

**ORDINANCE
CITY OF SAINT PAUL, MINNESOTA**

Presented By _____

An ordinance adding
Chapter 98 to the
Saint Paul Administrative Code
for the purpose of establishing Saint Paul’s Living Wage Requirements

THE COUNCIL OF THE CITY OF SAINT PAUL DOES ORDAIN

Section 1

Chapter 98 of the Saint Paul Administrative Code is hereby amended to include the following new chapter:

Chapter 98. Living Wage

Sec. 98.01. SHORT TITLE.

This Ordinance shall be called the “Saint Paul Living Wage and Responsible Public Spending Ordinance.”

Sec. 98.02. PURPOSE.

Recognizing that the City awards business subsidies and is a major contractor for services, the City enacts this Ordinance to promote the creation and retention of living wages and full time positions, and to increase the wages of service employees and employees whose employers are subsidized by the City or whose employer enters into a contract with the City in order to improve public health and welfare, promote the economic strength of the City, and reduce the pressure on governmental services and programs. Nothing in this Chapter shall abrogate or modify any rights or obligations specified in Chapter 85 of the Saint Paul Administrative Code.

41
42 **Sec. 98.03. DEFINITIONS.**
43

- 44 A. “Basic health insurance” means (1) an insurance or self-insured group health plan
45 [including any federally approved self-funded plan established under the Employee](#)
46 [Retirement Income Security Act of 1974 \(ERISA\) as amended](#) where an employer
47 pays at least seventy-five (75) percent of the premium for individual coverage
48 plus fifty (50) percent of the premium for family coverage; deductibles and out-of-
49 pocket maximums cannot be greater than those allowed by the Internal Revenue
50 Service for Health Reimbursement Arrangements and plan design must meet the
51 minimum required by Health Reimbursement Arrangements and State Law (2) a
52 deductible insurance plan offered by an employer where in-network deductibles
53 do not exceed twenty-five (25) percent for office visits, inpatient care, outpatient
54 care and/or urgent/emergency care, there is a one thousand five hundred dollars
55 (\$1,500.00) out of pocket maximum for individual and three thousand dollars
56 (\$3,000.00) out of pocket maximum for family, and any out-of-network
57 deductible plan's out-of-pocket maximum does not exceed two thousand dollars
58 (\$2,000.00) for individual and four thousand dollars (\$4,000.00) for family; or (3)
59 an employer offers a health plan not less in value than that provided to first level
60 supervisory employees provided that the benefit costs employers a minimum of
61 seventy-five (75) percent of the difference between one hundred ten (110) percent
62 and one hundred thirty (130) percent of the federal poverty level for a family of
63 four (4).
64
- 65 B. “City” means the City of Saint Paul and the Housing and Redevelopment
66 Authority of the City of Saint Paul, Minnesota.
67
- 68 C. “City Contractor” means a for-profit or not-for-profit entity or person that is a
69 party to a City Contract.
70
- 71 D. “City Contract” means a contract for services and any amendments thereto
72 between the City and City Contractor not covered by Section 82.07 of the
73 Administrative Code with the City valued in the aggregate at \$100,000 or more. A
74 City Contract does not include (a) a contract whereby the City Contractor
75 manages City owned land and/or improvements on behalf of the City’s parks
76 department and the City Contractor pays a portion of the revenues to the City or
77 (b) a contract whereby the City Contractor provides depository and/or financial
78 services to the City, or (c) a contract whereby the City Contractor provides
79 contract health care benefits to city employees. Nothing in this Chapter shall
80 abrogate or modify any rights or obligations specified in Chapter 85 of the City’s
81 Administrative Code.
82
- 83 E. “City Business Subsidy” means any of the following extended by the City to a
84 recipient with a value of \$100,000 or more: (a) a grant, (b) a contribution of
85 personal property, (c) a contribution of real property, (d) with respect to a loan
86 given by the City, the present value of the difference in the interest rate given by
87 the City and that rate commercially available to the recipient, (e) any reduction or
88 deferral of any tax, assessment or fee, (f) any guarantee of any payment under
89 any loan, lease, or other obligation, (g) tax increment financing, (h) the issuance
90 of revenue bonds, (i) tax credits, or (j) other City participation. Conduit bonds
91 and infrastructure are not a City Business Subsidy.

