

LOCAL LAW

BY MAJORITY LEADER MCDOW & COUNCIL MEMBER ROBERTSON:

A LOCAL LAW ESTABLISHING A LIVING WAGE POLICY FOR THE CITY OF YONKERS

BE IT ENACTED by the City Council of the City of Yonkers:

Section 1. The City Code of Yonkers is amended to add a new Chapter, as follows:

ARTICLE  
LIVING WAGE LAW

Section 1	Definitions
Section 2	Living Wage Established
Section 3	Reporting Requirements
Section 4	Compliance, Enforcement and Sanctions
Section 5	Retaliation and Discrimination Barred
Section 6	Ban on Use of Public Assistance for Pro-or Anti-Union Activities
Section 7	Non-Impairment of Existing Contracts
Section 8	Severability

Section 1 Definitions

For the purposes of this Local Law, the following terms shall have the following meanings:

CITY – the City of Yonkers and any City board, commission, bureau, division, department, administrative unit, or other office, position, administration, institution or agency of City government (1) the expenses of which are paid in whole or in part from the City general funds, or (2) over which majority control is exercised by officers of the City or their appointees. This definition shall include Authorities, as well as development agencies, including but not limited to the Industrial Development Agency, Yonkers Parking Authority, Yonkers Municipal Housing Authority, Section 108 Loan Agency, the Yonkers Empowerment Zone, Yonkers Empire Zone.

CONTRACTING AGENCY – any subordinate or component entity of the City that solicits proposals or bids and administers Service Contracts or City Assistance agreements.

SERVICE CONTRACT – any written agreement whereby the City is committed to expend funds for services provided to or for the City and that involves an expenditure of at least twenty-five thousand dollars (\$25,000) in any 12-month period. The term "Service Contract" shall not include contracts where services are incidental to the delivery of products, equipment or commodities. The term "Service Contract" shall include agreements whereby the City leases property and receives services

pursuant to that lease. For the purposes of this definition, City expenditures for more than one contract for the same service from the same vendor within any 12-month period shall be aggregated. A contract for the purchase or lease of goods, products, equipment, supplies or other property is not a "Service Contract" for the purposes of this definition. A subcontract shall be considered a "Service Contract" for the purposes of this Chapter where the subcontract is entered into to assist the primary contractor in performing services for the City.

**CITY ASSISTANCE** – any tax abatement, grant, loan, bond financing or other economic incentive of at least twenty-five thousand dollars (\$25,000) over the life of the agreement that is realized by or provided to a Covered Employer, as herein defined, by or through the authority or approval of the City or any Contracting Agency.

**SERVICE CONTRACTOR** – shall mean any person that enters into a service contract with the City or with the recipient of City assistance regarding the performance of services within the City of Yonkers or with a party that is the subject of a City lease or concession agreement.

**COVERED EMPLOYER** – any employer that is a (1) service contractor; (2) subcontractor to a service contractor; (3) recipient of City Assistance; (4) tenant or concessionaire of a recipient of City Assistance; or (5) tenant or concessionaire of the City where the relevant service contract, City Assistance, lease or concession agreement was entered into or renewed subsequent to the effective date of this law and where the employer employs at least ten (10) full-time equivalent employees regardless of whether those employees are covered employees or not.

**COVERED EMPLOYEE** – shall mean a person employed by a covered employer, to (1) perform work in, on or for a project that is subject of a service contract, or (2) perform work at a site or on a project for which City assistance was granted or that is the subject of a City lease or concession agreement; including a person who performs work on a full-time, part-time, contingent or contracted basis, including a person made available to work through an agency providing temporary services, including staffing agencies and employment agencies or similar entities. For the purposes of this act, a person employed as part of a City or private youth employment program is not a covered employee.

**FULL-TIME EQUIVALENT** – any combination of hours worked by one or more employees equivalent to between 35 and 40 hours (or more) per week.

**PERSON** – any entity or its agents, employees, representatives or legal representatives, including, but not limited to, natural persons, corporations, partnerships, limited liability companies, joint ventures, associations, labor organizations, educational institutions, mutual companies, joint stock companies, trusts, unincorporated organizations, trustees in bankruptcy, receivers or fiduciaries.

