CHAPTER XXIV

BOSTON JOBS AND LIVING WAGE ORDINANCE

Editor's Note:
Prior ordinance history includes portions of Ordinance Nos. 1997 c. 5 and 1998 c. 3.

24-1 TITLE AND PURPOSE.

This Chapter shall be known as the "Boston Jobs and Living Wage Ordinance." The purpose of this Chapter is to assure that employees of vendors who contract with the City of Boston to provide services earn an hourly wage that is sufficient for a family of four (4) to live at or above the Federal poverty level. This Chapter is also designed to maximize access for low- and moderate-income Bostonians to the jobs that are created, maintained or subsidized through service contracts with the City of Boston.
(Ord. 1998 c. 5 § 1)

24-2 DEFINITIONS.

For the purpose of this Chapter, the term:

a. *Assistance* shall mean any grant, loan, tax incentive, bond financing, subsidy, or other form of assistance of one hundred thousand ($100,000.00) dollars or more realized by or through the authority or approval of the City of Boston, including, but not limited to industrial development bonds, Community Development Block Grant (CDBG) loans and Federal Enhanced Enterprise Community designations awarded after the effective date of this Chapter. The forgiveness of a loan shall be regarded as financial assistance. A loan shall be regarded as financial assistance to the extent of any differential between the amount of the loan and the present value of the payments thereunder, discounted over the life of the loan by the applicable Federal rate as used in 26 U.S.C., Section 1274(d) 7872(f). A recipient of assistance shall not be deemed to include leases and subleases.

b. *Beneficiary* shall mean any direct recipient of at least one hundred thousand ($100,000.00) dollars of assistance provided that the beneficiary is a for-profit employer of at least twenty-five (25) FTE's or a not-for-profit employer of at least one hundred (100) FTE's.

c. *Contracting department* shall mean any City department that awards a service contract.

d. *Covered employee* shall mean a person employed by a covered vendor who directly expends or would directly expend his or her time on the service contract with the City of Boston or on the service subcontract.

e. *Covered vendor* means any for-profit employer who employs at least twenty-five (25) FTE's who has been awarded a service contract or service subcontract after the effective date of this section. This term does not include beneficiary as herein defined.

f. *Designated department* shall mean the City of Boston department or agency, designated by the Mayor, to be responsible for the overall implementation, compliance and enforcement of this Chapter.

g. *First Source Hiring Agreement* shall mean a signed agreement between a covered vendor or a beneficiary and a referral agency.

h. *Full-time equivalent (FTE)* shall mean a formula to calculate the number of employee work hours which equal one (1) full-time position. For the purposes of this Chapter, full time shall mean the standard number of working hours, between thirty-five (35) hours and forty (40) hours per week, that is used by the covered vendor to determine full time employment.

i. *Living wage* shall mean the rate established by the designated department as the minimum hourly wage rate that shall be paid to a covered employee by a covered vendor pursuant to the formula set forth in Section 24-6 of this Chapter.

j *Low- and moderate-income persons* shall mean persons with an annual income that is less than eighty (80%) percent of median income for the Boston Primary Standard Metropolitan Statistical Area as published by the Department of Housing and Urban Development.

k. *Person* shall mean one (1) or more of the following or their agents, employees, servants, representatives, and legal representatives: individuals, corporations, partnerships, joint ventures, associations, labor organizations, educational institutions, mutual companies, joint-stock companies, trusts, unincorporated organizations, trustees, trustees in bankruptcy, receivers, fiduciaries, and all other entities recognized at law by this Commonwealth.

l. *Referral agency* shall mean any organized job registry and referral service operated by a not-for-profit organization or union provided that the not-for-profit organization has the following:

1. An established community membership base and record of conducting outreach in low- and moderate-income Boston communities;

2. A computerized skills bank where individuals may register for employment and training opportunities;

3. An established process whereby an employer can post job openings, and where referrals can begin within forty-eight (48) hours of such posting;

4. A governing board comprised of a majority of low- and moderate-income Boston residents; or the majority of services provided by the entity are furnished to low- and moderate-income Boston residents;

5. A proven track record of nondiscriminatory job placement with respect to race, color, religion, national origin, sex, sexual orientation, age, marital status, discharge from the military service or handicap unrelated to job ability; and

6. Is certified as meeting requirements 1, 1. through 5. by the Boston Office of Jobs and Community Services.

m. *Service contract* shall mean any contract of at least fifty thousand ($50,000.00) dollars or more awarded to a vendor by the City for the furnishing of services to or for the City. Beginning on July 1, 2002, "Service Contract" shall mean any contract of at least twenty-five thousand ($25,000.00) dollars or more awarded to a vendor by the City for the furnishing of services to or for the City.

