

**February 21, 2003**

**City Council  
City of Sacramento**

**Sacramento Living Wage, Responsible Contractor and Fair Subsidy Ordinance**

WHEREAS, it is important to the health and welfare of all citizens of the City of Sacramento that working people are paid a wage that enables them to lift their families out of poverty; and

WHEREAS, the City of Sacramento itself employees public servants, many of whom do not earn enough to adequately support themselves and their families; and

WHEREAS, the City awards taxpayer-funded contracts to businesses to provide services to the public and to City government; and

WHEREAS, the City provides taxpayer-funded financial assistance to businesses that pledge to create jobs and expand economic opportunity in Sacramento; and

WHEREAS, the City leases valuable City-owned property to businesses seeking the opportunity to serve customers at these desirable locations; and

WHEREAS, many service employees in Sacramento and their families live at or below the poverty line; and

WHEREAS, the payment of such inadequate compensation tends to negatively affect the quality of services to the City and the public by fostering high turnover and instability in the workplace; and

WHEREAS, ensuring that businesses benefiting from City funds or property promote the creation of jobs that pay a living wage will increase the ability of Sacramento residents to attain self-sufficiency, decrease economic hardship in the City, and reduce the need for the taxpayers to fund social services in order to provide supplemental support for the employees of local businesses; and

WHEREAS, many businesses benefiting from City funds or property do not provide health insurance to their employees, adversely affecting employee performance and absenteeism, and increasing the burden on the taxpayers of caring for the uninsured through local and state health programs; and

WHEREAS, there is a risk of disruption of services provided to the City and to the public, and of real hardship for workers, when City contracts are awarded or

transferred to new contractors who refuse to retain the workers who previously performed the work; and

WHEREAS, to ensure that taxpayer funds are spent prudently and are not used to promote inappropriate business practices, the City should ensure that City service contracts are awarded to responsible firms that comply with all applicable laws and regulations; and

WHEREAS, it is inappropriate that taxpayer funds awarded to businesses for purposes of providing services to the City or creating jobs in Sacramento should be used for unrelated purposes, such as encouraging or discouraging workers in relation to joining a union; and

WHEREAS, a City policy to promote the creation of living wage jobs complements other City programs aimed at meeting the employment and economic development needs of the City of Sacramento and its workforce; and

WHEREAS, it is the purpose of this policy to ensure that businesses benefiting from taxpayer funds or the use of City property provide their employees a living wage of at least \$10.00 per hour and health benefits, protect their employees from displacement, and refrain from using public money for inappropriate purposes, thus enhancing the welfare of workers in Sacramento; therefore:

The City Code of Sacramento is hereby amended by inserting a new Chapter XX within Title YY to read as follows:

**Section . . .010. Title and Purpose.**

(a) This chapter shall be known as the “Sacramento Living Wage, Responsible Contractor and Fair Subsidy Ordinance”.

(b) The purpose of this chapter is to ensure that when taxpayer-funded benefits are extended by the City of Sacramento to private businesses, they are used in a way that benefits the interests of the City as a whole by creating good jobs for Sacramento residents. The chapter therefore encourages the City, City service contractors and subcontractors, businesses benefiting from its tax, loan, grant, and subsidy assistance programs, and businesses benefiting from the opportunity to lease City-owned property to pay their employees a wage that will enable a full-time worker to support a family at a level that meets basic needs and avoids economic hardship. To guard against disruption of services provided to the City and to the public and hardship to workers when City contracts are awarded or transferred to new contractors, the chapter ensures that successor contractors retain qualified workers who previously performed the work. Similarly, to ensure that taxpayer funds are spent prudently and are not used to promote inappropriate business practices, the chapter requires that City service contracts, City leases and city financial assistance be awarded to responsible firms that comply with all applicable laws and regulations. To ensure that taxpayer funds awarded to businesses to provide services for the City or to create jobs are not used for unrelated purposes, the

chapter prohibits their use for purposes such as encouraging or deterring workers from joining a union.

