

Ashland Living Wage Ordinance

### 3.12 Living Wage

#### 3.12.010 Purpose

The City awards contracts to private firms to provide services to the public and City government. The City also provides grants to notforprofit organizations. Such public expenditures should be spent only with deliberate purpose to promote the creation of jobs that allow citizens to support themselves and their families with dignity. Jobs that pay below living wages do not serve the public purpose and place an undue burden on taxpayers and the community which must further subsidize employers who pay subpoverty wages by providing their employees health care, housing, nutrition, energy assistance, and other governmentprovided services. The City has a responsibility when spending public money to set a community standard that promotes workers living above the poverty line. Therefore, contractors, subcontractors or other recipients of City financial assistance should pay their employees nothing less than a living wage as defined by this chapter.

#### 3.12.020 Definitions

For the purpose of this ordinance the following definitions shall apply:

A. "Employee" means any person who is employed as an employee of a service contractor or a recipient, or who is a recipient subcontractor or independent contractor of a service contractor, or subcontractor on a service contract with the City, for all employment hours spent performing the duties required pursuant to the service contract, or by a recipient or a subcontractor of a recipient who spends 50% or more of the employee's compensated time in a month working on the project or portion of business that received City financial assistance.

"Employee" does not include:

1. Employees outside the state of Oregon;
2. Employees who are hired as temporary or part-time employees and who are employed for a total of less than 1040 hours in any twelve month period;
3. Employees participating in bona fide training programs such as welfare-to-work (state), work study (educational institutions), certified apprentice programs or on-the-job training program of no more that 18 months;
4. Volunteers and quasi-volunteers (who may receive a stipend);
5. Employees who are under 18 years of age, employed by a non-profit entity for after school or summer employment or as a trainee for a period of not longer than 120 days;
6. Employees who are standing by or on-call according to the criteria established by the Fair Labor Standards Act, 29, U.S.C. Section 201.

7-15-13  
Date

Special Comm.  
Gov. Body

New Business  
Agenda Item

A  
Exhibit #

This exemption shall only apply during the time when the employee is actually standing by or on-call; or

7. An employee subject to a bona fide collective bargaining agreement.

B. "Employer" means the City of Ashland including the Parks and Recreation Department and any person who is a recipient, contractor, or subcontractor and who employs employees.

"Employer" does not include other governmental agencies or quasi-governmental agencies, which have publicly elected boards or commissions.

C. "Person" means natural person, joint venture, joint stock company, partnership, association, club, company, corporation, business, trust or organization.

D. "Recipient" means any person who receives financial assistance from the City, including direct grants, loans, waiver of city fees or other valuable consideration in an amount of more than \$18,703 in any twelve month period. This amount shall be adjusted annually, effective June 30, to reflect increases during the preceding year (January through December) in the Consumer Price Index - Urban Wage Earners, as published by the U.S. Department of Labor, Bureau of Labor Statistics. Recipient does not include a private employer with less than ten employees who receives a tax abatement or subsidy.

"Financial assistance" does not include:

1. The purchase of goods or other property;
2. The lease or rental of goods or other property;
3. Payment to provide services for the occasional meeting, reception, or similar function;
4. Payments under contracts subject to prevailing wage requirements in ORS 279.348 to 279.380; or
5. City staff assistance, or an economic benefit as an incidental effect of city policies, regulations or ordinances.

E. "Safety net services" include:

1. Temporary, emergency food and shelter;
2. Substance abuse education, prevention and treatment;
3. The preservation of dignity and equal access to justice;

4. Primary and preventive health care services; or
5. Critical supportive services for families, seniors and victims.

F. "Service contractor" means any person who enters into a service contract with the City. A "service contract" means a contract to provide services for the operation of the City or to maintain City property.

A service contract does not mean:

1. The purchase of goods or other property;
2. The lease or rental of goods or other property;
3. Payment to provide services for the occasional meeting, reception, or similar function;
4. Those contracts subject to prevailing wage requirements in ORS 279.348 to 279.380; or
5. Contracts involving payment of less than \$18,703. This amount shall be adjusted annually, effective June 30, to reflect increases during the preceding year (January through December) in the Consumer Price Index - Urban Wage Earners, as published by the U.S. Department of Labor, Bureau of Labor Statistics. Amendments to such contracts that increase the contract amount over \$18,703 are also not included within the definition of a service contract unless such amendments are used to circumvent living wage requirements.

G. "Subcontractor" means any person that enters into a service contract with:

1. A service contractor to assist the service contractor in performing 50% or more of the service work on a project or portion that receives city funds;
2. A recipient to assist the recipient in performing 50% or more of the service work on a project or portion that receives city funds.

(updated CPI 2010)

### **3.12.030 Payment of a Living Wage**

A. All employers covered under this chapter shall pay employees a "living wage" of wages and benefits equal to \$14.19 per hour (CPI 6/30/13). Benefits, which can be attributed to a living wage, are limited to health care, retirement, 401k and IRS eligible cafeteria plans (including childcare).

B. Work presently being performed by City of Ashland employees may not be contracted out unless the contractor pays employees performing that work a living wage or the current City wage, whichever is higher.

C. The wage rate required in section A shall be adjusted annually, effective June 30, to reflect increases during the preceding year (January through December) in the Consumer Price Index - Urban Wage Earners, as published by the U.S. Department of Labor, Bureau of Labor Statistics.

D. Employers subject to this chapter shall post a notice, which notifies employees of their potential rights under this chapter. Such notice shall be posted predominantly in areas where it will be seen by all employees.

(Updated CPI 2013)

### **3.12.040 Enforcement**

A. Compliance with this chapter shall be required in all City contracts to which it applies. Such contracts shall provide that upon a violation of any provision of this chapter the recipient, contractor or subcontractor who is out of compliance shall have thirty days to come into compliance. Such contracts shall further provide that after 30 days if the recipient, contractor or subcontractor remains out of compliance, the City may terminate the contract and otherwise pursue legal remedies that may be available including the repayment of, or payment for, all or part of the financial assistance provided. If a recipient, contractor, or subcontractor violates the provisions of this chapter twice, the City may terminate all contracts already in force and that recipient, contractor, or subcontractor shall be prohibited from receiving City financial assistance or contracting with the City for a period of two years.