n. *Service subcontract* shall mean a subcontract of twenty-five thousand ($25,000.00) dollars or more awarded to a vendor by a covered vendor, provided the subcontract is paid for by funds from the service contract.

o. *Youth program* shall mean any City, State, or Federally funded program which employs youth, as defined by City, State, or Federal guidelines, during the summer, or as part of a school to work program, or in other related seasonal or part-time program.

p. *Vendor agreement* shall mean a written agreement between the City of Boston and any covered vendor that is executed at the time a service contract is signed with the City or a subcontract is signed with a covered vendor.
(Ord. 1998 c. 5 § 2; Ord. 2001 c. 8)

24-3 APPLICABILITY, EXEMPTIONS, AND WAIVERS.

24-3.1 Applicability.

All of the provisions of this Chapter shall apply to all covered vendors as defined in this Chapter, not including the exemptions listed in subsection 24-3.2 of this section.
(Ord. 1998 c. 5 § 3)

24-3.2 Exemptions.

The following types of assistance, service contracts and subcontracts shall be exempt from the provisions of this Chapter:

a. Construction contracts awarded by the City of Boston that are subject to the State prevailing wage law; and

b. Assistance or contracts awarded to youth programs, as defined in this Chapter, provided that the contract is for stipends to youth in the program; and

c. Assistance or contracts awarded to work-study or cooperative educational programs, provided that the assistance or contract is for stipends to students in the programs; and

d. Assistance and contracts awarded to vendors who provide services to the City and are awarded to vendors who provide trainees a stipend or wage as part of a job training program and provides the trainees with additional services, which may include but are not limited to room and board, case management, and job readiness services, and provided further that the trainees do not replace current City funded positions.
(Ord. 1998 c. 5 § 3)

24-3.3 Affidavit Certifying Exemption Required.

Covered vendors and beneficiaries of assistance must certify in an affidavit in a form approved by the designated department and provided by the contracting department and signed by a principal officer of the covered vendor or beneficiary of assistance, that one (1) of the exemptions herein applies to them before they can be considered exempt. The covered vendor or the beneficiary of assistance shall submit the affidavit to the contracting department who shall forward a copy to the designated department and the Living Wage Advisory Committee.
(Ord. 1998 c. 5 § 3) Penalty, see § 24-11

24-3.4 Waivers.

a. *General Waiver.* Waivers may be granted by the designated department where application of this Chapter to a particular form of assistance, a service contract or subcontract violates a specific State or Federal statutory, regulatory or constitutional provision or provisions. All general waiver requests shall include the following:

1. The assistance, service contract or subcontract to which this Chapter applies;

2. The conflicting statutory, regulatory or constitutional provision or provisions that makes compliance with this Chapter unlawful, and a copy of each such provision; and

3. An explanation of how compliance with this Chapter would violate the cited provision or provisions, and the consequences that would result if this violation were to occur.

A general waiver request shall be submitted directly to the designated department. The designated department shall forward a copy of all requests to the Living Wage Advisory Committee.

b. *Hardship Waiver.* The contracting departments shall monitor, and as necessary, recommend to the designated department, individual or group exemptions necessary in cases in which compliance with this Chapter would cause undue economic hardship. Such waivers shall be subject to the designated department's approval after having held a public hearing on the request.

All hardship waiver requests shall include the following:

1. The service contract or service subcontract to which this Chapter applies;

2. The lower wage paid by the covered vendor, and

3. A detailed explanation of how the payment of a living wage will cause undue economic hardship including supporting financial statements.

All hardship waiver requests shall be forwarded to the Living Wage Advisory Committee. Hardship waivers under this section shall not be applicable to beneficiaries of assistance.
(Ord. 1998 c. 5 § 3)

24-4 FIRST SOURCE HIRING AGREEMENTS.