**Section .020. Definitions.**

As used in this chapter, the following words and phrases shall have the meaning given them in this section, unless the context clearly requires otherwise:

(a) “City Contract” means:

(i) Any contract between the City and any other Person to provide services to the City or its residents where the annual value of payments under the contract is \$25,000 or more;

(ii) Where the same Person or one or more of its affiliates or subsidiaries, receives more than one contract from the City during a 12-month period, the value of those contracts shall be combined and the contracts shall be deemed City Contracts if the aggregate value exceeds \$25,000;

(iii) Provided, however, that any contract with the City to provide construction services or other work that is subject to City, state or federal prevailing wage laws shall not be considered a City Contract for the purposes of this chapter.

(b) “City Financial Assistance” or “City Financial Assistance Award” means:

(i) Any grant, loan, tax incentive or abatement, tax increment financing, bond financing (such as industrial development or revenue bonds), Community Development Block Grants or related loans, subsidy, or other form of financial assistance awarded by or with the approval of the City with an aggregate value of \$100,000 or more over the life of the award or agreement;

(ii) Where the same Person or one or more of its affiliates or subsidiaries, receives more than one award of financial assistance from the City during a 12-month period, the value of those awards of financial assistance shall be combined and the awards shall be deemed City Financial Assistance if the aggregate value exceeds \$100,000;

(iii) Provided, however, that any award of financial assistance by the City for the performance of construction services or other work that is subject to City, state or federal prevailing wage laws shall not be considered City Financial Assistance for the purposes of this chapter.

(c) “City Lease” means any lease, concession agreement, or other agreement authorizing any Person to occupy, use, control or do business at property owned or controlled by the City, but only where either of the following applies: (1) at least a portion of the occupied premises is visited by substantial numbers of the public on a frequent basis; or (2) the leasee anticipates annual gross revenues of at least twenty five thousand dollars (\$25,000) from business conducted on the premises. (3) the leasee anticipates that it will employ at least fifteen (15) employees or, in the case of a Person performing custodial, landscaping, or recycling services, at least two 2 employees.

**(d)** “Beneficiary” means any Person that has at least 15 employees or, in the case of a Person performing custodial, landscaping, or recycling services, that has at least 2 employees, and that:

- (i) Is a recipient of City Financial Assistance or a City Lease; or
- (ii) Is a tenant, subtenant or concessionaire of a City Lease and uses or occupies property that is the subject of the City Lease; or
- (iii) Is a restaurant on-site at the property that is the subject of City Financial Assistance;
- (iv) Is a contractor or subcontractor of a recipient of City Financial Assistance or a City Lease and provides services on-site at the property that is the subject of the City Financial Assistance or City Lease.

**(e)** “Contractor” means any Person having at least 15 employees or, in the case of a Person performing custodial, landscaping, or recycling services, that has at least 2 employees, and that is a party to a City Contract, is a subcontractor that provides services relating to performing a City Contract.

**(f)** “Covered Employer” means the City, a Contractor or Beneficiary that is not exempt from this chapter.

**(g)** “Employee” means any person who performs work on a full-time, part-time, temporary, or seasonal basis and includes employees, contingent or contracted workers, and persons made available to work through the services of a temporary services, staffing or employment agency or similar entity, for:

- (i) The City; or
- (ii) A Contractor; or
- (iii) A Beneficiary;
- (iv) Provided, however, “Employee” shall not mean any person engaged as a program participant in a job training and education program, including but not limited to the state-certified Sacramento Local Conservation Corps and the federally funded Youth Build and Job Corps programs, which has as its expressed purpose the provision of basic job skills and education to participants with the goal of a high school equivalency degree and permanent employment.

**(h)** “Living Wage” has the meaning stated in section \_\_.\_\_.030.

**(i)** “Person” means any one or more of the following or their agents, employees, representatives, or legal representatives: natural persons, corporations, partnerships, joint ventures, associations, labor organizations, mutual companies, joint-stock companies, trusts, unincorporated organizations, trustees, trustees in bankruptcy, receivers, fiduciaries or any other entity, but excluding any unit of federal, state or local government

**(j)** “City” or “Sacramento” means:

- (i) The City of Sacramento, its departments, offices, agencies, or subdivisions thereof; or
- (ii) Any joint powers authority in which the City of Sacramento participates; or
- (iii) Any public authority or agency that is controlled by, a majority of the governing body of which is appointed by, or that receives public funds appropriated by or allocated on behalf of, the City of Sacramento or by any official of the City of Sacramento, including the Mayor.