B. An employee claiming violation of this chapter may report such action to the city. The city administrator may establish a procedure for receiving and investigating such complaints and take appropriate enforcement action. An employee claiming violation of this chapter may choose to bring an action in the Circuit Court of Oregon against an employer and may be awarded back pay for each day during which the employer failed to pay the employee the required living wage. As additional damages the employee shall be awarded an amount equal to an hour's pay for each hour the employee was not paid the amount required in section 3.12.030 and any additional injunctive relief necessary and appropriate under the circumstances. Notwithstanding the above, for employees hired as part-time or seasonal workers [i.e. with a 1040 hour limit per calendar year], back pay shall be limited to an award of the pay differential and penalty commencing with the 1041st hour of employment. The court shall award reasonable attorney's fees and costs to an employee who prevails in any such enforcement action.

The damage provision of this section shall not apply if such violation was deemed to be unintentional on the part of the employer and the employer paid the required back pay for each day the violation of this chapter occurred.

C. The statute of limitations for this chapter shall be two years from the time of the alleged violation of this chapter.

(Ord 3008, 2010)

### **3.12.050 Retaliation & Discrimination Prohibited**

- A. No employer shall retaliate or discriminate against an employee in his or her terms and conditions of employment by reason of the person's status as an employee protected by the requirements of this chapter.
- B. No employer shall retaliate or discriminate against a person in his or her terms and conditions of employment by reason of the person reporting a violation of this chapter or for prosecuting an action for enforcement of this chapter.

### **3.12.060 Applicability of Provisions**

The provisions of this chapter shall apply to:

- A. A contract executed and financial assistance provided after the effective date of this ordinance;
- B. A contract amendment executed after the effective date of this ordinance which itself meets the requirements of this chapter or extends a contract that meets the requirements of this chapter; and
- C. Supplemental financial assistance provided after the effective date of this ordinance which itself meets the requirements of this chapter.
- D. The Council may waive the requirements of this chapter for a recipient or service contractor upon a finding and determination that such a waiver is in the best interest of the City. The Council may waive the requirements of this chapter for a recipient or service contractor who provides safety net services, upon Council acceptance of a three-year plan for achieving the requirements of this chapter.

### **3.12.070 Severability**

If any court of competent jurisdiction declares any provision of this chapter legally invalid, the remaining provisions shall remain in full force and effect.

San Francisco  
Health Care  
Security  
Ordinance

Print

San Francisco Administrative Code

---

## CHAPTER 14: SAN FRANCISCO HEALTH CARE SECURITY ORDINANCE

---

- Sec. 14.1. Short Title; Definitions.
- Sec. 14.1.5. Alternate Provisions.
- Sec. 14.2. San Francisco Health Access Program and Reimbursement Accounts.
- Sec. 14.3. Required Health Care Expenditures.
- Sec. 14.4. Administration and Enforcement.
- Sec. 14.5. Severability.
- Sec. 14.6. Preemption.
- Sec. 14.7. General Welfare.
- Sec. 14.8. Operative Date.

7-15-13  
Date

Special Committee  
Gov. Body

New Business  
Agenda Item

B  
Exhibit #

### SEC. 14.1. SHORT TITLE; DEFINITIONS.

(a) **Short title.** This Chapter shall be known and may be cited as the "San Francisco Health Care Security Ordinance."

(b) **Definitions.** For purposes of this Chapter, the following terms shall have the following meanings:

(1) "City" means the City and County of San Francisco.

(2) "Covered employee" means any person who works in the City where such person qualifies as an employee entitled to payment of a minimum wage from an employer under the Minimum Wage Ordinance as provided under Chapter 12R of the San Francisco Administrative Code and has performed work for compensation for his or her employer for ninety (90) days, provided, however, that:

(A) From the effective date of this Chapter through December 31, 2007, "at least twelve (12) hours" shall be substituted for "at least two (2) hours" where such term appears in Section

12R.3(a);

(B) From January 1, 2008 through December 31, 2008, "at least ten (10) hours" shall be substituted for "at least two (2) hours" where such term appears in Section 12R.3(a);

(C) Beginning January 1, 2009, "at least eight (8) hours" shall be substituted for "at least two (2) hours" where such term appears in Section 12R.3(a);

(D) The term "employee" shall not include persons who are managerial, supervisory, or confidential employees, unless such employees earn annually under \$72,450.00 or in 2007 and for subsequent years, the figure as set by the administering agency;

(E) The term "employee" shall not include those persons who are eligible to receive benefits under Medicare or TRICARE/CHAMPUS;

(F) The term "covered employees" shall not include those persons who are "covered employees" as defined in Section 12Q.2.9 of the Health Care Accountability Ordinance, Chapter 12Q of the San Francisco Administrative Code, if the employer meets the requirements set forth in Section 12Q.3 for those employees; and

(G) The term "covered employees" shall not include those persons who are employed by a nonprofit corporation for up to one year as trainees in a bona fide training program consistent with Federal law, which training program enables the trainee to advance into a permanent position, provided that the trainee does not replace, displace, or lower the wage or benefits of any existing position or employee.

(H) Nor shall "covered employees" include those persons whose employers verify that they are receiving health care services through another employer, either as an employee or by virtue of being the spouse, domestic partner, or child of another person; provided that the employer obtains from those persons a voluntary written waiver of the health care expenditure requirements of this Chapter and that such waiver is revocable by those persons at any time.

(3) "Covered employer" means any medium-sized or large business as defined below engaging in business within the City that is required to obtain a valid San Francisco business registration certificate from the San Francisco Tax Collector's office or, in the case of a nonprofit corporation, an employer for which an average of fifty (50) or more persons per week perform work for compensation during a quarter. Small businesses are not "covered employers" and are exempt from the health care spending requirements under Section 14.3.

(4) "Employer" means an employing unit as defined in Section 135 of the California Unemployment Insurance Code or any person defined in Section 18 of the California Labor Code. "Employer" shall include all members of a "controlled group of corporations" as defined in Section 1563(a) of the United States Internal Revenue Code, and the determination shall be made without regard to Sections 1563(a)(4) and 1563(e)(3)(C) of the Internal Revenue Code.

(5) "Health Access Program" means a San Francisco Department of Public Health program to provide health care for uninsured San Francisco residents.

(6) "Health Access Program participant" means any uninsured San Francisco resident,

regardless of employment or immigration status or pre-existing condition, who is enrolled by his or her employer or who enrolls as an individual in the Health Access Program under the terms established by the Department of Public Health.

