, concession or franchise, or a funding agreement with a public agency, on a full-time, part-time, temporary, or seasonal basis, including employees, temporary workers, contracted workers, contingent workers, and persons made available to work through the services of a temporary services, staffing or employment agency or similar entity. However, Employee shall not mean any person:

- (1) Employed on a construction project that is covered by federal, state or local prevailing wage requirements;
- (2) Employed during summer months in a program to create summer jobs for students or teenagers;
- (3) Engaged in a bona fide training program, not to exceed 60 days in duration, under which the person will advance into permanent employment; or
- (4) Engaged or participating in a bona fide student internship program.

(5) *"Employer."* Those persons with more than five (5) employees, except that no person shall be deemed an Employer until they receive a new contract, lease, concession, franchise, or financial aid from the City. For these purposes the term "new" includes any arrangement entered into after this Chapter becomes effective, or any amendment, extension or renewal of a preexisting arrangement.

(6) *"Non-profit."* A non-profit organization described in Section 501(c) of the Internal Revenue Code of 1954, as amended, which is exempt from taxation under Section 501(c) of that code.

(7) *"Office of Labor Standards."* Such office as shall be designated by the Mayor to administer the provisions of this Chapter.

(8) *"Person."* Any individual, proprietorship, partnership, joint venture, corporation, limited liability company, trust, association, or other entity that may employ individuals or enter into contracts.

(9) *"Service contract."* A contract given to an employer by the City for the furnishing of services to or for the City, except contracts where services are

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incidental to the delivery of products, equipment or commodities. A subcontract shall be considered a "Service Contract" if it assists in performance of a Service Contract or accepts or transfers any right or responsibility set forth in a Service Contract as defined in this Chapter.

§17-1303. Employers Subject to the Requirements of this Chapter. The employers described below shall comply with the minimum compensation standards established by this Chapter .

- (1) The City of Philadelphia, including all its agencies, departments and offices.*
- (2) For-profit Service Contractors, which receive or are subcontractors on contract(s) for \$10,000 or more from the City in a twelve-month period, with annual gross receipts of more than \$1,000,000.*
- (3) Non-profit Service Contractors which receive or are subcontractors on contract(s) from the City of more than \$100,000 in a twelve-month period.*
- (4) Recipients of City leases, concessions, or franchises, or subcontractors thereof, which employ more than twenty-five (25) employees.*
- (5) City financial aid recipients. Compliance shall be required for a period of five (5) years following receipt of aid.*
- (6) Public agencies, which receive contract(s) for \$10,000 or more from the City in a twelve-month period.*

§17-1304. Waivers.

The Office of Labor Standards may grant a partial or total waiver of these requirements, pursuant to the following:

- (1) Any Employer which contends that it is unable to pay all or part of the new wage standard must provide a detailed explanation in writing to the City.*
- (2) The explanation must set forth the reasons for an Employer's inability to comply with the provisions of this chapter, including a complete cost accounting for the proposed work to be performed with any City funding or assistance that gives rise to coverage under this Chapter, including wages and benefits to be paid all*

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employees, as well as an itemization of the wage and benefits paid to the five highest paid individuals employed by the employer.

(3) The employer must also demonstrate that the waiver will further the interests of the City in creating training positions which will enable employees to advance into permanent jobs paying the new wage standard or better and will not be used to replace or displace existing positions or employees or to lower the wages of current employees.

(4) The City may grant a waiver only upon a finding and determination that the employer has demonstrated economic hardship and that waiver will further the interests of the City in providing training positions which will enable employees to advance into permanent jobs paying the new wage standard or better.

(5) However, no waiver will be granted if the effect of the waiver is to replace or displace existing positions or employees or to lower the wages of current employees.

(6) Waivers from the chapter are disfavored and will be granted only where the balance of competing interests weighs clearly in favor of granting the waiver.

(7) If waivers are to be granted, partial waivers are favored over blanket waivers. Moreover, any waiver shall be granted for no more than one year. At the end of the year, the employer may reapply for a new waiver which may be granted subject to the same criteria for granting the initial waiver.

(8) Notwithstanding any other provision of this section to the contrary, the City reserves the right to waive the requirements of this chapter upon a finding and determination that a waiver is in the best interests of the City.

(9) All of the provisions of this chapter, or any part hereof, may be waived by a bona fide collective bargaining agreement.