(k) “Willful Violation” means noncompliance with any of the requirements of this chapter by a Person who knew or should have known of his, her, or its obligations under this chapter and intentionally or negligently failed or refused to comply with its provisions.

**Section . .030. Living Wage and Health Benefits.**

(a) A Covered Employer must pay Employees no less than a Living Wage for all hours worked for the City, performing a City Contract, or at a site or project that is the subject of City Financial Assistance or a City Lease, and must provide Health Benefits.

(b) A Living Wage shall be \$10.00 per hour beginning in 2003, and each year thereafter shall be upwardly adjusted in proportion to the increase, if any, during the preceding 12-months in the in the Consumer Price Index for All Urban Consumers for All Items.

(c) Providing Health Benefits means either:

(i) A Covered Employer’s providing health benefits for a Employee and/or his/her dependents where the Covered Employer’s contribution to the health benefits package is valued at no less than the Health Benefits Supplement Rate for each hour worked by the Employee; or

(ii) A Covered Employer’s Paying a Employee a wage rate of no less than the sum of the current Living Wage and the Health Benefits Supplement Rate.

(d) The Health Benefits Supplement Rate shall be \$2.84 per hour beginning in 2003 and each year thereafter shall be upwardly adjusted in proportion to the increase, if any, during the preceding 12-months in the Consumer Price Index for All Urban Consumers for Medical Care.

(e) The City shall publish a bulletin by December 1 of each year announcing the adjusted Living Wage and Health Benefits Supplement Rate, which shall take effect on January 1. This bulletin shall be distributed to all City agencies and Covered Employers upon publication. Covered Employers shall provide written notification of the rate adjustments to their Employees, and to their covered contractors, subcontractors, tenants and subtenants. In the event that the City fails to publish the adjusted Living Wage and Health Benefit Supplement Rates, it shall remain the obligation of each Covered Employer to calculate them itself and begin paying the adjusted Living Wage and Health Benefits effective January 1.

**Section . .040. Paid Days Off.**

(a) Covered Employers shall provide Employees at least 12 compensated days off per year for holidays, sick leave, vacation, or personal necessity. Employees shall accrue one compensated day off per month of full-time-equivalent employment based on hours during which the Employee is entitled to be paid a living wage. Employees shall be eligible to use accrued days off after the first 6 months of employment or consistent with employer policy, whichever is more generous. All paid days off provided by a Covered Employer, including paid holidays and paid days off provided pursuant to a collective bargaining agreement, may, consistent with established employer policy, be counted toward provision of the required 12 compensated days off.

(b) Covered Employers shall also permit Employees to take at least an additional 10 days per year of uncompensated days off to be used for sick leave necessitated by illness of the Employee or a member of his or her immediate family where the employee has exhausted his or her compensated days off for that year. This provision does not mandate the accrual from year to year of uncompensated days off. The uncompensated leave requirements of this provision shall not apply to any employee entitled to more extensive uncompensated leave pursuant to the federal Family and Medical Leave Act. Where a Covered Employer provides more than 12 compensated days off per year, those days above 12 may be counted towards satisfaction of this requirement.

**Section .050. Exemptions.**

Notwithstanding any other provision of this chapter, the following Persons shall be deemed exempt from the requirements of this chapter:

(a) A Contractor or Beneficiary that is a nonprofit corporation organized under Section 501(c)(3) of the United States Internal Revenue Code of 1954, 26 U.S.C. Section 501(d)(3), whose chief executive officer or highest paid managerial employee earns a salary which, when calculated on an hourly basis, is less than six (6) times the lowest wage paid by the corporation to any Employee; or

(b) A Contractor performing a City Contract for professional services; or

(c) A Contractor performing a City Contract awarded under circumstances deemed by the Mayor to constitute an emergency.