(7) (A) "Health care expenditure" means any amount paid by a covered employer to its covered employees or to a third party on behalf of its covered employees for the purpose of providing health care services for covered employees or reimbursing the cost of such services for its covered employees, including, but not limited to: (i) contributions designated or paid by such employer on behalf of its covered employees to a health savings account as defined under section 223 of the United States Internal Revenue Code or to any other account having substantially the same purpose or effect without regard to whether such contributions qualify for a tax deduction or are excludable from employee income; (ii) reimbursement by such covered employer to its covered employees for expenses incurred in the purchase of health care services; (iii) payments by a covered employer to a third party for the purpose of providing health care services for covered employees; (iv) costs incurred by a covered employer in the direct delivery of health care services to its covered employees; and (v) payments by a covered employer to the City to be used on behalf of covered employees. The City may use these payments to fund membership in the Health Access Program for uninsured San Francisco residents, and establish and maintain reimbursement accounts for covered employees, whether or not those covered employees are San Francisco residents.

(B) A contribution designated or paid to a health savings account or to any other account having substantially the same purpose or effect which is not irrevocably paid to a third party on behalf of a covered employee, shall not constitute a "health care expenditure" unless all of the following conditions are met:

(i) The contribution is reasonably calculated to benefit the employee;

(ii) Except as provided in clause (v)(a), the contribution remains available to the employee (and any other person eligible for reimbursement for health care expenses through the employee) for a minimum of twenty-four (24) months from the date of the contribution.

(iii) On January 1, 2012, the account contains an amount equal to the balance in the account at the close of business on December 31, 2011, if any.

(iv) The employee receives a written summary of the contribution, within 15 days of the contribution which shall include: (a) the name, address, and telephone number of any third party to whom the contribution was made; (b) the date and amount of the contribution; (c) the date and amount of any other debits or credits to the account since the most recent written summary provided to the employee; (d) the balance in the account; and, (e) any applicable expiration dates for the funds in the account.

(v) If the employee separates from employment with a positive balance in a reimbursement account: (a) the balance in the account shall remain available to the employee (and any other person eligible for reimbursement for health care expenses through the employee) for a minimum of ninety days from the date of separation, and, (b) the employee shall receive, within three days following the separation, a written notice, which shall include the balance in the account and any applicable expiration dates for the funds in the account.

Notwithstanding any other provision of this subsection, "health care expenditure" shall not include any payment made directly or indirectly for workers' compensation or Medicare benefits.

(8) "Health care expenditure rate" means the amount of health care expenditure that a covered employer shall be required to make for each hour paid for each of its covered employees each quarter. The "health care expenditure rate" shall be computed as follows:

(A) From the effective date of this Chapter through June 30, 2007, \$1.60 per hour for large businesses and \$1.06 per hour for medium-sized businesses;

(B) From July 1, 2007 through December 31, 2007, January 1, 2008 through December 31, 2008, and January 1, 2009 through December 31, 2009, the rates for large and medium-sized businesses shall increase five (5) percent over the expenditure rate calculated for the preceding year;

(C) From January 1, 2010 and each year thereafter, the "health care expenditure rate" shall be determined annually based on the "average contribution" for a full-time employee to the City Health Service System pursuant to Section A8.423 of the San Francisco Charter based on the annual ten county survey amount for the applicable fiscal year, with such average contribution prorated on an hourly basis by dividing the monthly average contribution by one hundred seventy-two (172) (the number of hours worked in a month by a full-time employee). The "health care expenditure rate" shall be seventy-five percent (75%) of the annual ten county survey amount for the applicable fiscal year for large businesses and fifty percent (50%) for medium-sized businesses.

(9) "Health care services" means medical care, services, or goods that may qualify as tax deductible medical care expenses under Section 213 of the Internal Revenue Code, or medical care, services, or goods having substantially the same purpose or effect as such deductible expenses.

(10) "Hour paid" or "hours paid" means a work hour or work hours for which a person is paid wages or is entitled to be paid wages for work performed within the City, including paid vacation hours and paid sick leave hours, but not exceeding 172 hours in a single month. For salaried persons, "hours paid" shall be calculated based on a 40-hour work week for a full-time employee.

(11) "Large business" means an employer for which an average of one hundred (100) or more persons per week perform work for compensation during a quarter.

(12) "Medium-sized business" means an employer for which an average of between twenty (20) and ninety-nine (99) persons per week perform work for compensation during a quarter.

(13) "Person" means any natural person, corporation, sole proprietorship, partnership, association, joint venture, limited liability company, or other legal entity.

(14) "Required health care expenditure" means the total health care expenditure that a covered employer is required to make every quarter for all its covered employees.

(15) "Small business" means an employer for which an average of fewer than twenty (20) persons per week perform work for compensation during a quarter.

(Added by Ord. 218-06, File No. 051919, App. 8/4/2006; amended by Ord. 69-07, File No. 070255, App. 4/2/2007; Ord. 232-11, File No. 111030, App. 11/22/2011, Eff. 12/22/2011, Oper. 1/1/2012)

## **SEC. 14.1.5. ALTERNATE PROVISIONS.**

(a) If the City Attorney certifies to the Mayor and the Board of Supervisors that a court of competent jurisdiction in a lawsuit brought by or on behalf of a Covered Employer has struck down the provisions of Section 14.1.5, or permanently enjoined their enforcement, then the following provisions shall become operative on the first day of the next calendar quarter following the City Attorney's certification.

Notwithstanding any other provision of this Chapter, "health care expenditure" shall only include an amount irrevocably paid by a covered employer to a covered employee or to a third party on behalf of a covered employee. An amount that is retained by the employer or that may be recovered by or returned to the employer shall not constitute a "health care expenditure." An amount paid to a third party for the purpose of reimbursing a covered employee for expenses incurred in the purchase of health care services shall not constitute a "health care expenditure" unless any unused funds carry over from quarter to quarter and from year to year and remain available to the covered employee, even after the covered employee's separation from employment.

Notwithstanding the above, an amount paid as a "health expenditure" may be recovered by or returned to the employer without losing its status as a "health care expenditure" in the following circumstances:

- (A) A former employee has not made a claim for any of the remaining available funds for 18 months (including a claim made on behalf of any other person eligible for reimbursement from health care expenses from the former employee's remaining available funds); or,
- (B) The covered employee has died.

(b) If the City Attorney subsequently certifies to the Mayor and the Board of Supervisors that an order enjoining enforcement of the provisions of Section 14.1.5 has been lifted, then the original provisions shall again become operative on the first day of the next calendar quarter following the City Attorney's certification.