**SUBCONTRACTOR** – any person, other than an employee, that enters into a service contract with a service contractor to assist the primary service contractor in performing a service contract.

## Section 2 Living Wage Established

1. **Applicability.** Covered Employers shall pay no less than a living wage to their Covered Employees. This requirement applies for each hour that a Covered Employee actually performs work or renders services in connection with a City Service Contract or subcontract, in connection with a project, matter or location for which the Covered Employer has received City Assistance or that is the subject of a City lease or concession agreement. Covered employers shall pay the greater of the living wage pursuant to this law or the prevailing wage that would be applicable to such employees if they were subject to any federal, state or local prevailing wage law.

2. **Amount of Living Wage.** The living wage shall be calculated on an hourly basis and shall be no less than \$9.00 per hour with health benefits, as described in this local law, or otherwise \$10.00 per hour. The living wage shall be adjusted upwardly on an annual basis no later than April 1, in proportion to the annual increase, if any, in the Consumer Price Index for the area encompassing the City of Yonkers, for all items over the preceding year. The City shall publish, in a daily newspaper of general circulation in the City of Yonkers by March first of each year a notice announcing the adjusted rates. Said bulletin will be distributed by the City to all City agencies, departments and offices, and Covered Employers upon publication.

3. **Health Benefits.** Health benefits shall consist of the payment of the Covered Employer to its Covered Employees or on their behalf, of at least one dollar and fifty cents (\$1.50) per hour towards the provision of health care benefits contribution shall be one dollar and fifty cents (\$1.50) per hour in the first year of this law and shall be adjusted upwardly every year thereafter at rate equivalent to that of the Living Wage pursuant paragraph 2 of this section. Proof of the provision of such benefits must be submitted to the City not later than thirty (30) days after the execution of the relevant Service Contract, award of City Assistance, or City lease or concession agreement in order to qualify for the wage rate in paragraph 2 of this section.

4. **Compensated Leave.** Covered Employees shall provide at least twelve (12) compensated days leave per year to Covered Employees for sick leave, vacation, or personal necessity at the employee's request. Employees shall accrue one compensated day of leave per month of full-time equivalent employment. Covered Employees shall be eligible to use accrued days off after the first six months of employment or consistent with company policy, whichever is sooner. Paid holidays, consistent with established employer policy, may be counted toward provision of the required twelve (12) compensated days off.

5. **Uncompensated Leave.** Covered Employers shall also permit Covered Employees to take at least ten (10) days per year of uncompensated leave to be used for sick leave for the illness of the Covered Employee of a member of his or her immediate family. Uncompensated leave need not accrue from year to year.

5. Disputed findings of non-compliance. A Covered Employer may dispute a finding of non-compliance by requesting a hearing with the City to present evidence to refute the allegation of non-compliance. Based upon the evidence presented at said hearing, the City (or the Corporation Counsel or the City Council) shall make final determination on the question of compliance.

6. Where a finding of non-compliance with this law has been determined by the City, the Service Contractor or recipient of City Assistance, or a City lease or concession agreement will be given written notice by the City. The Covered Employer shall be given the right to cure the violation within thirty (30) days from the date of the notice. Should the Covered Employer fail to cure the violation within such time, the City shall impose sanctions including one or more of the following:

- a. Suspending and/or terminating the Service Contract, subcontract, City assistance, City lease, concession agreement or financial agreement for cause;
- b. Requiring the Covered Employer to pay back any or all of the Service Contract, subcontract, City Assistance, City lease, concession agreement or financial agreement awarded by the City;
- c. Deeming the Covered Employer ineligible for future City Service Contracts, City Assistance, City leases or City concession agreements, until all penalties and restitution have been paid in full and until the City determines to restore eligibility;
- d. Imposing a fine payable to the City of Yonkers in the sum of five hundred dollars (\$500) for each week for each employee found not to have been paid in accordance with this law; or
- e. Requiring the Covered Employer to: (1) reinstate the affected employee; (2) make restitution of wages to the employee; (3) grant to the employee any additional make whole relief deemed appropriate by the City, and (4) pay to the affected employee liquidated damages of five hundred dollars (\$500) per week for any periods of non-compliance with this law affecting the Covered Employee.