All covered vendors and all beneficiaries of assistance (hereinafter referred to as "the employer" for the purposes of this section) shall sign a First Source Hiring Agreement with one (1) or more referral agencies or one (1) or more Boston One Stop Career Centers which shall include the following:

a. Prior to announcing or advertising an employment position for work which shall be performed as a result of a service contract, service subcontract or assistance created either as a result of a vacancy of an existing position or of a new employment position, the employer shall notify the referral agency about the position, including a general description and the employer's minimum requirements for qualified applicants for such position;

b. The employer shall not make such public announcement or advertisement for a period of five (5) business days after notification to the referral agency of the availability of such position. Such five (5) day period is hereinafter referred to as the "Advance Notice Period";

c. The referral agency shall maintain a database of job opportunities subject to this Chapter and shall provide information on such job opportunities to all Boston residents who receive services;

d. The Advance Notice Period shall be waived if the referral agency has no qualified candidates to refer to the covered vendor or beneficiary;

e. The referral agency or Career Center shall institute a tracking system and record which applicants were interviewed, which applicants were not interviewed, and which applicants were hired for the positions;

f. The Agreement does not require the employer to comply with these procedures if it fills the job vacancy or newly created position by transfer or promotion from existing staff or from a file of qualified applicants previously referred by the referral agency or Career Center; and

g. The Agreement shall not require the employer to hire any applicant referred under the terms of this Agreement.

Beneficiaries who receive assistance from the City in the amount of one million ($1,000,000.00) dollars or more in any twelve (12) month period shall be required to comply with this section for five (5) years from the date such assistance reaches the one million ($1,000,000.00) dollar threshold. Beneficiaries receiving less than one million ($1,000,000.00) dollars but at least one hundred thousand ($100,000.00) dollars of assistance in any twelve (12) month period shall be required to comply with this section for one (1) year.
(Ord. 1998 c. 5 § 4) Penalty, see § 24-11

24-5 NOTIFICATION REQUIREMENTS.

All contracting departments engaged in the awarding of contracts shall provide in writing, an explanation designed by the designated department, of the requirements of this Chapter in all requests for bids for service contracts with the City of Boston. All persons who have signed a service contract with the City of Boston shall forward a copy of such requirements to any person submitting a bid for a subcontract on the service contract.
(Ord. 1998 c. 5 § 5) Penalty, see § 24-11

24-6 LIVING WAGE PAYMENT TO EMPLOYEES.

24-6.1 Applicability.

Covered vendors shall pay no less than the living wage to covered employees.
(Ord. 1998 c. 5 § 6) Penalty, see § 24-11

24-6.2 Calculation of the Living Wage.

The living wage shall be calculated on an hourly basis and shall be no less than ten dollars and twenty-five ($10.25) cents from the effective date of passage of this section, subject to adjustment each year on July 1:

a. To the hourly rate which at forty (40) hours of work a week for fifty (50) weeks a year would be

equal to but not less than one hundred sixteen percent (116%) of the poverty threshold for a family of four (4) as published by the United States Department of Health and Human Services; or

b. In proportion to the increase at the immediately preceding December 31 over the year earlier level of the Annual Average Consumer Price Index for All Urban Consumers (CPI-U) Boston-Lawrence-Salem, MA NH as published by the Bureau of Labor Statistics, United States Department of Labor applied to ten dollars and twenty-five ($10.25) cents; or

c. One hundred ten (110%) percent of the Federal or State minimum wage; or whichever of the foregoing is higher.
(Ord. 1998 c. 5 § 6; Ord. 2001 c. 8) Penalty, see § 24-11

24-7 DUTIES OF COVERED VENDORS.

24-7.1 Notification Requirements.

Covered vendors shall provide each covered employee with a fact sheet about this Chapter and shall post a notice about the Chapter in a conspicuous location visible to all employees. The fact sheet and poster shall be provided to the covered vendor by the designated department and shall include:

a. Notice of the living wage amount;

b. A summary of the provisions of this Chapter;

c. A description of the enforcement provisions of the Chapter;

d. The name, address, and phone number of a person designated by the designated department to which complaints of noncompliance with this Chapter should be directed.
(Ord. 1998 c. 5 § 7) Penalty, see § 24-11

24-7.2 Maintenance and Examination of Payroll Records.

a. *Maintenance of Payroll Records.* Each covered vendor shall maintain payrolls for all covered employees and basic records relating thereto for a period of three (3) years. The records shall contain the name and address of each employee, the job title and classification, the number of hours worked each day, the gross wages, deductions made, actual wages paid, a copy of the social security returns, and evidence of payment thereof, a record of fringe benefit payments including contributions to approved plans, funds or programs and/or additional cash payments, and such other data as may be required by the contracting department from time to time.

b. *Examination of Payrolls.* Each covered vendor shall permit representatives of the designated department or their designees to observe work being performed upon the work site, to interview employees and to examine the books and records relating to the payrolls being investigated.
(Ord. 1998 c. 5 § 7) Penalty, see § 24-11

24-7.3 Vendor Agreements.

