

ORDINANCE #65597
Board Bill No. 43
Floor Substitute

An ordinance repealing Ordinance #65045 pertaining to a living wage and enacting in lieu thereof a new ordinance establishing the St. Louis Living Wage Law requiring employers benefiting from certain taxpayer-funded contracts with the City of St. Louis or benefiting from multi-million dollar awards of taxpayer-funded financial assistance to pay their employees a living wage equal to 130% of the Federal Poverty Guidelines for a family of three. Also prohibiting such recipients and contractors from using City funds to support or oppose unionization, providing for a City Compliance Official, and containing definitions, implementation, enforcement and penalty provisions, a severability clause and an effective date.

NOW THEREFORE BE IT ORDAINED BY THE CITY OF ST. LOUIS AS FOLLOWS:

SECTION ONE. Ordinance 65045 is hereby repealed and in lieu thereof the following provisions are enacted, to-wit:

SECTION TWO. DEFINITIONS AND APPLICABILITY

(A) This Ordinance applies to any individual, proprietorship, partnership, corporation, trust, association or other entity that is a Contractor or City Financial Assistance Recipient (CFAR), as defined:

(i) A Contractor is a party to a contract with the City of St. Louis and/or a City Agency that is entered into after the effective date of the provisions of this Ordinance and that is primarily for the furnishing of services, provided that contracts for the purchase or lease of goods, public works contracts for construction, contracts for the provision of goods and services by utilities subject to federal and/or state regulatory oversight and their affiliates, the provision of health, workers compensation and other benefits to employees of the City of St. Louis and contracts for the provision of medical services to inmates of city correctional facilities and incarcerated persons under the control of City public safety agencies shall not constitute the furnishing of services for purposes of this Ordinance, and where the total value of such contract(s) is \$50,000 or more in a twelve-month period. Utilities shall include, but not be limited to, electric, gas, sewer, telecommunications, water and similar services. Where during any twelve-month period an entity receives more than one contract from the City for the provision of the same or similar services, the value of the contracts shall be aggregated to determine whether this threshold is met. Any subcontractor that assists a Contractor in furnishing the services that are the subject of such a contract shall be deemed a Contractor for the purposes of this definition. An entity that receives or enters into one or more contracts triggering coverage under this definition shall be deemed a Contractor for the duration of the contracts.

(ii) This definition of Contractor shall include any party to a written agreement (including, without limitation, any lease, concession, franchise or easement agreement) with the St. Louis Airport Commission, the City of St. Louis and/or a City Agency that is entered into after the effective date of the provisions of this Ordinance, that is for the use of real property that is under the jurisdiction of the St. Louis Airport Commission, and where the total value of such agreement (including all lease or concession payments and other payments made) over a twelve-month period is \$50,000 or more, regardless whether such value accrues to the benefit of the party or to the City of St. Louis as in the case of a lease or concession agreement. This definition of Contractor shall also include (a) any party to a sublease or other agreement with a Contractor allowing the party the use of real property that is under the jurisdiction of the St. Louis Airport Commission, or (b) any party to a subcontract or contract with a Contractor to perform services on property that is under the jurisdiction of the St. Louis Airport Commission. The provisions of this section shall not apply to any lease between the City or the Airport Commission and any regional, national or international airline.

(iii) A City Financial Assistance Recipient (CFAR) is a recipient of any financial assistance from the City of St. Louis and/or a City Agency awarded after the effective date of the provisions of this Ordinance that has a present value of at least \$20,000,000 over the term of the assistance, and where the primary purpose of the assistance is economic development or job growth. Financial assistance includes any financial assistance administered by the City or a City Agency including any federal grant program, tax increment financing, revenue bond financing, tax abatements, tax credits, grants, loans or any other form of financial assistance. Where an entity receives more than one award of City financial assistance within a twelve-month period, the value of the financial assistance awards shall be aggregated to determine whether this threshold is met. Any contractor, subcontractor, tenant or concessionaire of a CFAR that employs persons at a CFAR's subsidized site and that benefits significantly from the City-awarded financial assistance shall be deemed a CFAR for the purposes of this definition. Where an entity receives City financial assistance to retain or create jobs or to provide a service, and then contracts with another entity to retain or create those jobs or to provide that service, the contracting firm will be presumed to benefit significantly from the City financial assistance. Where City financial assistance is awarded to support a facility intended to be occupied chiefly by a single major tenant, that tenant will be presumed to