(Added by Ord. 232-11, File No. 111030, App. 11/22/2011, Eff. 12/22/2011, Oper. 1/1/2012)

## **SEC. 14.2. SAN FRANCISCO HEALTH ACCESS PROGRAM AND REIMBURSEMENT ACCOUNTS.**

(a) The San Francisco Department of Public Health shall administer the Health Access Program. Under the Health Access Program, uninsured San Francisco residents may obtain health care from a network consisting of San Francisco General Hospital and the Department of Public Health's clinics, and other community non-profit and private providers that meet the program's quality and other criteria for participation. The Health Access Program is not an insurance plan for Health Access Program participants.

(b) The Department of Public Health shall coordinate with a third party vendor to administer

program operations, including basic customer services, enrollment, tracking service utilization, billing, and communication with the participants.

(c) The Health Access Program shall be open to uninsured San Francisco residents, regardless of employment status. Eligibility criteria shall be established by the Department of Public Health, but no person shall be excluded from the Health Access Program based on a pre-existing condition. Participants may enroll themselves as individuals, with the terms of enrollment to be determined pursuant to Section 14.4(a).

(d) The Health Access Program may be funded from a variety of sources, including payments from covered employers pursuant to Section 14.3, from individuals, and from the City. Funding from the City shall prioritize services for low and moderate income persons, with costs based on the Health Access Program participant's ability to pay.

(e) The Health Access Program shall use the "Medical Home" model in which a primary care physician, nurse practitioner, or physician assistant develop and direct a plan of care for each Health Access Program participant, coordinate referrals for testing and specialty services, and monitor management of chronic conditions and diseases. Health Access Program participants shall be assigned to a primary care physician, nurse practitioner, or physician assistant.

(f) The Health Access Program shall provide medical services with an emphasis on wellness, preventive care and innovative service delivery. The Program shall provide medical services for the prevention, diagnosis, and treatment of medical conditions, excluding vision, dental, infertility, and cosmetic services. The Department of Public Health may further define the services to be provided, except that such services must, at a minimum, include: professional medical services by doctors, nurse practitioners, physician assistants, and other licensed health care providers, including preventive, primary, diagnostic and specialty services; inpatient and outpatient hospital services, including acute inpatient mental health services; diagnostic and laboratory services, including therapeutic radiological services; prescription drugs, excluding drugs for excluded services; home health care; and emergency care provided in San Francisco by contracted providers, including emergency medical transportation if needed.

(g) The Department of Public Health shall also be authorized to use payments made to the City by employers to satisfy their expenditure requirements as set forth in Section 14.3 to establish and maintain reimbursement accounts from which covered employees may obtain reimbursement of health care expenditures.

(h) The City Controller shall ensure any required health care expenditures made by an employer to the City are kept separate and apart from general funds and shall limit use of the expenditures to the Health Access Program or to the establishment and maintenance of reimbursement accounts from which covered employees may obtain reimbursement of health care expenditures. If any covered employee fails to enroll in the Health Access Program or establish a reimbursement account with the Department of Public Health within a reasonable time, as determined by the Department of Public Health, the City may use the funds paid to the City and County of San Francisco on behalf of that employee for the benefit of the health care programs created by this Ordinance, but the City may not transfer these funds to the City's general fund.

(Added by Ord. 218-06, File No. 051919, App. 8/4/2006; Ord. 69-07, File No. 070255, App. 4/2/2007)

## **SEC. 14.3. REQUIRED HEALTH CARE EXPENDITURES.**

(a) **Required Expenditures.** Covered employers shall make required health care expenditures to or on behalf of their covered employees each quarter. The required health care expenditure for a covered employer shall be calculated by multiplying the total number of hours paid for each of its covered employees during the quarter (including only hours starting on the first day of the calendar month following ninety (90) calendar days after a covered employee's date of hire) by the applicable health care expenditure rate. In determining whether a covered employer has made its required health care expenditures, payments to or on behalf of a covered employee shall not be considered if they exceed the following amount: the number of hours paid for the covered employee during the quarter multiplied by the applicable health care expenditure rate. The City's Office of Labor Standards Enforcement (OLSE) shall enforce the health expenditure requirements under this Section.

(b) **Employer Notice to Employees.**

(1) By December 1 of each year, OLSE shall publish and make available to Covered Employers, in all languages spoken by more than five percent of the San Francisco work force, a notice suitable for posting by Covered Employers in the workplace informing Covered Employees of their rights and the Covered Employer's obligations under the Ordinance.

(2) Every Covered Employer shall post in a conspicuous place at any workplace or job site where any Covered Employee works the notice published each year by OLSE. Every Covered Employer shall post such notices in English, Spanish, Chinese and any other language spoken by at least five percent of the Employees at the workplace or job site.

(c) **Additional Employer Responsibilities.** A covered employer shall: (i) maintain accurate records of health care expenditures, required health care expenditures, and proof of such expenditures made each quarter each year, and allow OLSE reasonable access to such records, provided, however, that covered employers shall not be required to maintain such records in any particular form; and (ii) provide information to the OLSE, or the OLSE's designee, on an annual basis containing such other information as OLSE shall require, including information on the employer's compliance with this Chapter, but OLSE may not require an employer to provide information in violation of State or federal privacy laws. If a Covered Employer uses a health reimbursement account to satisfy its obligation to make health care expenditures for any of its Covered Employees, the Employer shall also report to OLSE the terms of such accounts, including what costs are eligible for reimbursement.

Where an employer does not maintain or retain adequate records documenting the health expenditures made, or does not allow OLSE reasonable access to such records, it shall be presumed that the employer did not make the required health expenditures for the quarter for which records are lacking, absent clear and convincing evidence otherwise. The Office of Treasurer and Tax Collector shall have the authority to provide any and all nonfinancial information to OLSE necessary to fulfill OLSE's responsibilities as the enforcing agency under this Ordinance. With regard to all such information provided by the Office of Treasurer and Tax Collector, OLSE shall be subject to the confidentiality provisions of Subsection (a) of Section 6.22-1 of the San Francisco Business and Tax Regulations Code.

(d) If a Covered Employer imposes a surcharge on its customers to cover in whole or in part the costs of the health care expenditure requirement under this Chapter, the Covered Employer shall provide to OLSE on an annual basis the amount collected during the 12-month reporting period from the surcharge for employee health care and the amount spent on employee health care. If the amount collected from the surcharge is greater than the amount spent on employee health care, the Covered Employer must irrevocably pay or designate an amount equal to that difference for health care expenditures for its Covered Employees under this Chapter. OLSE may refer any potential cases of consumer fraud to appropriate authorities.