- 92
- 93 F. “City Business Subsidy Recipient” means a for-profit or not-for-profit entity that
- 94 receives a City Business Subsidy.
- 95
- 96 G. “City Subcontract” means a contract for services between a City Contractor and
- 97 City Subcontractor valued at \$100,000 or more to perform a portion of the
- 98 services described in a City Contract.
- 99
- 100 H. “City Subcontractor” means a for-profit or not-for-profit entity or person that is a
- 101 party to a City Subcontract.
- 102
- 103 I. “Job readiness and training services” means services whose purpose and intent is
- 104 to help individuals establish a stable work history by addressing the social and
- 105 economic barriers to employability, including training, apprenticeship, and
- 106 adequate day care.
- 107
- 108 J. “Sole source” means a source of products or services that is the only viable
- 109 market option for the City.
- 110
- 111 K. “Tenant” means the initial for-profit or not-for-profit entity or person that leases
- 112 from a City Business Subsidy Recipient space in the specific location for which
- 113 the City Business Subsidy was provided, or if there is more than one such initial
- 114 entity or person then it means the entity or person that leases the greatest amount
- 115 of space and any entity or person that leases space of 15,000 or more square
- 116 feet.
- 117
- 118 L. “Tenant Subcontractor” means a person, other than an employee of a Tenant, who
- 119 performs services at the specific location for which the City Business Subsidy
- 120 was provided under a contract between that person or that person’s employer and
- 121 a Tenant.
- 122

123 **Sec. 98.04. . LIVING WAGE/JOB CREATION AND RETENTION**

124

125 A. PAYMENT OF LIVING WAGE

126

- 127 1. City Contract; City Subcontract. Any City Contract, or City Subcontract
- 128 must require City Contractors and City Subcontractors to pay an hourly
- 129 wage that is at least the living wage for the duration of the contract to each
- 130 employee who is working pursuant to the City Contract or City
- 131 Subcontract or who is employed in the specific location for which the City
- 132 Contract or City Subcontract is intended to benefit.
- 133
- 134 2. City Business Subsidy. Any City Business Subsidy Recipient and Tenant
- 135 must agree to pay an hourly rate that is at least the living wage to each
- 136 employee who is employed in the location for which the City Business
- 137 Subsidy was provided and a Tenant must pay at least a living wage to each
- 138 Tenant Subcontractor for the longer of the following: (a) the duration of
- 139 the City Business Subsidy Agreement, or (b) three years.
- 140

141 B. CALCULATION OF LIVING WAGE

142
143 The living wage shall be a wage level equivalent to at least 130 percent of the federal
144 poverty level for a family of four. For employers that provide employees basic health
145 insurance, the living wage shall be a wage level equivalent to at least 110 percent of the
146 federal poverty level for a family of four. The living wage shall be based on the then
147 current federal poverty level and shall be adjusted within one week after the federal
148 government adjusts the rate.

149
150 C. JOB CREATION AND RETENTION

151
152 A City Business Subsidy Recipient must enter into a City Business Subsidy agreement
153 with the City that includes:

- 154
155 (1) a description of the subsidy;
156 (2) a statement of the public purpose for the subsidy;
157 (3) goals for the number of jobs created and/or retained; and
158 (4) wage goals for any jobs created and/or retained.

159
160 D. APPROVAL OF CITY CONTRACT AND CITY BUSINESS SUBSIDY

161
162 All City Contracts and City Business Subsidies must be approved by the Saint Paul City
163 Council and/or the Board of Commissioners of the Housing and Redevelopment Authority of the
164 City of Saint Paul, Minnesota by a resolution approving a budget or the City Contract or City
165 Business Subsidy.