benefit significantly from the City financial assistance. Where City financial assistance is awarded to finance the construction of a stadium and/or related entertainment or retail facilities contained within the stadium, any contractor, subcontractor, tenant or concessionaire operating at the subsidized stadium or related facilities will be presumed to benefit significantly from the City financial assistance in light of the unique business location and customer base that the City-financed project makes available to them. Beyond these enumerated circumstances, a contractor, subcontractor, tenant or concessionaire of a CFAR will be deemed to benefit significantly from the City-awarded financial assistance and will therefore be subject to the requirements of this Ordinance only where the City determines that such would be the case at the time the financial assistance is awarded and apprises the recipient CFAR of that determination. An entity that receives City financial assistance triggering coverage under this definition shall be deemed a CFAR for the period of time during which the financial assistance that triggers coverage is received or, if the financial assistance has no specified duration, for five years.

(iv) Notwithstanding the foregoing, a not-for-profit organization that provides social or human services for disadvantaged residents of St. Louis pursuant to a contract or with financial assistance from the City and the contractors and subcontractors of such an organization shall not be deemed a Contractor or CFAR for the purposes of this Ordinance. "Not-for-profit organization" means a corporation having tax-exempt status under section 501(c)(3) of the United States Internal Revenue Code and recognized under Missouri state not-for-profit law. An organization is deemed to be providing social or human services for disadvantaged residents if the primary purpose of its work is to provide in-home or agency-based services such as food, housing, health care or training to vulnerable residents such as youth, low-income, elderly, ill or disabled individuals.

(B) The wage and benefits requirements of this ordinance shall apply (i) to any employee of a Contractor for all hours that the employee is employed performing work related to the covered contract or concession agreement (but shall include hours employed performing general overhead or administrative services related to the City contract only where such hours total at least 10 hours for the employee in a given week and can be clearly identified and allocated to the City contract); and (ii) to any employee of a CFAR for all hours that the employee is employed performing work in connection with any job site covered or subsidized in whole or in part by a covered award of financial assistance from the City. An employee is any person who performs work on a full-time, part-time, temporary, or seasonal basis, and includes employees, independent contractors, and contingent or contracted workers, including persons made available to work through the services of a staffing, temporary, or employment agency. This provision shall not apply to interns.

(C) For purposes of this Ordinance, a "City Agency" shall include any agency, office, position, administration, department, division, bureau, board, commission, or other unit, affiliate, or subdivision of the City, and any other entity over which majority control is exercised by officers or employees of the City or by their appointees, or which awards contracts or financial assistance that is funded by the City. This definition shall include any Department of the City, the City of St. Louis Airport Authority, the Planned Industrial Expansion Authority, the Land Clearance for Redevelopment Authority, the Industrial Development Authority, the Community Development Agency, the Local Development Company and the St. Louis Development Corporation.

SECTION THREE. LIVING WAGE AND OTHER REQUIREMENTS

(A) Each Contractor and CFAR shall pay its employees wages that are no less than a living wage as defined in this Ordinance or wages that are at least equal to the wages required under Chapter 6.20 of the Revised Code of the City of St. Louis, whichever is greater.

(B) A living wage means an hourly wage rate which on an annual basis (based on forty hours per week, fifty-two weeks per year) is equivalent to 130% of the federal Poverty Guidelines for a family of three, as updated annually in the Federal Register by the U.S. Department of Health and Human Services, if the employee also receives health benefits from the employer. Health benefits, for the purposes of this ordinance, means receipt of health care benefits for the covered employee and/or his or her dependents where the employer's contribution to the benefits package, for each hour worked, is valued at no less than the hourly prevailing fringe benefits rate defined under the City's prevailing wage law, chapter 6.20 of the revised code of the City of St. Louis, as adjusted periodically. If health benefits are offered as provided by this ordinance, an employee shall not have the option of choosing to higher wages in lieu of the health benefits. In determining the living wage an employer is required to pay a tipped employee, the amount paid such employee shall be an amount equal to:

(1) The hourly cash wage paid such employee which for purposes of such determination shall be not less than 50% of the value of the living wage required for non-tipped employees as defined herein and adjusted annually;

(2) An additional amount on account of the tips received by such employee which amount is at least equal to 50% of the value of the living wage required for non-tipped employees. The additional amount on account of tips may not exceed the value

of the tips actually received by an employee. The preceding two (2) sentences shall not apply with respect to any tipped employee unless such employee has been informed by the employer of the provisions of this subsection, and all tips received by such employee have been retained by the employee, except that this subsection shall not be construed to prohibit the pooling of tips among employees who customarily and regularly receive tips.