At the time of signing a service contract with the City of Boston or subcontract with a vendor, the contract with the covered vendor must include the following:

a. The name of the program or project under which the contract or subcontract is being awarded;

b. A local contact name, address, and phone number for the covered vendor;

c. A written commitment by the covered vendor to pay all covered employees not less than the living wage, subject to adjustment each July 1, and to comply with the provisions of this Chapter;

d. A workforce profile of covered employees paid for by the service contract or subcontract including the employees' job titles with wage ranges, number of covered employees who are Boston residents, and the number of covered employees who are minorities and women;

e. A written narrative of the covered vendors' past efforts and future goals to hire low- and moderate-income Boston residents and train covered employees; the potential for advancement and raises for covered employees; the net increase and decrease in number of jobs or number of jobs maintained by classification that will result from the awarding of the service contract;

f. For service contracts, a list of all service subcontracts either awarded or that will be awarded to vendors with funds from the service contract. Any covered vendor awarded a service contract shall notify the contracting department within three (3) working days of signing a service subcontract with a vendor.
(Ord. 1998 c. 5 § 7) Penalty, see § 24-11

24-7.4 Reports.

Covered vendors shall provide quarterly reports to the designated department of their employment activities. Not-for-profit vendors with fifty (50) or more FTE's and all for-profit vendors shall be required to provide such reports biannually. These reports shall include:

a. The job positions charged to the service contract or service subcontract, the wage ranges of those positions;

b. The total number of Boston residents, women and minorities who are charged to the service contract or service subcontract;

The designated department shall submit a summary of said reports to the City Council and Living Wage Advisory Committee within thirty (30) working days following the end of each quarterly or biannual reporting period.
(Ord. 1998 c. 5 § 7; Ord. 2001 c. 8) Penalty, see § 24-11

24-8 LIVING WAGE ADVISORY COMMITTEE.

24-8.1 Purpose.

The purpose of the Living Wage Advisory Committee shall be to review the effectiveness of this Chapter in creating and retaining living wage jobs in Boston, to promote access to living wage jobs for low- and moderate-income Bostonians, to review the implementation and enforcement of this Chapter, and to make recommendations from time to time in connection therewith.
(Ord. 1998 c. 5 § 8)

24-8.2 Composition and Term.

The Living Wage Advisory Committee shall be comprised of seven (7) members who shall be appointed by the Mayor:

a. One (1) member of the Committee shall be a labor union member appointed by the Mayor from a list of three (3) nominees recommended by the Massachusetts AFL-CIO;

b. One (1) member of the Committee shall be a member of the Association of Community Organizations for Reform Now (ACORN) appointed by the Mayor from a list of three (3) nominees recommended by ACORN;

c. One (1) member of a community-based organization operating solely within the City of Boston;

d. One (1) member of the Greater Boston Chamber of Commerce appointed by the Mayor from a list of three (3) nominees recommended by the Chamber; and

e. One (1) member of the Boston Chamber of Neighborhood Commerce appointed by the Mayor from a list of three (3) nominees recommended by the Neighborhood Chamber.

Each member of this committee shall serve a three (3) year term.
(Ord. 1998 c. 5 § 8)

24-8.3 Meetings.

The Living Wage Advisory Committee shall meet quarterly and in special session as required. All meetings of the Living Wage Advisory Committee shall be open to the public under the Commonwealth's Open Meeting Law. The Committee shall promulgate regulations and rules which allow for public participation and testimony at hearings and meetings.
(Ord. 1998 c. 5 § 8)

24-8.4 Conflict of Interest.

For the purposes of this Chapter, no member of the Living Wage Advisory Committee shall participate

in any proceeding concerning a beneficiary, a covered vendor, a covered employee, or applicant for waiver or exemption, if the member or any member of his or her immediate family has a direct or indirect financial interest in said individual or in the award of a service contract, subcontract or assistance or the granting of relief to said individual.
(Ord. 1998 c. 5 § 8)

24-9 ENFORCEMENT POWERS.

If necessary for the enforcement of this Chapter, the designated department may issue subpoenas, compel the attendance and testimony of witnesses and production of books, papers, records and documents relating to payroll records necessary for hearing, investigations, and proceedings. The designated department may apply to a court of competent jurisdiction to enforce these provisions.
(Ord. 1998 c. 5 § 9)

24-10 COMPLAINT PROCEDURES AND INVESTIGATIONS.