166
167 E. EXEMPTIONS

- 168
169 1. Entities. The following entities are exempt from the living wage requirement:
170
171 a. any incorporated entity, organized for profit, that falls within the definition
172 of a small business under Minnesota Statute 645.445;
173
174 b. any 501 (c) entity which falls under the criteria laid out in Minnesota
175 Statute 645.445, subdivision 2;
176
177 c. a recipient of a City Contract, City Business Subsidy or City Subcontract
178 that contains an express provision that the purpose of the contract or
179 subsidy is job readiness and training services and that the recipient is
180 exempt from the living wage requirement;
181
182 d. any recipient of a City Contract, City Business Subsidy or City
183 Subcontract for whom the City Council determines that application of the
184 living wage requirement would conflict with a state or federal law or
185 program requirement;
186
187 e. any recipient of a City Contract, City Business Subsidy or City
188 Subcontract which is bound by a collective bargaining agreement for the
189 period of the contract or the subsidy;

- 190 f. any recipient that is an intermediary, such as a community development
191 corporation, community investment group, or community bank, which
192 serves as a pass-through agency for the granting of assistance;
193
194 g. 501 (c) entities that are sole source providers of product or service.
195

196 2. Employees.
197

198 a. A recipient of a City Contract, City Subcontract, or City Business Subsidy and a Tenant may
199 request and obtain exemptions from the living wage requirements for the following types of
200 employees:
201

202 1. Temporary internships or similar positions that are intended to provide career
203 exposure to new entrants to the workforce, lasting no more than 12 consecutive months;

204 2. Individuals who are placed with the employer as the result of a job readiness or job
205 training program or who are participants in an employment program that provides work
206 opportunities for those with serious mental and physical barriers to employment or similar
207 employer sponsored work opportunity program for individuals with serious mental and physical
208 barriers to employment;

209 3. Seasonal, part-time or temporary employees whose employment does not reduce or
210 offset the work of permanent employees, on the conditions that (a) no more than ten percent
211 (10%) of such seasonal, part-time or temporary employees can be exempted, and (b) that the City
212 Contractor, City Subcontractor or City Business Subsidy Recipient is not intending to utilize
213 such labor to avoid the requirements of this ordinance.
214

215 F. ENFORCEMENT
216

217 1. Any recipient of a City Contract or City Subcontract that fails to meet the
218 living wage requirements of this Ordinance at any time during the duration
219 of the contract, and any City Business Subsidy Recipient that fails to meet
220 the living wage or wage goals and other requirements of this Ordinance at
221 any time during the duration of the subsidy, shall (a) not be eligible for a
222 City Business Subsidy or City Contract in the next contract cycle or the
223 next calendar year; and (b) shall repay to the city an amount determined as
224 follows: the entire value of the contract or subsidy if compliance is less
225 than 50% of the requirement, one-half of the value of the contract or
226 subsidy if compliance is 50% or more but less than 80% of the
227 requirement, and proportionate to the value of the contract or subsidy if
228 compliance is 80% or more but less than 100% of the requirement.
229

230 2. No City Contractor, City Subcontractor City Business Subsidy Recipient
231 or Tenant shall discharge, demote, harass, or otherwise take adverse action
232 against any individual because such individual seeks enforcement of the
233 living wage requirement or testifies, assists, or participates in any manner
234 in an investigation, hearing, or other proceeding to enforce this Ordinance.
235

236 3. No City Contractor, City Subcontractor City Business Subsidy Recipient
237 or Tenant shall split or subdivide a contract or subsidy, pay an employee
238 through a third party, or treat an employee as a subcontractor or
239 independent contractor to avoid payment of a living wage.
240

241 4. This Ordinance shall be enforced by the Department of Planning and
242 Economic Development, or its successor agency, with respect to a City
243 Business Subsidy, which shall propose regulations for Council approval as
244 are necessary to implement and administer compliance with the City
245 Business Subsidy. This Ordinance shall be enforced by the Office of
246 Financial Services or its successor agency, with respect to a City Contract,
247 which shall propose regulations for Council approval as are necessary to
248 implement and administer compliance with the City Contract.
249 Enforcement shall include but not be limited to receiving, investigating
250 and attempting to resolve complaints by employees and Tenant
251 Subcontractors.