(C) If health benefits are not provided, each Contractor and CFAR shall pay its covered employees a wage no less than an hourly wage equal to the sum of the living wage for employees with health benefits as defined in (B) above, plus the prevailing fringe benefits rate defined under the City's prevailing wage law, chapter 6.20 of the revised code of the City of St. Louis, as adjusted periodically.

(D) The City Compliance Official (CCO) shall adjust the living wage rate annually no later than April 1 to incorporate changes in the federal poverty guidelines. The CCO shall publish a bulletin announcing any change in the amount of the living wage and in the prevailing fringe benefits rate defined under the City's prevailing wage law, and shall inform each Contractor and CFAR of such changes in writing prior to such adjustment becoming effective. In the event that the City ever ceases determining the prevailing fringe benefits rate currently defined under the City's prevailing wage law, the prevailing fringe benefits rate for the purposes of this Ordinance shall be the hourly prevailing fringe benefits rate for employees in the St. Louis metropolitan area as determined pursuant to the federal Service Contract Act, 41 U.S.C. Section 351 et seq., as amended.

(E) It shall be unlawful for any employer, an employer's agent or representative, or any other party to take any action against an individual in retaliation for the exercise of rights protected under this Ordinance. Rights protected under this Ordinance shall include the freedom to inform others of their potential rights under this Ordinance, and to assist them in asserting those rights. This protection shall also apply to any individual who mistakenly, but in good faith, alleges noncompliance with this Ordinance. Taking adverse action against an individual within sixty (60) days of the individual's exercise of rights protected under this Ordinance shall raise a rebuttable presumption of having done so in retaliation for the exercise of those rights. Contractors and CFAR's shall also be in compliance with other applicable federal, state and local labor and workplace laws.

(F) No Contractor or CFAR shall, directly or indirectly, use any City financial assistance or payments for the purpose of persuading employees to support or oppose unionization. In particular, financial assistance or payments received from City of St. Louis shall not be used to schedule or hold meetings related to union representation during employees' working hours. However, this restriction shall not apply to any expenditure made in the course of good faith collective bargaining, or to any expenditure pursuant to obligations incurred under a bona fide collective bargaining agreement. Where a Contractor or CFAR operates on property owned or controlled by the City then, in order to ensure that publicly owned or controlled space is used in a viewpoint-neutral fashion, a labor union shall be allowed the same opportunity to communicate with employees as is enjoyed by the Contractor or CFAR, including the right to have access to the premises, post notices, distribute literature, and use the premises to hold meetings with employees.

(G) All of the provisions of this Ordinance, or any part hereof, may be waived in a bona fide collective bargaining agreement, but only if the waiver is explicitly set forth in such agreement in clear and unambiguous terms.

SECTION FOUR. IMPLEMENTATION AND ENFORCEMENT

(A) The provisions of this Ordinance shall augment the City's normal and customary procedure for administering its contracts and economic development assistance programs. The Mayor shall designate a City Compliance Official (CCO) as the City agency and/or individual with primary responsibility for administering, implementing and enforcing this Ordinance, including coordinating and ensuring effective compliance by all City-affiliated agencies, provided that the CCO shall not be the St. Louis Development Corporation. The CCO shall promulgate implementing rules, regulations, forms, bid and contract provisions, and other materials, as appropriate, consistent with this Ordinance, which shall be binding on City agencies, Contractors, CFAR's, employees, and all other parties affected by this Ordinance. Subject to the requirements of this Ordinance, the rules and regulations shall establish procedures for monitoring the operations of Contractors and CFAR's, and their covered subcontractors and tenants, to ensure compliance with this Ordinance, and shall establish procedures for regular review of payroll records and investigation and resolution of specific concerns or complaints about the employment practices of Contractors and CFAR's, and their covered subcontractors and tenants. The rules and regulations shall require Contractors, CFAR's and their covered subcontractors and tenants to submit reports to the City at least annually identifying: their covered employees and the wages and benefits that they are paid; and the number of employees based at the site that is performing the service contract or receiving the financial assistance that are paid less than the living wage and a brief explanation of why they are believed not to be covered by this Ordinance. Where the CCO deems appropriate or necessary, the implementing rules and regulations may include interpretive or legislative rules and regulations that explain and clarify the substantive requirements of this Ordinance. Implementing rules, regulations, forms, bid and contract provisions, and other

materials promulgated by the CCO shall be subject to public hearing, and to review and comment by the Board of Aldermen, before they take effect. Upon receipt of said materials, the Board of Aldermen shall have sixty (60) days to make such review and comment. Where the CCO deems appropriate, and to the extent permitted by law, the CCO may assign its authority over any particular implementation function to another body, agency, or individual. Such rules or regulations shall have the force and effect of law and may be relied on by Contractors and CFAR's and other parties in order to determine their obligations under this Ordinance. By April 1st of each year, the CCO shall make available to the public and submit to the Board of Aldermen annual reports on the implementation and enforcement of this Ordinance during the preceding calendar year.