(Added by Ord. 218-06, File No. 051919, App. 8/4/2006; amended by Ord. 69-07, File No. 070255, App. 4/2/2007; Ord. 232-11, File No. 111030, App. 11/22/2011, Eff. 12/22/2011, Oper. 1/1/2012)

---

## **SEC. 14.4. ADMINISTRATION AND ENFORCEMENT.**

(a) The City shall develop and promulgate rules to govern the operation of this Chapter. The regulations shall include specific rules by the Department of Public Health on the operation of both the Health Access Program and the reimbursement accounts identified in Section 14.2(g), including but not limited to eligibility for enrollment in the Health Access Program and establishment of reimbursement accounts and rules by the OLSE for enforcement of the obligations of the employers under this Chapter. The rules shall also establish procedures for covered employers to maintain accurate records of health care expenditures and required health care expenditures and provide a report to the City without requiring any disclosures of information that would violate State or Federal privacy laws. The rules shall further establish procedures for providing employers notice that they may have violated this Chapter, a right to respond to the notice, a procedure for notification of the final determination of a violation, and an appeal procedure before a hearing officer appointed by the City Controller. The sole means of review of the hearing officer's decision shall be by filing in the San Francisco Superior Court a petition for a writ of mandate under Section 1094.5 of the California Code of Civil Procedure. No rules shall be adopted finally until after a public hearing.

(b) During implementation of this Chapter and on an ongoing basis thereafter, the City shall maintain an education and advice program to assist employers with meeting the requirements of this Chapter.

(c) Any employer that reduces the number of employees below the number that would have resulted in the employer being considered a "covered employer," or below the number that would have resulted in the employer being considered a medium-sized or large business, shall demonstrate that such reduction was not done for the purpose of evading the obligations of this Chapter or shall be in violation of the Chapter.

(d) It shall be unlawful for any employer or covered employer to deprive or threaten to deprive any person of employment, take or threaten to take any reprisal or retaliatory action against any person, or directly or indirectly intimidate, threaten, coerce, command or influence or attempt to intimidate, threaten, coerce, command or influence any person because such person has cooperated or otherwise participated in an action to enforce, inquire about, or inform others about the requirements of this Chapter. Taking adverse action against a person within ninety (90) days of the person's exercise of rights protected under this Chapter shall raise a rebuttable presumption of having done so in retaliation for the exercise of such rights.

(e) (1) The City shall enforce the obligations of covered employers under this Chapter, including requiring restitution to employees where appropriate, and shall impose administrative penalties upon covered employers who fail to make required health care expenditures on behalf of their employees within five business days of the quarterly due date. Failure to make a required health care expenditure shall include making a purported expenditure that is determined by OLSE not to be reasonably calculated to benefit the employee. The amount of the penalty shall be up to one-and-one-half times the total expenditures that a covered employer failed to make, but in any event the total penalty for this violation shall not exceed \$100 for each employee for each quarter that the required expenditures were not made within five business days of the quarterly due date. The \$100 penalty limit shall increase each year by an amount corresponding to the prior year's increase, if any, in the Consumer Price Index for urban wage earners and clerical workers for the San Francisco-Oakland-San Jose, CA metropolitan statistical area.

(2) For other violations of this Chapter by employers and covered employers, the maximum administrative penalties shall be as follows: For refusing to allow access to records, pursuant to Section 14.3(c), \$25.00 as to each worker whose records are in issue for each day that the violation occurs; for the failure to maintain or retain accurate and adequate records pursuant to Section 14.3(c) and for the failure to make the annual reports of information required by OLSE pursuant to Sections 14.3(c) and 14.3(d), \$500.00 for each quarter that the violation occurs; for violation of Section 14.4(d) (retaliation), \$100.00 as to each person who is the target of the prohibited action for each day that the violation occurs; and for any other violation not specified in this subsection (e)(2), \$25.00 per day for each day that the violation occurs.

(3) The City Attorney may bring a civil action to recover civil penalties for the violations set forth in subsections (e)(1) and (e)(2) in the same amounts set forth in those subsections, and to recover the City's enforcement costs, including attorneys' fees.

(4) Amounts recovered under this Section shall be deposited in the City's General Fund.

(f) The City Controller shall coordinate with the Department of Public Health and OLSE to prepare periodic reports on the implementation of this Chapter including participant rates, any effect on services provided by the Department of Public Health, the cost of providing services to the Health Access Program participants and the economic impact of the Chapter's provisions. Reports shall be provided to the Board of Supervisors on a quarterly basis for quarters beginning July 1, 2007 through June 30, 2008, then every six months through June 30, 2010. Reports shall include specific information on any significant event affecting the implementation of this Chapter and also include recommendations for improvement where needed, in which case the Board of Supervisors or a committee thereof shall hold a hearing within thirty (30) days of receiving the report to consider responsive action.

(g) The Director of Public Health shall convene an advisory Health Access Working Group to provide the Department of Public Health and the Health Access Program with expert consultation and direction, with input on members from the Mayor and the Board of Supervisors. The Health Access Working Group shall be advisory in nature and may provide the Health Access Program with input on matters including: setting membership rates; designing the range of benefits and health care services for participants; and researching utilization, actuaries, and costs.

(h) The Department of Public Health and the OLSE shall report to the Board of Supervisors by July 1, 2007, on the development of rules for the Health Access Program and for the enforcement and

administration of the employer obligations under this Chapter. The Board of Supervisors or a committee thereof shall hold a hearing on the proposed rules to ensure that participants in the Health Access Program shall have access to high quality and culturally competent services.

(Added by Ord. 218-06, File No. 051919, App. 8/4/2006; amended by Ord. 69-07, File No. 070255, App. 4/2/2007; Ord. 232-11, File No. 111030, App. 11/22/2011, Eff. 12/22/2011, Oper. 1/1/2012)

## **SEC. 14.5. SEVERABILITY.**

If any section, subsection, clause, phrase, or portion of this Chapter is for any reason held invalid or unconstitutional by any court or Federal or State agency of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions thereof. To this end, the provisions of this ordinance shall be deemed severable.

(Added by Ord. 218-06, File No. 051919, App. 8/4/2006)

## **SEC. 14.6. PREEMPTION.**

Nothing in this Chapter shall be interpreted or applied so as to create any power, duty or obligation in conflict with, or preempted by, any Federal or State law.