**Section .060 Worker Retention.**

(a) In order to ensure continuity in living wage employment for employees of City Contractors and minimize disruption when services that were previously performed by employees of a City Contractor (including the employees of a contractor providing services for the City under a contract awarded prior to the effective date of this chapter) or by employees of the City are continued by a new City Contractor, the new City Contractor must provide for continued employment of any Qualified Retention Employees that previously performed the service work at issue for the predecessor City Contractor.

(b) “Qualified Retention Employee” means an employee who performed the work that is to be performed by the new City Contractor for at least three months prior to award of the new City Contract and will be terminated from his or her employment as a result of the new City Contract.

(c) When a City Contract (including a contract to provide services for the City that was awarded prior to the effective date of this chapter) is to end, the predecessor City Contractor shall within ten (10) days provide the City the name, address, date of hire, and employment occupation classification of its employees, and employees of any subcontractors, who are performing services relating to the City Contract at that time. When the City decides to contract out services that previously had been performed by City employees, the City shall gather the same information for the City employees who had been performing the services to be contracted out. When the City awards a City Contract to perform the services that were previously performed by employees of a City Contractor or by employees of the City, the City shall provide the new City Contractor with the name, address, date of hire, and employment occupation classification of each employee who would otherwise be displaced by the City Contract. Where the services at issue were previously, or shall in the future, be performed under multiple City Contracts, the City shall pool the employees, ordered by seniority within job classification.

(d) In the event that the new City Contractor does not have enough employee positions available under the City Contract for all Qualified Retention Employees, the City Contractor shall hire Qualified Retention Employees for available employee positions by seniority within each employment classification. For any employee positions that become available during the first three months of the new City Contract, the City Contractor shall hire Qualified Retention Employees by seniority within each employment classification.

(e) A City Contractor may not discharge a Qualified Retention Employee without cause during the first three months of their employment. A City Contractor must provide each Qualified Retention Employee with a written performance evaluation at the conclusion of this three month period. Each such Qualified Retention Employee who receives a satisfactory performance evaluation at the end of his or her first three months of employment shall be offered continued employment under the same terms and conditions established by City Contractor for its other employees.

### **Section .050 Responsible Contractor Standards.**

(a) Any person wishing to obtain a City Contract, City Financial Assistance Award or City Lease, must first obtain a certification from the City that the person has the necessary ability and business integrity to justify receipt of City funds or use of City Property. In deciding whether to issue such certification, the City shall consider the following factors, except that the City need not consider a factor if it determines that the particular factor is inapplicable to a given City Contract, City Financial Assistance Award or City Lease: (1) financial resources; (2) technical qualifications; (3) experience; (4) organization, material, equipment, facilities and expertise necessary to carry out the work; (5) a satisfactory record of performance; and (6) a satisfactory record of compliance with applicable statutes and regulations.

(b) In order to facilitate the certification process, the City shall require all bidders for City Contracts and all applicants for City Financial Assistance Awards or City Leases to complete and submit with their bids and/or applications a questionnaire developed by the City that will provide the information the City needs to determine whether the person

meets the appropriate standards for the criteria set forth in paragraph (a) of this section. A prospective Contractor or Beneficiary must submit the questionnaire even if no bid is required. The prospective Contractor or Beneficiary must submit its response to the questionnaire under penalty of perjury. If, after issuing the certification, the City determines that the prospective Contractor or Beneficiary has provided false information, the City may revoke the certification. The Contractor or Beneficiary shall be obligated to update its responses to the questionnaire during the term of the City Contract, City Financial Assistance Award or City Lease within 30 days after any material change to the responses previously provided. The City may revoke the Contractor or Beneficiary's certification for failure to update the questionnaire. Revocation of the certification shall be considered grounds for terminating the City Contract, City Lease or City Financial Assistance Award.

(c) A prospective Contractor or Beneficiary must submit the questionnaire no fewer than fourteen (14) calendar days prior to execution of the City Contract, City Lease or City Financial Assistance agreement in order to allow for full review of the questionnaire. Questionnaires shall be public records and information contained therein shall be available for public review.

