

By: Councilmember Rivera

Ordinance Amendment

Chapter 96 Bonds and Contracts

The Common Council of the City of Buffalo does hereby ordain as follows:

That §96-19, Buffalo Living Wage Ordinance, of the Code of the City of Buffalo be amended to read as follows:

A. Legislative determination of intent.

(1)

The City awards many contracts to private firms to provide services to the public and to City government. Experience indicates that procurement by contract of services has all too often resulted in the payment by service contractors to their employees of wages at or slightly above the minimum required by federal and state minimum wage laws. Such minimal compensation tends to inhibit the quantity and quality of services rendered by such employees to the City and to the public. Underpaying employees in this way fosters high turnover, absenteeism and lackluster performance. Conversely, adequate compensation promotes amelioration of these undesirable conditions. Through this section, the City intends to require service contractors to provide a minimum level of compensation that will improve the level of services rendered to and for the City.

(2)

The inadequate compensation typically paid today also fails to provide service employees with resources sufficient to afford life in the City of Buffalo. It is unacceptable that contracting decisions involving the expenditure of City funds could foster conditions placing a burden on limited social services.

(3)

The City of Buffalo has a limited amount of taxpayer resources to expend; and even in promising economic times, far too many working Buffalo residents and their families live below or near the poverty line.

(4)

Due to strict new time limits on public assistance, access to family-supporting jobs in Buffalo is especially crucial, and as a result of new work requirements imposed by welfare reform, the influx of former welfare recipients into low-wage labor market is projected to lower these workers' wages.

(5)

The use of taxpayer dollars to promote sustenance and create family-supporting jobs will increase consumer income while decreasing levels of poverty. In the City of Buffalo, new homeowners contribute additional property tax revenue while spending more money in our City economy at neighborhood businesses. Additionally, desperate neighborhoods overly dependent on low-wage jobs are blessed with a decrease in crime, given the compelling relationship between crime statistics and low-wage work. And, for Buffalo students facing tougher educational standards, ending the poverty cycle is imperative; presently many of Buffalo's school children are so poor that they qualify for free school lunches and/or breakfasts. No child can learn while hungry, and hunger is the first result of debilitating poverty.

(6)

In addition, on a region-wide basis, living-wage legislation may benefit the larger community by reducing reliance on taxpayer-funded public assistance such as food stamps, Medicaid, emergency medical services and other social programs provided by the Erie County government.

(7)

Community organizations, religious leaders, union members and other Buffalo residents have organized together and proposed the policy reflected in this section.

(8)

Since the City is presently facing a grave financial crisis, in order to relieve the City of any financial burdens in connection with the Living Wage Ordinance, this section creates a volunteer commission to assist in the administration of this section.

B.

Title and purpose: Buffalo Living Wage Ordinance.

(1)

This section shall be known as the "Buffalo Living Wage Ordinance."

(2)

The purpose of this section is to assure that employees of substantial City contractors and subcontractors provided by the City earn an hourly wage that is sufficient for a family of three to live at or above the federal poverty level.

C.

Definitions. The following definitions shall apply throughout this section:

CITY

The City of Buffalo and any division, subdivision, office, department, board, commission, bureau, including but not limited to the Board of Parking, the Zoning Board of Appeals, the City Planning Board, the Committee for Youth, the Office of Disabled Persons Advocacy, the Commission on Citizens Rights and Community Relations, the Citizens Planning Council, the Board of Dunn Tire Park and the Board of Johnnie B. Wylie Stadium, whose expenses are paid in whole or part by the City.

COMMISSION ON A LIVING WAGE

The body created by this section charged with overseeing and evaluating this section and holding hearings to investigate noncompliance with its provisions.

CONTRACT

Any written agreement for the purchase of services in excess of \$50,000 a year, where the contractor providing the service employs more than ten people and where the City is obligated to expend funds or is entitled to receive funds from a contractor in connection with a contract or subcontract for services. This definition excludes professional contracts such as legal, architectural or engineering services.

CONTRACTOR

Any person that enters into a service contract with the City.