(Added by Ord. 218-06, File No. 051919, App. 8/4/2006)

## **SEC. 14.7. GENERAL WELFARE.**

By this Chapter, the City is assuming an undertaking only to promote the general welfare and otherwise satisfy its obligations to provide health care under applicable law. This Chapter should in no way be construed as an expansion of the City's existing obligations to provide health care under State and Federal law, and the City shall set all necessary criteria for enrollment consistent with its legal obligations. The City is not assuming, nor is it imposing on its officers and employees, an obligation for breach of which it is liable in money damages to any person who claims that such breach proximately caused injury. To the fullest extent permitted by law, the City shall assume no liability whatsoever. To the fullest extent permitted by law, any actions taken by a public officer or employee under the provisions of this Chapter shall not become a personal liability of any public officer or employee of the City.

(Added by Ord. 218-06, File No. 051919, App. 8/4/2006)

## **SEC. 14.8. OPERATIVE DATE.**

This Chapter shall become operative in three phases. The day this Chapter becomes effective, implementation of the Chapter shall commence. The Health Access Program shall become operative on July 1, 2007. Any requirements on employers for which an average of fifty (50) or more persons per week perform work for compensation during a quarter shall become operative on January 1, 2008. Any

requirements on employers for which an average of from twenty (20) to forty-nine (49) persons per week perform work for compensation during a quarter shall become operative on April 1, 2008. This Chapter is intended to have prospective effect only.

(Added by Ord. 218-06, File No. 051919, App. 8/4/2006; Ord. 72-07, File No. 070354, App. 4/2/2007)

**Disclaimer:**

This Code of Ordinances and/or any other documents that appear on this site may not reflect the most current legislation adopted by the Municipality. American Legal Publishing Corporation provides these documents for informational purposes only. These documents should not be relied upon as the definitive authority for local legislation. Additionally, the formatting and pagination of the posted documents varies from the formatting and pagination of the official copy. The official printed copy of a Code of Ordinances should be consulted prior to any action being taken.

For further information regarding the official version of any of this Code of Ordinances or other documents posted on this site, please contact the Municipality directly or contact American Legal Publishing toll-free at 800-445-5588.

© 2013 American Legal Publishing Corporation  
[techsupport@amlegal.com](mailto:techsupport@amlegal.com)  
1.800.445.5588.

DC Living Wage Ordinance

ENGROSSED ORIGINAL

A BILL

20-62

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

To require large retailers, located in the District and whose parent companies gross revenues total \$1 billion or more, to pay employees that make less than \$50,000 a year a living wage, the living wage is established at \$12.50 an hour, to exempt franchises from paying a living wage, to allow a large retailer to use any reasonable methodology to prorate the hourly costs of any benefits that it provides toward payment of the living wage, to require the District to publish a bulletin announcing the living wage each year, to mandate a large retailer post the living wage bulletin on their premises, to grant the Mayor or his or her designee the authority to inspect a large retailers records to make sure they are in compliance with this act, to grant protections to employees who exercise their rights under this act from possible retaliation from large retailers, and to exempt from the requirements of this act for four years large retailers that are currently operating in the District.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That  
this act may be cited as the "Large Retailer Accountability Act of 2013".

Sec. 2. Findings.

The Council of the District of Columbia finds that:

(1) The Council of the District of Columbia declares that it is the policy of the District to promote living wage jobs to help working families make ends meet and protect the health, safety and welfare of our community.

7-15-13  
Date

Special Committee  
Gov. Body

New Business  
Agenda Item

C  
Exhibit #

**ENGROSSED ORIGINAL**

(2) Large retailers are becoming an important source of jobs for local residents.

By adopting living wage standards for large retailers, the District can ensure that economic development better meets the community's need for family-supporting jobs.

(3) The District has the authority to mandate social and economic policies as long as the policy is rationally related to a legitimate state interest.

(4) There are three legitimate interests in requiring large retailers to pay a living wage which are:

(A) Save the District government money on costs associated with social services;

(B) Expand the District's economy by augmenting spending by District residents who would earn a living wage; and

(C) Provide a higher income to District residents so they can better afford to live in the District.

(5) Retailers that pay living wages and provide affordable health benefits face growing pressure to cut back when their competitors are permitted to pay low wages and offer no benefits. The result could be increased costs to the District when businesses that provide health care to their employees are replaced by businesses that do not and instead rely on city health clinics, public hospitals, and publicly funded programs such as Medicaid to provide health care to their employees.

**ENGROSSED ORIGINAL**

(6) A living wage would provide a family more income, which in turn would reduce the Earned Income Tax Credit they receive from the District government. A family would rely more on wage income and less on government tax subsidies to make ends meet.

(7) Providing full-time employment with a living wage would lift two-thirds of District working poor families out of poverty and help them get off the Temporary Assistance for Needy Families program.

(8) Requiring a living wage would not only give more money to working families when they need it most, but it would be a positive impact on the District's economy. Low-wage workers are more likely than any other income group to spend any extra earnings immediately on previously unaffordable basic needs or services.

(9) A living wage would help shift revenues that would be made from businesses that are not located in the District to District residents thereby augmenting their spending power. In turn, District residents would spend those extra funds within the District on goods and services. The increased spending would boost the economy and create jobs.

(10) States that have mandated higher minimum wages have seen growth in employment 50% greater than in states where the federal minimum wage prevails.

(11) Retail employment grew by 6.1% in the states with a higher minimum wage versus 1.9% in states with a lower minimum wage.

(12) The cost of living in the District is a real hardship for low-wage workers. The District is the ninth most expensive city in the United States to reside.

**ENGROSSED ORIGINAL**

(13) Living wages would make it easier for families to be able to afford to live in the District.

(14) Wal-Mart has already detailed to District residents that it intends to offer full and part-time employees a healthcare plan and they plan to create jobs that would pay an average of \$12.49 an hour.

(15) The District should embrace businesses' wage and benefit promises, such as Wal-Mart's, and require by law that large retailers provide living wages and benefits.

(16) The retail industry has oversaturated the rural and suburban markets, so the only way they can grow is to expand in large urban centers.

(17) With the influx of over 1,000 residents a month there is a growing and dynamic market for large retailers to thrive in the District

(18) It is appropriate to set a standard for larger businesses in the retail industry because:

(A) Large retailers are better able to afford the cost of paying a living wage than many other kinds of employers since most of them make profits well in excess of \$1 billion a year;

(B) A number of large retailers in the region are already paying a living wage, providing evidence that it is feasible for employers in this industry to create good jobs while still operating profitably;

**ENGROSSED ORIGINAL**

(C) Large retailers generally are less likely than other kinds of businesses to respond to such regulation by closing or reducing employment because the retail industry is more location-dependent; and

(D) Other cities, such as Sante Fe and San Francisco, which have enacted living wage laws have experienced no negative impact on retail employment and development.