(d) Based upon review of the information contained in the questionnaire, information obtained from other governmental agencies, its own independent investigation, and any information received from the public, the City shall either certify the prospective Contractor or Beneficiary, or make a determination of non-responsibility. Before being declared non-responsible, a prospective Contractor or Beneficiary shall be notified of the proposed determination, provided with a summary of the information upon which the City is relying, and given an opportunity to be heard. At the responsibility hearing, the prospective Contractor or Beneficiary shall be allowed to rebut adverse information and to present evidence that it has the necessary quality, fitness, capacity, and integrity. The prospective Contractor or Beneficiary must exercise its right to request a hearing within five calendar days after the City provides notice of its preliminary determination. Failure to submit a written request for a hearing within the five-day period will be deemed a waiver of the right to such a hearing.

(e) A City Contractor shall not enter into any subcontract to provide services relating to performing a City Contract, and a Beneficiary shall not enter into a lease or sublease at a property that is the subject of City Financial Assistance or a City Lease, or service contract for services to be performed on-site at a property that is the subject of City Financial Assistance or a City Lease, unless the prospective tenant, subtenant, contractor or subcontractor has been certified by the City in accordance with this section.

#### **Section . .60. Compliance with Applicable Laws.**

(a) Covered Employers shall comply with all applicable federal, state, and local laws, including but not limited to laws regarding health and safety (including environmental laws), labor and employment laws, and licensing laws.

(b) Covered Employers shall notify the City within fourteen (14) days upon receiving notification that a government agency has initiated an investigation of the Covered Employer which may result in a finding that it is not in compliance with paragraph (a) of this Section.

(c) Covered Employers shall notify the City within fourteen (14) days of receiving any finding (including a preliminary finding subject to appeal) by a government agency or court of competent jurisdiction that the Covered Employer has not complied with an applicable federal, state, or local law.

(d) Upon award of a City Contract, City Lease or City Financial Assistance, a Covered Employer shall complete a Pledge of Compliance attesting under penalty of perjury to compliance with paragraph (a) of this section.

(e) A Covered Employer shall ensure that any tenants, subtenants, subcontractors, or contractors performing on-site services are in compliance with this section. A Covered Employer shall include this requirement in any lease, sublease, subcontract or contract for on-site services.

(f) Where the City has received information indicating that a Covered Employer or one of its subcontractors, on-site contractors, tenants or subtenants is not in compliance with this section, the City shall issue a written notice to the Covered Employer regarding the alleged noncompliance, and it shall provide the Covered Employer or one of its subcontractors, on-site contractors, tenants or subtenants with ten days to demonstrate either that there was no violation, or that the violation has been cured. In the event that the employer has not demonstrated to the City within such period that it has cured such violation, the City may then declare a material breach of the service contract, except where such violation involves a failure to comply with the provisions of federal labor laws (the National Labor Relations Act or Railway Labor Act). Where the violation involves a failure to comply with federal labor law, the City may hold a public hearing regarding the nature and extent of the violation, and whether the violation implicates the proprietary interests of the City. In the event the City determines that such violation does implicate its proprietary interests, it reserves the right to seek an appropriate remedy.

**Section .70. Protection Against Disruption of Essential Services Through Labor Unrest.**

(a) The Council hereby declares that, to the best of its ability, it intends to ensure that essential services and labor pursuant to City Contracts, City Leases or City Financial Assistance are provided efficiently and without interruption. Therefore, it is necessary to avoid the potential of disruption by labor disputes.