COVERED EMPLOYEE AND/OR EMPLOYEE

An employee, either part-time or full-time, by a covered employer in, on or for the project or matter subject to the contract; provided, however, that persons who are employed in construction work covered pursuant to federal or state prevailing wage laws shall be exempt from this section. This definition shall include any employee who is employed (including fulfilling a work requirement under the Family Assistance or Safety Net Program) as a service employee of a contractor or subcontractor on or under the authority of one or more service contracts and who expends any of his or her time thereon, including but not limited to food-service employees, janitorial employees, security guards, parking attendants, landscaping employees, clerical employees and waste management employees.

COVERED EMPLOYER

The City of Buffalo or any contractor or subcontractor directly involved in providing a covered service to the City of Buffalo.

NOT-FOR-PROFIT ORGANIZATION

A corporation having tax exempt status under Section 501(c)(3) of the United States Internal Revenue Code and recognized under the New York State Not-For-Profit Corporation Law.

PERSON

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

SUBCONTRACTOR

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

D.

Living wage.

(1)

Applicability. Covered employers shall pay no less than a living wage to their covered employees.

(2)

Amount of wage; tipped employees.

(a)

Amount of wage. The living wage shall be calculated on an hourly basis and adjusted annually as of July 1 of each year. The living wage shall be calculated by using the 150 percent of the Federal Poverty Guideline for annual income for a family of three for that same calendar year, as determined by the United States Department of Health and Human Services, and divided by 2,080 to determine the hourly rate.

(b)

Tipped employees. A covered employer may take a tip credit towards Buffalo Living Wage Ordinance compliance if a service employee receives enough tips to ensure that total tips plus wages equals or exceeds the Buffalo Living Wage. Such tipped employees shall receive a wage of at least the hourly cash wage required for tipped employees under 12 NYCRR 146. Covered employers must comply with all provisions of New York State Labor Law with respect to tipped employees but in no event shall an employee's hourly cash wage plus tips equal less than the hourly equivalent of the Buffalo Living Wage.

(3)

No reduction in collective bargaining wage rates. Nothing in this section 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.

(4)

Notifying employees of their potential right to federal earned income credit. Covered Employers shall inform Covered Employees of their possible right to the Federal Earned Income Credit (EIC) under Section 32 of the Internal Revenue Code of 1954, 26 U.S.C. 32, and shall make available to employees forms informing them about the EIC.

E.

Employer responsibility, compliance and sanctions.

(1)

Notice of application for contract. Simultaneous with the submission of the bid for the proposed contract, the department authorized to enter into the contract shall obtain an application for contract from the prospective employer and shall forward a copy to the Commission on a Living Wage. An employer's failure to file an application for contract may bar the City or any of its individual departments from considering a bid for contract. Any contract entered into by the City without receipt of an application may be voided if not filed with the department within 60 days. The application must contain the following:

(a)

The name, address and phone number of both the prospective covered employer and the specific project for which the contract is sought.

(b)

A description of the project or service for which the contract is sought.

(c)

A statement of project number of employees, by classification, under the prospective contract.

(d)

A statement of the projected wage levels of all covered employees in each of the years for which the contract is sought.

(e)

A written commitment to pay all covered employees a living wage as defined by this section.

(2)

Quarterly reports from covered employers. Covered employers shall provide publicly available quarterly reports to the Commission on a Living Wage regarding their employment activities, including the name, address, classification, period of employment and wage rate of covered employees hired and laid off during the quarter.

(3)

Compliance, enforcement and sanctions.

(a)

Posting. Every employer shall post and keep in conspicuous places in its premises, where notices to employees and applicants for employment are customarily posted, two copies of this section or other materials designed by regulation, informing employees of their rights under this section.

(b)

Grievance procedure. An employee who believes that his or her employer is not complying with the requirements of this section has the right to file a grievance with the Commission on a Living Wage. Such grievances may be made at any time and shall be investigated as soon as possible by the Commission on a Living Wage. Written and oral statements made by an employee shall be treated as confidential and shall not be disclosed to the covered employer without the consent of the employee.