252
253 5. Any recipient of a City Contract or City Business Subsidy or City
254 Subcontract or Tenant shall provide written notice to its employees that
255 they may be covered by the terms of this Ordinance as specified in section
256 98.04 (A) and shall also provide its employees a written copy of this
257 Ordinance.

258

259 **Sec. 98.05. APPLICATION.**

260

261 This Ordinance shall apply to any City Contract, City Subcontract or City Business Subsidy
262 executed after the effective date of this Ordinance.

263

264 **Sec. 98.06 SEVERABILITY.**

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266 If any provision or application of this Ordinance is declared illegal, invalid, or inoperative, in
267 whole or in part, by any court of competent jurisdiction, the remaining provisions and portions
268 thereof and applications not declared illegal, invalid, or inoperative shall remain in force or
269 effect.

270

271 **Sec. 98.07. WAIVER FOR CITY BUSINESS SUBSIDY.**

272

273 **A. PRIOR TO EXECUTION OF CITY BUSINESS SUBSIDY AGREEMENT**

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275 The requirements of this Ordinance may be waived in whole or in part by the City Council or
276 HRA Board of Commissioners prior to the execution of a City Contract or City Business Subsidy
277 agreement after a public hearing, consideration of both advantages and disadvantages of a
278 waiver, and upon a finding of a compelling public purpose.

279

280 **B. AFTER EXECUTION OF CITY BUSINESS SUBSIDY AGREEMENT**

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282 Any City Business Subsidy Recipient who can demonstrate that it will suffer an economic
283 hardship due to the occurrence of significant unforeseen circumstances beyond the control of the
284 City Business Subsidy Recipient that have occurred subsequent to the City Business Subsidy
285 agreement may request a waiver from the requirements of this Act and such waiver may be given
286 by the City Council or HRA Board of Commissioners.

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Section 2

This Ordinance adding Administrative Code Chapter 98 shall become effective thirty (30) days after passage, approval and publication as provided in the City Charter, Section 6.11.

	Yeas	Nays	Absent
Benanav			
Bostrom			
Harris			
Helgen			
Lantry			
Montgomery			
Thune			

Requested by Department of:

By: _____

Form Approved by City Attorney

By: _____

Adopted by Council: Date _____

Adoption Certified by Council Secretary

By: _____

Approved by Mayor: Date _____

By: _____

Form Approved by Mayor for Submission to Council

By: _____

Summary of Saint Paul Living Wage Ordinance

January 31, 2018

The Saint Paul City Council has adopted a new Living Wage Ordinance (File 06-1071). This Ordinance replaces the Living Wage Resolution passed by the Council in 1997 for contracts executed and subsidies given after February 14, 2007.

Application

- The Ordinance applies to the “City” which includes both the City of Saint Paul and the Housing and Redevelopment Authority of the City of Saint Paul, Minnesota.
- The Ordinance applies to a (a) City Contract which means a contract and any amendments for services not covered by Administrative Code Section 82.07 valued in the aggregate at \$100,000 or more. A City Contract does not include certain contracts of the Parks Department and Office of Financial Services or contract health care benefits.
(b) City Business Subsidy which means financial assistance with a value of \$100,000 or more in any of the following forms: grant; contribution of personal or real property; reduction in interest rates on a loan which is the present value of the difference in the interest rate given by the City and that rate commercially available to the recipient; reduction or deferral of any tax, assessment or fee; guaranty of any loan, lease or other obligation; tax increment financing; revenue bonds; tax credits; or other City participation. Conduit bonds and infrastructure are not a City Business Subsidy.
(c) City Subcontract which means a contract for services valued at \$100,000 or more to perform a portion of the services described in a City Contract.
(d) Tenant which means the initial for-profit or not-for-profit entity or person that leases from a City Business Subsidy recipient space in the specific location for which the subsidy was given, and if there is more than one such initial entity or person, it means the entity or person that leases the greatest amount of space and any entity or person that leases space of 15,000 or more square feet.