(b) Prior to the issuance of any request for proposal for a City Contract, granting of a City Lease or agreement on any award of City Financial Assistance, including

competitive requests for qualifications, requests for quotes, project or development applications or agreements, lease documents, or other solicitations or requests for information (collectively referred to as “RFP” or “RFP’s”), the City shall determine the level of vulnerability of the proposed contract, lease or award of financial assistance to service or labor disputes and the degree to which labor peace is essential to the proprietary interests of the City. The determination shall be based on considerations including, but not limited to, the following factors:

- (i) Whether the proposed City Contract, City Lease or City Financial Assistance will be provided on a City site or a site which is important to the proprietary interests of the city; and
  - (ii) Whether the proposed Contractor or Beneficiary will rely on a significant amount of public patronage; and
  - (iii) The likely economic effect of any disruption on City expenditures or revenues; and
  - (iv) The likely effect of any disruption on the residents, tourists, and businesses in the community.
- (c) The City shall consider the relationship between the extent to which the City is vulnerable to the effects of labor unrest and the type of assurances of protection against labor discord that need to be provided by the applicant.
- (d) Each RFP shall include a provision requiring adequate assurances in light of the level of vulnerability in each request for proposals.
- (e) The City department awarding the contract shall provide a copy of each RFP to any person or entity that files a request for notification.

**Section . . .80 Restriction on Use of City Funds.**

Covered Employers shall use City funds, received pursuant to City Contracts or City Financial Assistance Awards, and City property pursuant to a City Lease, for the purposes for which they are awarded or leased. No Covered Employer may use, directly or indirectly, any City funds for the purpose of persuading employees to support or oppose unionization. In particular, City funds 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 the obligations incurred under a bona fide collective bargaining agreement

**Section . . .090 No Retaliation.**

It shall be unlawful for a Covered Employer or any other Person to take any action against a person in retaliation for exercising rights protected under this chapter. Rights protected under this chapter shall include the right to complain regarding any Person's compliance or anticipated compliance with this chapter, the right to oppose any practice proscribed by this chapter, the right to participate in any proceedings related to this chapter, the right to seek to extend coverage of this chapter to other Persons, the right to assert his or her rights under this chapter by any lawful means, and the right to inform others of their potential rights under this chapter, and to assist others in asserting such rights. This protection shall also apply to a person who mistakenly, but in good faith, alleges noncompliance with this chapter. Taking adverse action against a Person within 60 days of the Person's exercise of rights protected under this chapter shall raise a rebuttable presumption of having done so in retaliation for the exercise of such rights.

**Section .100 Implementation & Enforcement.**

(a) Private Civil Enforcement. A person aggrieved by a violation of this chapter, including but not limited to an employee, an organization representing employees, or the City, may commence a civil action in a court of competent jurisdiction for enforcement of the requirements of this chapter in law or equity and may be awarded any appropriate relief including, but not limited to:

- (i) For failure to pay wages required by this chapter -- back pay for each day during which the violation continued.
- (ii) For failure to provide medical benefits required by this chapter -- the difference between the wage required by this chapter without benefits and such wage with benefits, less amounts paid, if any, toward medical benefits.
- (iii) For failure to allow an employee to take requested compensated or uncompensated time off as required by this chapter -- damages in an amount equivalent to that employee's wages for the time off requested and not received as well as consequential damages in an amount according to proof.
- (iv) For failure to comply with the worker retention provisions, back pay for each day during which the violation continued, which shall be calculated at a rate of compensation not less than the higher of (A) the average rate of pay received by the employee during his/her most recent twenty six weeks work in the same occupation classification, or (B) the final regular rate of pay received by the employee.
- (v) For retaliation -- reinstatement, back pay, and any other equitable relief the court may deem appropriate.

- (vi) For breach of the responsible contractor provision, equitable relief, including but not limited to, rescission of the City Contract, City Lease or City Financial Assistance Award, and make whole relief patterned after that authorized under the California Agricultural Labor Relations Act, Cal. Lab. Code § 1140, et seq.
- (vii) Unless the violator establishes that the violations were committed in good faith, the amount of money to be paid out under subsections (i) through (v) shall be doubled.
- (viii) For Willful Violations, the amount of monies to be paid out under subsections (i) through (v) shall be trebled.

Reasonable attorney's fees and costs shall be awarded to any complaining party that prevails in an action brought to enforce this chapter.