(c)

Sanctions for failure to pay a living wage. Where appropriate, following the receipt of a grievance, the Commission shall have the authority to conduct a hearing to determine the validity of the grievance or complaint. After such a hearing, by majority vote of the Commission, the Commission may recommend that sanctions be imposed by the City department head responsible for the service contract in question. The recommended sanctions may include one or more of the following:

[1]

Withholding payment of any amount due.

[2]

Wage restitution for each affected employee.

[3]

Suspension or termination of ongoing contracts.

[4]

Ineligibility for further City contracts for up to three years or until all penalties and restitution have been paid in full.

(d)

Sanctions for retaliation. A covered employer shall not discharge, reduce the compensation of or otherwise discriminate against any employee for making a grievance, otherwise asserting his or her rights under this section, or participating in any of its proceedings. The Commission shall investigate allegations of retaliation and, if such allegations shall be found to be true, after notice and hearing, shall recommend, to the City department head responsible for the contract in question, appropriate relief, including but not limited to:

[1]

Reinstatement of a discharged or demoted employee;

[2]

Back pay to the date of the violation; or

[3]

The sanctions in Subsection E(3)(c)[1], [3], or [4] above.

(e)

The Commission shall make a recommendation to the City department head who has a contract with the covered employer. Within 30 days of the Commission's recommendation, the department head will be obliged to choose one or more of the listed above.

F.

Enforcement.

(1)

Private right of action. An employee claiming violation of this section shall have the right to file an action against an employer in the appropriate court, within two years after discovery of the alleged violation. The court may award any employee who files suit pursuant to this provision, as to the relevant period of time, the following:

(a)

For failure to pay the living wage required by this section: the difference between the living wage required herein and the amount actually paid to the employee.

(b)

For retaliation for exercise of any rights provided for under this section: reinstatement, back pay, and/or any other relief that a court may deem appropriate.

(c)

The court may award reasonable attorney's fees and costs to an employee who prevails in any such private action and such other remedies as the court may determine to be just.

(2)

Each service contract to which these regulations apply shall provide that violation of this section shall enable any aggrieved employee to file an action against the contractor for damage. In addition, such service contract shall also indicate that the City has the discretion to terminate the service contract and pursue any other legal remedies available to the City if the contractor fails to comply with this section. Notwithstanding the failure of a service contract to provide the foregoing information, that failure shall not alleviate the responsibility of a contractor to comply with the requirements of this section.

(3)

Retaliation prohibited. A covered employer shall not discharge, reduce the compensation of or otherwise discriminate against any employee for making a complaint, otherwise asserting his or her rights under this section, or participating in any of its proceedings.

(4)

City enforcement. The City may, in its sole discretion, investigate and address any alleged violation of this section's requirements. However, the City's failure to investigate an alleged violation or otherwise enforce any of the provisions of this section shall not create any right to recover damages from the City by any person, including but not limited to an aggrieved employee.

G.

The Commission on a Living Wage: duties and powers. The City hereby establishes a Living Wage Commission to evaluate the efficacy and enforcement of the section.

(1)

Powers. The Living Wage Commission shall have the following powers:

(a)

To evaluate the enforcement of the Living Wage Ordinance, issue an annual public report and such other reports as it shall deem necessary, and make legislative recommendations regarding needed changes in this ordinance;

(b)

To help notify City department heads responsible for entering into contracts of their obligations under the law and to assist in their understanding of the law;

(c)

To hold monthly meetings;

(d)

To hold public and private hearings and take testimony under oath;

(e)

To receive, investigate, and hold hearings in connection with complaints by employees of noncompliance with this section and retaliation by employers against employees asserting their rights under this section;

(f)

To issue and make public written findings in connection with investigations of complaints or other allegations of noncompliance;

(g)

To recommend sanctions in connection with findings of noncompliance after a notice and hearing to employers;

(h)

To receive charitable contributions and grants to facilitate its work;

(i)

To retain private counsel to assist the Commission in its work, provided that such counsel must agree to work free of any charge for legal services or costs unless attorney's fees are awarded by Court;

(j)

To have access to and the right to duplicate the contracts governed by this section;

(k)

To select a chairperson, by majority vote of the Commission; and

(l)

To adopt rules for the operation of meetings and to carry out the powers enumerated above.