Requirements-Payment of Living Wage

- Any City Contract or City Subcontract must require payment of a living wage for the duration of a contract to each employee who is working pursuant to the contract or subcontract or who is employed in the specific location for which the contract or subcontract is intended to benefit.
- Any recipient of a City Business Subsidy and Tenant must pay a living wage to each employee (and in the case of a Tenant to an independent contractor as well) who is employed in the location for which the subsidy was provided for the longer of the duration of a City Business Subsidy or 3 years.
- A living wage is 130 percent of the federal poverty level for a family of four (**\$15.68 for 2018**) or 110 percent (**\$13.27 for 2018**) if the employer provides basic health insurance as that term is defined in the Ordinance.

Exemptions:

- Entities- The following entities are exempt from paying a living wage: for-profit entity that qualifies as a small business under Minn Stat 645.445; 501(c) entity that qualifies under Minn Stat 645.445, subd. 2; a recipient of a job readiness and training services contract; a recipient bound by a collective bargaining agreement; an intermediary such as a community development corporation, community investment group or community bank, who serve as a pass-through agency for the assistance; and 501(c) entities that are sole source providers of product or service.
- Employees- A recipient of a City Contract, City Subcontract or City Business Subsidy and a Tenant may request and obtain from the City Council exemptions from paying a living wage to the following types of employees: (a) temporary internships

Summary of Saint Paul Living Wage Ordinance

January 31, 2018

intended to provide career exposure to new entrants to the workforce lasting no more than 12 consecutive months; (b) individuals placed as a result of a job readiness or job training program or those persons with serious mental and physical barriers to employment; and (c) seasonal, part-time or temporary employees whose employment does not reduce or offset the work of permanent employees provided that no more than 10 percent of such employees can be exempted and use of such employees is not intended to avoid the requirements of the Ordinance.

Waiver

- The requirements of the Ordinance may be waived by the City Council or HRA Board prior to the execution of a City Contract or City Business Subsidy after a public hearing and a finding of a compelling public purpose.
- After the execution of a City Business Subsidy a recipient who can demonstrate it will suffer an economic hardship due to the occurrence of significant unforeseen circumstances beyond its control may request a waiver.

Reporting

- A yearly report on compliance will be required by all recipients for the duration of its obligation to pay living wages.

Enforcement/Penalties

- PED will enforce the Ordinance with respect to a City Business Subsidy and will propose regulations to the City Council to administer compliance.
- Office of Financial Services will enforce the Ordinance with respect to a City Contract and will propose regulations to the City Council to administer compliance.
- Any recipient of a City Contract, City Business Subsidy, City Subcontract or Tenant must provide written notice to its employees of the Ordinance and a copy of the Ordinance.
- Any recipient that fails to meet the living wage requirements of the Ordinance is not eligible for a City Contract or City Business Subsidy in the next contract cycle or calendar year; and must repay a portion of the contract or subsidy depending on the level of non compliance.

645.445 Small business; definitions

Subd. 2. Small business. "Small business" means a business entity organized for profit, including but not limited to any individual, partnership, corporation, joint venture, association or cooperative, which entity:

- (a) Is not an affiliate or subsidiary of a business dominant in its field of operation; and
- (b) Has 20 or fewer full-time employees; or
- (c) In the preceding fiscal year has not had more than the equivalent of \$ 1,000,000 in annual gross revenues; or
- (d) If the business is a technical or professional service, shall not have had more than the equivalent of \$ 2,500,000 in annual gross revenues in the preceding fiscal year.