Sec. 3. Definitions.

For the purposes of this act, the term:

(1) "Benefits" means payments made by a large retailer for any bona fide fringe benefits paid directly to an employee or to a third party on behalf of an employee or employee's family, such as benefits related to health care, retirement security, disability, training and education, or paid leave, but excluding any payments that are deducted from an employee's wages or otherwise reimbursed by an employee, or that are required by any federal or District law.

(2) "Business" means a business corporation as defined in the District of Columbia Official Code § 29-101.02(2).

(3) "Employee":

(A) Means an individual who is employed by a large retailer on a part-time or full-time basis.

ENGROSSED ORIGINAL

(B) Does not include any managerial or administrative employees receiving more than \$50,000 per year in wages, salary, bonus, commission or other compensation from a large retailer.

(4) "Franchise" means an express, implied, oral or written agreement in which:

(A) A franchisee is granted the right to engage in the business of offering, selling, or distributing goods or services under a marketing plan or system prescribed in substantial part by the franchisor;

(B) The operation of the business under the marketing plan or system is associated substantially with the trademark, service mark, trade name, logotype, advertising, or other commercial symbol that designates the franchisor or its affiliate; and

(C) The franchisee must pay directly or indirectly a franchise fee to the franchisor.

(5) "Franchisee" means a person to whom a franchise is granted.

(6) "Franchisor" means a person who grants a franchise.

~~(7) "Large retailer" means any business, excluding franchisees, which operate a retail store located within the geographic boundaries of the District where the parent company's gross revenues total \$1 billion or more on an annual basis.~~

(7) "Large retailer" means any business, which operates a retail store located within the geographic boundaries of the District, where:

**ENGROSSED ORIGINAL**

(A) The indoor premises of the retail store comprise 75,000 square feet or more. For the purposes of this definition, the indoor premises of adjacent stores shall be aggregated if the stores share check stands, management, controlling ownership, a warehouse, or a distribution facility; and

(B) The parent company, including the REIT of the parent company, gross revenues of \$1 billion or more on an annual basis.

(8) "Parent company" means a common parent as defined in 26 U.S.C. § 1563.

(9) "REIT" means a real estate investment trust as defined in 26 U.S.C. § 856.

(10) "Retail store"

(A) Means a business that sells goods in smaller quantities than the business buys with a view to profit.

(B) Does not include banks, conventions, credit unions, educational institutions, franchisees, hospitals, hotels, restaurants, savings institutions and trade shows

Sec. 4. Living wages and benefits.

(a) Large retailers shall provide employees an hourly compensation package with a value of no less than the living wage.

(b) Large retailers may provide new employees minimum compensation of up to \$2.00 less than the living wage for the first 90 calendar days after the employee's date of hire.

(c) The Mayor shall establish living wage rates according to the following guidelines:

**ENGROSSED ORIGINAL**

(1) Beginning on the effective date of this act, the living wage rate shall be an hourly rate of \$12.50.

(2) No later than January 1 of each successive year, the living wage rate shall be increased in proportion to the increase during the preceding twelve months, if any, in the Consumer Price Index for All Urban Consumers in the Washington Metropolitan Statistical Area, as published by the U.S. Bureau of Labor Statistics of the United States Department of Labor.

(d)(1) The prorated hourly cost of any benefits that a large retailer chooses to provide an employee may be credited toward payment of the minimum hourly compensation required under this act, provided that this provision shall not be construed as amending or superseding any other applicable District and federal wage laws.

(2) A large retailer may use any reasonable methodology for determining the hourly dollar value of any benefits provided and may, at its election, use each quarter, month or pay period as the relevant period for calculating the prorated hourly value of any benefits provided.

(e) The provisions of this section may be waived by the written terms of a bona fide collective bargaining agreement.

Sec. 5. Employment of District residents.

Prior to publishing any notice of vacancy, a large retailer shall announce the vacancy to one or more of the following District agencies:

(1) Department of Employment Services;

(2) Department of Human Services, Income Maintenance Administration;

(3) Child and Family Services Agency, Teen Services;

(4) Department of Youth Rehabilitation, Youth and Family Empowerment;

(5) Department on Disability Services; and

(6) Office on Re-entry and Returning Citizens Affairs.

Sec. 6. Notice, posting and payroll records.

(a) By December 1 of each year, the Mayor shall publish and make available to large retailers, in English and Spanish, a notice suitable for posting by large retailers in the workplace informing employees of the current living wage and benefits rate, which shall take effect on January 1 of the following year, and of their rights under this act.

(b) Every large retailer shall post in a conspicuous place at any workplace or job site where an employee works the notice required by subsection (b) of this section.

(c)(1) Large retailers shall retain payroll and benefits records pertaining to employees for a period of four years, and shall allow the Mayor access to such records to monitor compliance with the requirements of this act.

(2) Large retailers shall permit an employee or an employee's designated representative to inspect the large retailer's payroll and benefits pertaining to the employee.

(d)(1) Where a large retailer does not maintain or retain adequate records documenting

**ENGROSSED ORIGINAL**

wages paid or does not allow the Mayor reasonable access to such records, there shall be a rebuttable presumption that the large retailer has not paid the living wage.

(2) This presumption may be overcome if the large retailer proves by clear and convincing evidence that the large retailer has paid the living wage.

**Sec. 67. Prohibition against retaliation.**

(a) It shall be unlawful for a large retailer to discriminate in any manner or take adverse action against an employee in retaliation for exercising rights protected under this act or for informing other employees of any legal rights under federal or District, to the extent that such protection is permitted by federal or District law.

(b) Rights protected under this act include, but are not limited to:

(1) The right to file a complaint or inform any person about any party's alleged noncompliance with this act or any other federal or District law; and

(2) The right to inform any person of his or her potential rights under this act or other laws and to assist an employee in asserting such rights.

(c) Protections of this act shall apply to any person who mistakenly, but in good faith, alleges noncompliance with this act or any other law.

(d) Taking adverse action against a person within 90 days of the employee's exercise of rights protected under this act shall raise a rebuttable presumption of having done so in retaliation for the exercise of such rights.

**Sec. 78. Implementation and enforcement.**

**ENGROSSED ORIGINAL**

(a) The Mayor, pursuant to Title I of the District of Columbia Administrative Procedure Act, approved October 21, 1968 (82 Stat. 1204; D.C. Official Code §2-501 *et. seq.*) shall issue rules to implement the provisions of this act.