(2)

The right to receive a listing of contracts and to duplicate designated contracts at the Commission's expense.

(a)

Upon written request to the Comptroller, the Comptroller shall forward a listing of the contract that the City entered into for a stated period of time. That listing shall contain the name and address of the contractor, the amount of the contract, and a description of the services being provided.

(b)

After reviewing the list provided by the Comptroller, members of the Commission or their designated representative are authorized to view any contract they believe may be governed by this section in the Office of the Comptroller.

(c)

The Commissioners or their designated representative are authorized to duplicate any contract they may wish to copy, at the Commission's expense, at a cost charged by the City not to exceed \$0.10 a page.

(3)

Composition and selection of Commissioners. The Commission shall be composed of nine members, each serving a three-year term. Commissioners shall serve without compensation. They shall be selected, by written notice to the Common Council, on the following basis:

(a)

A representative selected by the Mayor;

(b)

A representative selected by the Common Council;

(c)

A representative from the Cornell School of Industrial Labor Relations;

(d)

A representative selected by the Coalition of Black Trade Unionists;

(e)

Two representatives selected by the Network of Religious Communities;

(f)

A representative selected by the Buffalo Niagara Partnership;

(g)

A representative selected by the Western New York Area Labor Federation;

(h)

A representative selected by the Western New York Welfare Monitoring Task Force.

(4)

Procedures governing the selection of Commissioners.

(a)

Each organization designated above shall have three months from the effective date of this section to notify the Common Council in writing of its designated representative. Representatives shall be authorized to take their seat on the Commission at the first monthly meeting following their designation by each organization.

(b)

If any organization listed above ceases to exist following the passage of this section, the Chairperson of the Commission shall designate a community organization with a comparable organizational mission to select a representative to serve on the Commission.

(c)

The failure of a designated organization to name a representative shall not affect the authority of the Commission to perform its functions.

(d)

Consideration with regard to diversity of both race and gender ought to be given in the selection of Commissioners.

(e)

A majority of the Commission should be residents of the City of Buffalo.

H.

Exemptions.

(1)

Grounds for granting exemptions. The Mayor may request that the Common Council grant a partial or whole exemption to the requirements of this section.

(a)

General exemption. Exemptions may be granted where application of this section to a particular contract is found by the City to violate specific state or federal statutory, regulatory or constitutional provision or provisions, and Common Council approves the exemption on that basis.

(b)

Youth employment exemption. An exemption to this section may be granted where a covered employer is an organization who regularly employs individuals under the age of 21 in a summer youth program, school-to-work program, or other related seasonal part-time work. The exemption shall only apply to these employees. The City of Buffalo shall be considered such an organization.

(c)

Not-for-profit organizations. An exemption to this section may be granted to not-for-profit organizations which perform services for the City or its departments.

(2)

Contents. All general exemption requests shall include the following:

(a)

The nature of the contract to which this section applies, and the specific or official name of the contract, the statutory or regulatory authority for the granting of the contract, and a copy of that authority;

(b)

The conflicting statutory, regulatory or constitutional provision or provisions that make complaints with the section unlawful, and a copy of each provision; and

(c)

A factual explication and legal analysis of how compliance with this section would violate the cited provision or provisions, and the legal consequences that would attach if this violation were to occur.

(3)

Common Council review and approval of exemption requests. The Common Council shall consider exemption requests, along with their supporting documentation and analysis, and may hold a public hearing to consider the views of the public, before approving the exemption. The Common Council may approve or deny all or part of a request.

I.


Severability. In the event any court of competent jurisdiction shall hold any provision of this section invalid or unenforceable, such holding shall not invalidate or render unenforceable any other provisions hereof.

J.

Effective date. This section shall be effective immediately upon enactment.

Section 2. That this Ordinance Amendment shall take effect on July 1, 2021 upon being duly ratified pursuant to §3-19 of the City Charter.

NOTE: Matter underlined is new, matter in brackets is to be deleted.

APPROVED AS TO FORM ONLY:

Anna M. Falicov
ASSISTANT CORPORATION
COUNSEL