Subd. 3. Dominant in field of operation. "Dominant in its field of operation" means having more than 20 full-time employees and more than \$ 1,000,000 in annual gross revenues or \$ 2,500,000 in annual gross revenues if a technical or professional service.

Subd. 4. Affiliate or subsidiary of business dominant in field of operation. "Affiliate or subsidiary of a business dominant in its field of operation" means a business which is at least 20 percent owned by a business dominant in its field of operation, or by partners, officers, directors, majority stockholders, or their equivalent, of a business dominant in that field of operation.

ADDITIONAL REQUIREMENTS

The Living Wage requirement begins when the contract to receive the City business subsidy is signed and lasts until either the duration of the City business subsidy or three years, whichever is longer.

An employer providing services to the City cannot restrict payment of living wage only to the time and place during which City services are provided. Living wage must be paid to all employees all of the time until either the contract expires, the project is complete, or the duration of three years, depending on the nature of the contract and language in the contract.

When an employer becomes subject to the ordinance, living wage must be provided to all the employees. An employer cannot separate the workforce or, in the case of a business providing services to the City, cannot bifurcate the workforce into two groups, in which only one group provides the City services and receives living wage and the other group does not.

Similarly, Living Wage will apply to every facet of an employer's business operation during the time the living wage requirement is in force. An employer is not allowed to split or divide his or her business operations into separate components in order to avoid paying living wage.

A City Business Subsidy recipient may not split a project up into multiple phases for purposes of avoiding the Living Wage ordinance.

When calculating living wage for their employees, an employer may take into account health insurance only when it is in fact provided to the workforce; it is not enough that it is offered.

Independent Contractors vs. Employees

Procedure for Investigation

The Labor Standards Unit will initiate an investigation based on its own findings or after receiving a complaint from a worker that they are not being paid living wage. In either case, the City will interview the complainant, the other workers of the employer subject to the living wage ordinance, and the employer or employer's representative.

The Labor Standards Unit may request payroll records from the employer. The Labor Standards Unit will review the workers' paystubs and bank records and compare these against the employer's records. If a discrepancy exists that demonstrates the worker(s) was not paid the living wage, the Labor Standards Unit shall provide a written letter or email to the employer specifying the amount of money owed to the worker(s) and the basis for the finding. The Labor Standards Unit shall afford the employer 14 days to review the findings and provide an opportunity to respond. If the contractor does not contest the findings within 14 days, or does not otherwise respond to the Labor Standards Unit's findings within said time, it shall be considered final. The employer will be required to provide restitution to the worker(s) and provide documentation of the restitution to the Labor Standards Unit within 30 days from the initial 14 days to contest the findings. Upon the employer's request, the Labor Standards Unit will arrange for a meeting with the employer to review the evidence for the violation to ensure the allegations are accurate.

If the employer contests the findings within 14 days, the Labor Standards Unit shall review and respond within a reasonable amount of time to consider the employer's position. If the Labor Standards Unit does not change its findings after the reconsideration, the contractor shall provide restitution within 30 days from issuance of the reconsideration from HREEO.

Failure of the contractor to maintain adequate payroll records will be prima facie evidence that the employer's workers were not paid the living wage, at which point the burden will be on the employer to demonstrate they paid the living wage to the affected workers. It is the responsibility of the employer to maintain payroll records sufficient for the Labor Standards Unit to make a reasonable determination.

All information gathered during the investigation is confidential unless otherwise subject to state and local public data laws.

Upon completion of fact finding and investigation, the Labor Standards Unit will compose and distribute a written determination of the findings, conclusions, and remedies, if applicable, to every party.

Appeal

If the employer appealed the initial determination and disagrees with HREEO's reconsideration, the employer has the right to appeal the reconsideration to the Deputy Director of HREEO within 14 calendar days. The request for appeal must be in writing and specifically state what parts of the determination the appellant believes are erroneous. Within 30 days the Deputy Director of HREEO shall issue a decision to the appeal. The Deputy Director of HREEO will reverse the Labor Standards determination only if it is clearly erroneous.