(b) This act shall be enforced pursuant to the Minimum Wage Act Revision Act of 1992, effective March 25, 1993 (D.C. Law 9-248; D.C. Official Code § 32-1001 *et. seq.*).

(c)(1) An employee or similarly situated employees injured by violation of this act shall be entitled to maintain an action in any court of competent jurisdiction to recover unpaid compensation, damages, and other appropriate relief.

(2) A prevailing plaintiff in such an action shall be entitled to recover from the large retailer his or her expenses in bringing the action, including reasonable attorney's fees and costs of the action.

(3) The remedies set forth herein are not exclusive of any other remedies available at law, and none is a prerequisite for pursuing another remedy.

(d) Any waiver by an individual of any of the provisions of this act shall be deemed contrary to public policy and shall be void and unenforceable, except that employees are not barred from entering into a written valid collective bargaining agreement waiving provisions of this act if such waiver is set forth in clear and unambiguous terms.

(e) This act shall be liberally construed in favor of its purposes. If any provision or application of this act is declared illegal, invalid or inoperative, in whole or in part, by any court of competent jurisdiction, the remaining provisions and portions thereof shall remain in full force

**ENGROSSED ORIGINAL**

or effect. The courts are hereby authorized to reform the provisions of this act in order to preserve the maximum permissible effect thereof.

Sec. 89. Applicability.

Large retailers operating in the District on the date this act becomes effective are not required to comply with the requirements of this act until four years after the effective date.

Sec. 910. Fiscal impact statement.

The Council adopts the fiscal impact statement in the committee report as the fiscal impact statement required by section 602 (c)(3) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Official Code §1-206.02 (c)(3)).

Sec. 4011. Effective date.

This act shall take effect following approval by the Mayor (or in the event of veto by the Mayor, action by the Council to override the veto), a 30-day period of Congressional review as provided in section 602(c)(1) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(1)), and publication in the District of Columbia Register.



Beery Elsner  
& Hammond LLP

7-15-13  
Date

Special Committee  
Gov. Body

New Business  
Agenda Item

D  
Exhibit #

## MEMORANDUM

TO: Sherwood Special Committee  
FROM: *HRM* Heather R. Martin, Office of the City Attorney  
SUBJECT: Living Wage Issues  
DATE: July 15, 2013

As discussed at the last Sherwood Special Committee meeting, below are different options for employee benefits/living wage ordinances for the City.

As an initial matter, it should be noted that these provisions should apply to all similarly situated businesses in Sherwood and should not target specific businesses.

1. **Living Wage** – ORS 653.017 prohibits local governments from enacting minimum wage requirements except: (1) for public employers; (2) through its public contracts or; (3) as a condition of the local government providing direct tax abatements or subsidies for private employers with 10 or more employees. An example of a living wage ordinance from Ashland that meets state requirements is attached.

Given the limitations of ORS 653.017, the City would not be able to require big box retailers to pay above the current state minimum wage which is \$8.95.

2. **Benefit Wages** – San Francisco passed the Health Care Security Ordinance in 2006 which was expanded in subsequent years and requires employers to pay a minimum amount of money per hour worked to cover employees' healthcare expenses. For 2013, employers subject to the ordinance with 20-99 employees must spend at least \$1.55 per hour worked on employee healthcare expenses. For employers with more than 100 employees, \$2.33 an hour is the minimum required expenditure on healthcare expenses. The ordinance allows employers to meet the minimum expenditure requirements by paying into one of the following:
  - Private health insurance plans (healthcare premiums)
  - SF's Health Access Plan "Healthy San Francisco"
  - HSA, HRA, FSA or Medical Reimbursement Plan

- Cash reimbursement to covered employee for qualified healthcare services (as defined by IRS code 213)
- Payment to service provider on behalf of covered employee

A requirement to pay employees a set amount of money for benefits would likely run afoul ORS 653.017 as “wages” is defined as “compensation due to an employee by reason of employment, payable in legal tender of the United States or check on banks convertible into cash on demand at full face value, subject to such deductions, charges or allowances as are permitted in ORS 653.035.” This office would need to do more research on this subject or look at other options – i.e., requiring benefits in lieu of payments to the employees if benefits are not interpreted as “wages” under ORS 653.017.

3. **Sick Leave Requirements** – Portland recently enacted an ordinance that requires all employers to provide sick leave for employees – up to 40 hours per year. Employers with 6 or more employees are required to provide paid sick leave (employer with five or fewer employees can provide unpaid leave). The state Bureau of Labor and Industries (BOLI) will enforce the requirement under administrative rules to be adopted by Portland. In addition, BOLI will enter into an IGA with Portland to further define their role in the process. Unfortunately, this process is still undefined as the administrative rules and the IGA have not been drafted so there is no way to determine what the fiscal impact would be or how this will work in practice. One critical distinction is that sick leave provisions can be interpreted under a wage and hour analysis – this system is already in place at BOLI due to its enforcement of the state’s wage and hour laws.
4. **Proportional benefits for full and part-time employees** – Without doing in-depth research, it appears on the surface that this type of ordinance may be preempted by the federal Employee Retirement Income Security Act (ERISA) because it would require an employer to offer certain health care benefits in Sherwood that it does not offer to employees in other locations. ERISA establishes a comprehensive scheme of federal regulation regarding employers’ benefits, including employee benefit plans (i.e., health care, retirement). One of ERISA’s primary objectives is to provide a uniform regulatory regime for employee benefit plans (particularly for multi-state employers) and it broadly preempts any and all state (including local) laws that might relate to any employee benefit plan covered by ERISA. Before adopting this type of ordinance, we will need to research the potential legal implications and obtain the advice of an attorney who is well-versed in ERISA issues as this is a very complex area of the law.

July 15, 2013

Page 3

5. **Fair Share** – Fair share regulations typically require employers with employees who receive state assistance such as food stamps, Medicaid, etc. to cover those costs so that they are not borne by state taxpayers.

If an ordinance is structured so that it does not impact any employer-provided benefits (i.e., health care), the City may be able to adopt an ordinance of this type. However, several states (Hawaii and Maryland) and one county (Suffolk County, New York) passed similar laws that were later struck down by the courts. In each case, the law would require the employer to pay for health care costs covered by the state. Those laws were found to be preempted by ERISA because even if the law did not *require* the employer to revise its health care benefits, the practical result was that the employer would need to offer different benefits to employees in those states/localities to avoid paying into the state system. Here again, we will need to do more research and an ERISA expert would need to be consulted.

I look forward to discussing these and other issues in more detail with the Special Committee this evening.

HRM/sb

Enclosures

cc: Tom Pessimier