§17-1305. Compensation Required to be Paid to Employees. Except as otherwise provided in this Chapter, an Employer subject to this Chapter shall provide its covered Employees the following minimum compensation:

(1) Minimum Wage Standard. The Employer shall pay each Employee an hourly wage, excluding benefits, at least 150% of the federal or state minimum wage, whichever is higher.

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(2) *Additional compensation permissible. Nothing in this Chapter shall be construed to limit an employer's discretion to provide greater wages or benefits to its employees.*

§17-1306. *Required Contract Provisions.*

Every City contract, lease, license, concession agreement, franchise agreement or agreement for financial aid (collectively "contract" or "agreement") with an employer described in this Chapter or amendment thereto shall contain provisions requiring the employer to comply with the requirements of this Chapter as they exist on the date when the employer entered into its agreement with the City or when such agreement is amended. Such agreement provisions shall require the employer to promptly provide to the City documents and information verifying its compliance with the requirements of this Chapter, and provide for sanctions for non-compliance. Such agreement provisions shall also require the employer to notify each of its affected employees with regard to the wages that are required to be paid pursuant to this Chapter.

§17-1307. *Exemptions.*

(1) *An employee for whom application of the requirements of this Chapter is prohibited by state or federal law.*

§17-1308. *Retaliation and Discrimination Prohibited.*

It shall be unlawful to retaliate or discriminate against any person on account of his having claimed a violation of this Chapter.

§17-1309. *Private Right of Action.*

(1) *A person aggrieved by a violation of this Chapter may bring an action against an employer and obtain the following remedies:*

(a) *Back pay for each day during which the employer failed to pay the compensation required by this Chapter.*

(b) *Reinstatement, compensatory damages and punitive damages, to the extent such punitive damages are permitted by law.*

(c) *Reasonable attorney's fees and costs.*

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(2) Notwithstanding any provision of this Chapter or any other ordinances to the contrary, no criminal penalties shall attach for any violation of this Chapter.

(3) 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 hereunder in a court of law. This Chapter shall not be construed to limit an employee's right to bring a common law cause of action for wrongful termination.

(4) Nothing in this Chapter shall be interpreted to authorize a claim for damages against the City based upon another employer's failure to comply with this Chapter.

§17-1310. Responsible Bidding and Use of City Funds.

Prior to commencement of the contract's term or execution by the City, each Contractor covered by the bill's requirements will certify to the satisfaction of the City that its employees are paid the minimum wage standard as provided by the Chapter. As part of any bid, application or proposal for any agreement or contract, or other funding arrangement with the City covered by this Chapter, the submitter shall include an acknowledgment, in a form acceptable to the City, of the terms of this Chapter and intent to comply therewith.

§17-1311. Living Wage Advisory Committee.

- (1) Establishment. The City Council shall establish a nine (9) person committee entitled the "Living Wage Advisory Committee," the purpose of which shall be to review the implementation and effectiveness of this Chapter and to make recommendations to the City Council regarding this Chapter.*
- (2) Members. The Committee shall be composed of nine (9) members, composed of representatives of the low-income community, labor and businesses, appointed by the City Council, provided that no more than four (4) members are members of the business community. No members of the Committee shall be city contractors, affected employers, or city employees except that at least one (1) member must be appointed to represent the Office of Labor Standards.*
- (3) Meetings. The Committee shall meet at least quarterly. All meetings shall be open to the public and will allow for public testimony on policies or conduct relating to this Chapter.*

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SECTION 2. Severability.

If any section, subsection, subdivision, paragraph, sentence, clause or phrase of this Ordinance, or the application of such provision to any person or circumstance, is for any reason held to be unconstitutional or invalid, such a decision shall not affect the validity of the remaining portions of this Ordinance, or the application of such provision to persons or circumstances other than those as to which it is held invalid. The City Council hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause or phrase of this Ordinance irrespective of the unconstitutionality or invalidity of any section, subsection, subdivision, paragraph, sentence, clause or phrase.

SECTION 3. Effective Date.

This Ordinance shall become effective immediately.

Explanation:

[Brackets] indicate matter deleted.
Italics indicate new matter added.

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CERTIFICATION: This is a true and correct copy of the original Bill, Passed by the City Council on May 12, 2005. The Bill was Signed by the Mayor on May 26, 2005.



Patricia Rafferty
Chief Clerk of the City Council