(B) A not-for-profit organization as defined in Subparagraph (A)(iv) above may appeal a determination that it is covered under this Ordinance to the CCO .

(C) This Ordinance is intended to establish civil obligations on covered parties, and the remedies authorized for violations shall be civil, not penal or criminal. Employers covered under this Ordinance shall be obligated to maintain payroll records documenting wages and benefits received by employees. In the absence of adequate evidence of wages and benefits paid, it shall be presumed that the employer paid no more than the applicable federal or state minimum wage, and did not provide health benefits.

(D) The CCO shall monitor and enforce compliance with the requirements of this Ordinance. Where the CCO has reason to believe that a Contractor, CFAR or other person may have violated any of the requirements of this Ordinance, or of the implementing rules and regulations, the CCO shall initiate an investigation. Where the CCO determines that a violation has occurred, it may attempt to negotiate an end to the violation and appropriate relief from the violating party including back-pay for the affected workers or persons. Such appropriate relief may include any of the remedies enumerated in Section Four, E of this Ordinance.

(E) Where the CCO determines that a violation of this Ordinance has occurred and determines that a negotiated resolution is not possible or not appropriate, the CCO may initiate a formal administrative complaint against the Contractor, CFAR or other person involved. In addition, any person denied wages or benefits mandated under this Ordinance or aggrieved by an action or non-action of another person or entity in violation of this Ordinance or its implementing rules and regulations, or an organization representing the interests of a person so aggrieved, may also file a formal administrative complaint with the CCO on a Complaint Form provided by the CCO. Complaints must be initiated within one year of the denial of wages or benefits or other violation of the Ordinance. The CCO shall, not later than ten (10) days after initiating or receiving the complaint, mail to the person alleged to have violated the Ordinance a copy of the complaint, and such person alleged to have violated the Ordinance shall have twenty (20) days to file a written response. The CCO shall within ten (10) days after the deadline for filing a response schedule a hearing, which shall be held as soon as possible and within thirty (30) days after the response is due, except for good cause shown. The hearing shall be conducted pursuant to the provisions set forth in Missouri Revised Statutes, Chapter 536. Upon a determination that there has been a violation of this Ordinance, the CCO may order any of the following relief:

- (i) Suspension and/or termination of the contract, subcontract, lease, concession agreement or financial assistance agreement;
- (ii) Forfeiture and repayment of any or all of the financial assistance awarded by the City of St. Louis;
- (iii) Disbarring the Contractor or CFAR from eligibility for future City contracts and/or financial assistance until all ordered relief has been made or paid in full;
- (iv) Liquidated damages payable to the City of St. Louis in the amount of \$500 for each week, or part thereof, that an employee has not been provided wages and benefits in accordance with this Ordinance. Each such weekly violation shall constitute a separate violation of this Ordinance and must be demonstrated separately.

Within twenty (20) days after the conclusion of the hearing, the CCO shall render a decision. Any aggrieved party may appeal said decision pursuant to Chapter 536.

SECTION FIVE. Every Contractor and CFAR shall post in a conspicuous place on any job site subject to this ordinance a copy of the living wage rates required under this Ordinance. The City shall notify Contractors and CFAR's of the current living wage rate, and any adjustments thereto, within a reasonable period before they become effective.

SECTION SIX. SEVERABILITY

If any portion or provision of this ordinance, or its application to any person or circumstance, is declared invalid or

unenforceable by a court of competent jurisdiction, it is the intent of the Board of Aldermen that such holding shall not invalidate or render unenforceable any other portions or provisions of this Ordinance or the application of such portions or provisions held invalid to any other person or circumstance. Furthermore, it is the intent of the Board of Aldermen that if a portion or provision of this Ordinance is found invalid or unenforceable, the court should invalidate the smallest possible portion of the Ordinance sufficient to excise the identified legal defect.

SECTION SEVEN. EFFECTIVE DATE

This Ordinance shall take effect 90 days after its enactment. The requirements of this Ordinance shall apply to any contract or concession agreement entered into or renewed and any financial assistance granted or renewed after the effective date of this Ordinance. Entering into an agreement for extension of a contract for a period beyond its original term shall be considered entering into a contract for purposes of this Ordinance.

Approved: August 5, 2002