(b) **Implementation.** The provisions of this chapter shall augment the City's ordinary procedures for administering its contracts and economic development assistance programs. The City shall include a summary of the requirements of this chapter in all requests for proposals, solicitations or other materials relating to City Contracts, City Leases or City Financial Assistance to which it applies. Compliance with this chapter shall be required in all City Contracts, City Leases and City Financial Assistance Awards to which it applies, and such City Contracts, City Leases and City Financial Assistance Awards shall provide that violation of this chapter shall constitute a material breach thereof and authorize the City to terminate the City Contract, City Lease or City Financial Assistance Award and pursue legal remedies specified in section \_\_.\_\_.100 or that may otherwise be available.

**Section \_\_.\_\_.110. Limitation of Actions.**

All claims asserting rights under this chapter must be brought within three (3) years of the discovery of the violation.

**Section \_\_.\_\_.111. Coexistence With Other Available Relief.**

This chapter shall not be construed to limit an employee's right to bring legal action for violation of any other law.

**Section \_\_.\_\_.112. Supersession by Collective Bargaining Agreement.**

The requirements of this chapter are superseded for employees whose terms and conditions of employment are governed by a bona fide collective bargaining agreement containing an explicit provision waiving the terms of this chapter.

**Section \_\_.\_\_.113. Severability.**

If any provision of this chapter, or its application to any person or circumstance is held invalid by any court of competent jurisdiction, the remainder of the chapter or its application to other persons or circumstances shall not be affected.

**Section \_\_.\_\_.114. No Reduction In Collective Bargaining Wage Rates.**

Nothing in this chapter 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 law.

**Section \_\_.\_\_.115. Cuts In Non-Wage Benefits Prohibited.**

No covered employer will fund wage increases required by this chapter, or otherwise respond to the provisions of this chapter, by reducing the health, insurance, pension, vacation, or other non-wage benefits of any of its employees.

**Section \_\_.\_\_.116. Living Wage Reporting.**

**(a) Certification Agreements for Contractors and Beneficiaries.**

To be eligible for consideration to enter into or receive any City Contract, City Lease or City Financial Assistance, a Contractor or Beneficiary must file a Certification Agreement with the department or agency of the City responsible for awarding the City Contract, City Lease or City Financial Assistance and must ensure that contractors, subcontractors, tenants or subtenants that will assist in performing the City Contract, or that will occupy property that is the subject of the City Financial Assistance or City Lease also file Certification Agreements. Where contractors, subcontractors, tenants or subtenants are not yet identified, the Contractor or Beneficiary shall so indicate and shall file an updated Certification Agreement when any contractor, subcontractor, tenant or subtenant is identified, added or substituted. The Certification Agreement shall be completed on a form provided by the City and shall include the names and addresses of any contractors, subcontractors, tenants or subtenants that will assist in performing the City Contract, or that will occupy property that is the subject of the City Financial Assistance or City Lease.

**(b) Payroll Record Keeping and Reporting**

(i) Each Covered Employer shall maintain payrolls for all Employees and basic records relating thereto and shall preserve them for a period of three years. The records shall contain: the name, zip code of each employee's place of residence, the number of hours worked each day, the gross wages, deduction made, actual wages paid, a record of fringe benefit payments, and any other data as may be required by the City from time to time. Where a Covered Employer does not maintain or retain adequate records documenting wages and benefits paid, it shall be presumed that the Covered Employer paid no more than the applicable federal or state minimum wage, and did not provide health benefits.

(ii) Every six months, each Covered Employer will file with the City a complete payroll showing the Covered Employer's payroll records for each of its Employees for one payroll period. Upon request by the City, a Covered Employer shall produce for inspection and copying its payroll records for any or all of its Employees for the prior three year period.

(iii) Covered Employers shall permit access to work sites and relevant payroll records for authorized City representatives for the purpose of monitoring compliance with this chapter, investigating employee complaints of non-compliance and evaluating the operation and effects of this chapter, including the production for inspection and copying of its payroll records for any or all of its employees.

**(c) List of Employees**

Where the City has given notice that a City Contract subject to this chapter has been terminated, the Awarding Agency shall notify the terminated contractor of the identity of the successor contractor, if known, and the terminated contractor shall within ten days thereafter provide to the successor contractor and the Awarding Agency the name, address, date of hire, and employment occupation classification of each employee, or that of its subcontractors, primarily performing work on the terminated contract at the time of contract termination. If a successor contractor has not been awarded the contract by the end of the ten day period, the Awarding Agency shall provide the employment information to the successor contractor upon award.