7. Corporation Counsel shall promulgate procedures for the legal enforcement of the requirements of this law.

8. Private Right of Action. In addition to any other remedy provided for under this Chapter, employee, an employee's representative, a labor union with an interest in the Service Contract, City lease, City concession agreement or City Assistance at issue, or any other aggrieved party claiming violation of this local law may institute an action in a court of appropriate jurisdiction against any Covered Employer or other party alleged to have violated this Chapter. For any violation of this Chapter, including failure to pay the Living Wage required benefits, failure to comply with other requirements of this Chapter and retaliation for exercising rights provided hereunder, the court may award any appropriate remedy at law or equity, including, but not limited to back pay, other equitable or make-whole relief, liquidated damages in the amount of five hundred dollars (\$500) for each employee for each week during which the violation continued, reinstatement, injunctive relief, compensatory damages and/or punitive damages. The Court shall award reasonable attorney's fees and costs to any complaining party who prevails in any such enforcement action. Such action

6. No Reduction in Collective Bargaining Wage Rates. Nothing in this law shall be read to require or authorize any Covered Employer to reduce wages set by a collective bargaining agreement or required under any prevailing wage.

7. Cuts in Non-Wage Benefits Prohibited. No Covered Employer may fund wage increases required by this local law or otherwise respond to the requirements of this Chapter, by reducing the health, insurance, pension, vacation, or other non-wage benefits of any of its employees.

8. Covered Employers shall inform employees making less than (\$9.50) per hour of their possible right to the federal earned income tax credit (EITC) under Section 32 of the Internal Revenue Code of 1954, and shall make available to employees forms informing them about EITC and forms required to secure advance EIC payments from the employer.

9 All City Service Contracts, agreements to award City Assistance, leases or concession agreements shall contain an agreement by said employers or said recipients to comply with living wage requirements set forth herein, as well as to not discriminate on the basis of race, color, religion, sex, national origin, age, marital status, sexual preference, discharge from military service or handicap unrelated job ability.

### Section 3 Reporting Requirements

1. Notice of Application for Service Contract, city lease or concession agreement or City Assistance. Any and all Service Contracts, City leases or concession agreements, or agreements to provide City Assistance shall be void, and no Service Contract, City lease or concession agreement or City Assistance shall be awarded, unless at least twenty-one (21) days before the Service Contract, City lease or concession agreement or City Assistance is awarded, the Covered Employer files with the City of Yonkers, a publicly available application which shall include the following:

- a. The name, address and telephone number of both the prospective Covered Employer, and, if different, the specific project for which the Service Contract, City lease, concession or City Assistance is sought;
- b. A description of the project or service for which the Service Contract, lease, concession agreement, or City Assistance is sought;
- c. A statement of projected number of employees by job title, under the prospective Service Contract, lease, concession agreement, or project for which City Assistance is sought;
- d. A statement of the projected wage levels of all Covered Employees in each of the years for which a Service Contract, lease, concession agreement or City Assistance is sought; and
- e. A written commitment to pay all Covered Employees a Living Wage, as defined under this Chapter, unless an exception is granted under this Chapter.

2. Payroll Record Keeping and Reporting. Each Covered Employer shall, maintain payrolls for all Covered Employees and basic records relating thereto and

shall preserve them for a period of three years. The records shall contain the zip code of each employee's place of residence; the number of hours worked each day, the gross wages, deductions made, actual wages paid, a record of non-wage benefit payments, and any other data as may be required by the City from time to time. Every six months, each Covered Employer shall file with the City a complete payroll showing the Covered Employer's payroll records for each of its Covered Employees for on payroll period. Upon request by the City, a Covered Employer shall produce for inspection and copying its payroll records for all of its Covered Employees for the three-year period.

3. Annual Reports from Covered Employers. Covered Employers shall provide annual reports to the City of Yonkers of their employment activities, including job title, health benefits, period of employment and wage rate of Covered Employees.