24-10.1 Complaints.

a. A person or an employee who believes that he or she is a covered employee or a person who is an applicant for a position to be filled by a covered employee and believes that his or her employer is not complying with requirements of this Chapter applicable to the employee, may file a complaint with the designated department. Complaints by covered employees of alleged violations may be made at any time. Statements written or oral, made by an employee, shall be treated as confidential and shall not be disclosed to the covered vendor without the consent of the employee.

b. A complaint of noncompliance with this Chapter may be filed by any person with the designated department, which shall provide a copy of the complaint to each covered vendor against whom the complaint is made within five (5) business days.
(Ord. 1998 c. 5 § 10)

24-10.2 Discrimination Against Covered Employees Barred.

If a covered vendor: discharges; reduces the compensation of; or discriminates against any covered employee or any other person for making a complaint to the designated department, otherwise asserting his or her rights under this Chapter, participating in any of its proceedings, or using any civil remedies to enforce his or her rights under the Chapter, the covered vendor shall be considered in violation of this Chapter. The designated department shall investigate allegations of retaliation or discrimination and shall, if found to be true, after notice and a hearing order appropriate relief to the employee or person and penalties for the covered vendor and may suspend the contract or order the service contractor to suspend the subcontract.
(Ord. 1998 c. 5 § 10)

24-10.3 Investigations.

The designated department, or its designee shall investigate all complaints of noncompliance. Investigations may include routine reviews, spot checks, and investigations pursuant to complaints. The designated department, or its designee, shall have the responsibility to examine promptly all payrolls for compliance upon receiving a complaint, in furtherance of any investigation.
(Ord. 1998 c. 5 § 10)

24-10.4 Noncompliance.

a. If the designated department finds evidence that the covered vendor is not in compliance or has violated any of the provisions of this Chapter, the designated department shall order such remedial measures as required to ensure compliance herewith including, but not limited to: ordering back-pay to covered employees for noncompliance with Section 24-6, Living Wage Payment to Employees.

b. If the covered vendor does not comply with the designated department's order within ten (10) working days, the designated department shall review the facts of the finding and may proceed with a formal hearing and investigation. If a hearing is held by the designated department, the department shall review

remedies and penalties with the Living Wage Advisory Committee. If the designated department decides not to proceed with a hearing, it shall so notify the Living Wage Advisory Committee and provide a statement of the reasons for the decision.
(Ord. 1998 c. 5 § 10)

24-10.5 Living Wage Advisory Committee Compliance Review Hearings.

The Living Wage Advisory Committee shall determine the need for an additional public hearing on any recommendations by the designated department. If a hearing is deemed necessary, it shall be scheduled and conducted by the Committee, in conjunction with the designated department, within twenty (20) business days of the designated department's notification to the Committee of a covered vendor's noncompliance. The Committee shall file a notice of the hearing seven (7) working days before such hearing to the City Clerk, the covered vendor, and the complaining party or parties.
(Ord. 1998 c. 5 § 10)

24-11 PENALTIES AND REMEDIES.

a. In the event that the designated department determines, after notice and hearing, that any covered vendor has failed to pay the living wage rate or has otherwise violated the provisions of this Chapter, the designated department may order any or all of the following penalties and relief

1. Fines in the amount of three hundred ($300.00) dollars for each covered employee for each day that the covered vendor is in violation of this Chapter;

2. The filing of a complaint with the pertinent State or Federal agency;

3. Wage restitution for each affected employee;

4. Suspension of ongoing contracts and subcontract payments; and

5. Ineligibility for future contracts with the City for three (3) years or until all penalties and restitution have been paid in full;

6. Any other action deemed appropriate and within the discretion and authority of the City.

b. *Remedies Herein Non-Exclusive.* No remedy set forth in this Chapter is intended to be exclusive or a prerequisite for asserting a claim for relief to enforce the right granted under this Chapter in a court of law. This Chapter shall not be construed to limit an employee's right to bring common law cause of action for wrongful termination.
(Ord. 1998 c. 5 § 11)

24-12 EARNED INCOME CREDIT NOTIFICATION.

Covered vendors and beneficiaries shall inform covered employees earning less than twelve ($12.00) dollars per hour, or such other amount as determined by the designated department, of their possible eligibility for the State and/or Federal Earned Income Credit ("EIC").
(Ord. 1998 c. 5 § 12)

24-13 SEVERABILITY.

In the event any provision of this Chapter shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provisions hereof.
(Ord. 1998 c. 5 § 13)

24-14 EFFECTIVE DATE.

This Chapter shall be effective upon its passage.
(Ord. 1998 c. 5 § 14)