**(d) Notification to Workers**

Covered Employers shall give written notification to each current and new employee, at time of hire, of his or her rights to receive the benefits under the provisions of this chapter. The notification shall be provided in English, Spanish and other languages spoken by a significant number of the employees, and shall be posted prominently in communal areas at the work site. A copy of said notification shall be forwarded to the City.

**Section .117. Notifying Employees of their Potential Right to the Federal Earned Income Credit.**

Covered Employers shall inform employees making less than twelve dollars (\$12.00) per hour of their possible right to the federal Earned Income Credit (“EIC”) under §32 of the Internal Revenue Code of 1954, 26 U.S.C. §32, and shall make available to employees forms informing them about the EIC and forms required to secure advance EIC payments from the employer. These forms shall be provided to the eligible employees in English, Spanish and other languages spoken by a significant number of the employees within 30 days of employment under the terms of this chapter and as required by the Internal Revenue Code.

**Section .118. RFP, Contract and Financial Assistance Agreement Language.**

All RFP’s, City Contracts, City Leases and City Financial Assistance Awards, regardless of whether they are subject to this chapter shall contain language informing the bidders or recipients that this chapter may apply to the service, assistance, or bid in question.

**Section .119. Effective Date, Duration of Coverage & Counting Employees.**

(a) This chapter shall take effect 60 days after its enactment and shall apply to any City Contract, City Lease or City Financial Assistance Award entered into, awarded, renewed, or extended after that effective date. Provided, however, that Covered Employers shall not be required to begin paying the wages and benefits established by this chapter, or to comply with the chapter’s other requirements, until January 1, 2004. Provided further that the requirements of this chapter shall apply to renewals or extensions only where the City has the discretion not to renew or extend the agreement.

(b) The requirements of this chapter shall apply to a Covered Employer for the duration of the City Contract, City Lease or City Financial Assistance involved. Where City Financial Assistance does not have a defined duration, or is received in a lump sum, its duration shall be deemed to be five years.

(c) When a City Contract, City Lease or City Financial Assistance Award becomes subject to the requirements of this chapter, any subcontractors, tenants or subtenants providing services relating to the City Contract or at the site that is the subject of the City Financial Assistance Award or City Lease shall immediately become subject to the requirements of this chapter, regardless of the award or renewal date of the subcontract, lease or sublease.

(d) When counting the number of Employees of a Contractor or Beneficiary for purposes of determining whether they are subject to the requirements of this chapter, the following rules shall apply:

(i) All Employees working firm-wide for the Contractor or Beneficiary, whether full-time, part-time or temporary, shall be counted.

(ii) Persons who are or will be employed by any contractors, subcontractors, tenants or subtenants providing services relating to the City Contract or at the site that is

the subject of the City Financial Assistance Award or City Lease shall be counted as if they were employees of the Contractor or Beneficiary.

(iii) A Contractor or Beneficiary shall be deemed to employ the greater of the following:

(A) The greatest number of persons it employed at any point in the 12 months preceding the award of the City Contract, City Lease or City Financial Assistance; or

(B) The greatest number of persons it will employ or is expected to employ after award of the City Contract, City Lease or City Financial Assistance.

(iv) A Contractor or Beneficiary that, based on these rules, is deemed to employ more than the specified threshold number of Employees required for coverage under this chapter shall be deemed a Covered Employer for the duration of the City Contract, City Lease or City Financial Assistance.

(v) A Contractor or Beneficiary that employed fewer than the specified threshold number of Employees at the beginning of the City Contract, City Lease or City Financial Assistance Award but then exceeds the threshold during the duration thereof shall be deemed a Covered Employer for the remaining duration. In such event, the Contractor or Beneficiary shall be obligated to alert the City of its change in coverage status within 30 days.

(vi) The City shall assess the number of persons employed by a Contractor or Beneficiary for purposes of determining coverage under this chapter.