#### Section -4. Compliance, Enforcement and Sanctions.

1 Covered Employer Cooperation. Upon written notice received by the Covered Employer three business days prior to an on-site inspection, the Covered Employer shall permit representatives from the City to observe work being performed at, or in or on the project or matter for which the Covered Employer has received a Service Contract, lease, concession agreement or City Assistance, to interview employees and to examine the books and records of the Covered Employer relating to employment and payroll to determine if the Covered Employer is in compliance with the provisions of this Chapter.

2. Posting. Upon hiring, and by January 15 of each year, Covered Employers shall provide all employees with materials provided by the City informing them of their rights under this law. Every Covered Employer shall conspicuously post on its premises, in an area where notices to employees and applications for employment are kept, two copies of this law or other materials designed by regulation, informing employees of their rights under this law.

3. Grievance Procedure. A person who believes that any Covered Employer is not complying with the requirements of this Chapter has the right to file a complaint with the City. Complaints of alleged violations may be made at any time and shall be investigated promptly by the City. Written and oral statements in support of the complaint shall be treated as confidential and shall not be disclosed to the Covered Employer without the consent of the Covered Employees.

4. Duties of the City. It shall be the responsibility of the City to examine payrolls as deemed necessary to determine compliance and cause investigations to be made as necessary to monitor compliance with the provisions of this law. The City shall promptly cause investigations to be made into complaints alleging non-compliance by Covered Employers. The City may in conjunction with the City Council, in accordance with the powers herein granted, require the production by the Covered Employer of such evidence as required to determine compliance with the provisions of this Chapter.

must be commenced within three years of the date on which the complainant became aware of the alleged violation. 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.

9. Wage protest not required. Notwithstanding any inconsistent provision of this Chapter or of any other general, special or local law, or regulation, an employee affected by this law shall not be barred from the right to recover the difference between the amount paid to the employee and the amount that should have been paid under the provisions of this Chapter because of the prior receipt by the employee without protest of wages paid or on account of the employee's failure to state orally or in writing upon any payroll receipt of which the employee is required to sign that all wages received by the employee are received under protest, or on account of the employee's failure to indicate a protest against the amount, or that the amount so paid does not constitute payment in full of wages due the employee for the period covered by such payment.

#### Section 5. Retaliation and discrimination barred.

It shall be unlawful for any person to retaliate or discriminate against an individual for making known a violation of this Chapter, for seeking or communicating information regarding rights conferred by this Chapter, for exercising any other right protected under this Chapter or for participating in any proceeding relating to this Chapter. The protection shall also apply to any individual who mistakenly, but in good faith, alleges a violation of this Chapter, or who seeks or communicates information regarding rights conferred by this Chapter in circumstances where he or she mistakenly, but in good faith believes this law is applicable. Taking adverse action against an individual within sixty (60) days of the individual's engaging in any of the aforementioned activities shall raise a rebuttable presumption of having done so in retaliation for those activities.

#### Section 6. Ban on Use of Public Assistance for Pro-or Anti-Union Activity

Covered Employers shall use all City Assistance and payments for services received from the City for purposes for which they are awarded. No Covered Employer shall directly or indirectly, use any City Assistance or payments for the purpose of persuading employees to support or oppose unionization. In particular, City Assistance or payments for services received from the City shall not be used to schedule or hold meetings related to union representation during employees' working hours. However, this restriction shall not apply to any expenditure made in the course of good faith collective bargaining, or to any expenditure pursuant to obligations incurred under a bona-fide collective bargaining agreement.

#### Section 7. Non-impairment of existing Service Contracts or City Assistance.

Nothing contained herein shall operate to impair any existing Service Contract, City lease, concession agreement or award of City assistance. The provisions of this Chapter shall apply to (1) a Service Contract entered into and City Assistance provided after the effective date of this law; (2) a Service Contract amendment executed after the effective date of this Chapter which is otherwise covered under this Chapter; or (3) supplemental City Assistance provided for after the effective date of this Chapter which is otherwise covered under this Chapter.

#### Section 8. Severability

This local law will take effect as allowed by law. The sections, subsections and paragraphs of this Chapter shall be deemed severable and the declaration by a court of competent jurisdiction that any part hereof is invalid shall not affect the remaining parts of this Chapter.