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**T&PW & W&M/Budget**- Your Committee recommends that the proper City officers be authorized to issue a Request for Proposals (RFP) for consulting services to perform pre-design, design, development of contract documents, construction, inspection, start-up, and operations of a new chemical storage building. Funds are available within the existing project budget.

Adopted 11/4/05.

Approved by Mayor Rybak 11/8/05

(Published 11/9/05)

The **WAYS & MEANS/BUDGET** Committee submitted the following reports:

**W&M/Budget** - Your Committee, to whom was referred an ordinance amending Title 2 of the Minneapolis Code of Ordinances relating to *Administration*, (by adding a new Chapter 38 requiring certain business subsidy recipients to create living wage jobs), and having held a public hearing, now recommends that said ordinance be given its second reading for amendment and passage.

Adopted 11/4/05 Yeas, 11; Nays, 2 as follows:

Yeas - Johnson Lee, Benson, Goodman, Samuels, Johnson, Colvin Roy, Zimmermann, Schiff, Zerby, Lilligren, Ostrow

Nays - Niziolek, Lane

Ordinance 2005-Or-103 amending Title 2 of the Minneapolis Code of Ordinances relating to *Administration* by adding a new Chapter 38 entitled "*Minneapolis Living Wage and Responsible Public Spending Ordinance*", requiring certain business subsidy recipients to create living wage jobs, was adopted 11/4/05 by the City Council. A complete copy of this ordinance is available for public inspection in the office of the City Clerk.

The following is the complete text of the unpublished summarized ordinance.

**ORDINANCE 2005-Or-103**

**By Johnson, Zerby, Colvin Roy, Johnson Lee, Samuels,  
Zimmermann, Lilligren, Schiff, Benson**

**Intro & 1<sup>st</sup> Reading: 10/7/05**

**Ref to: W&M/Budget**

**2<sup>nd</sup> Reading: 11/4/05**

**Amending Title 2 of the Minneapolis Code of Ordinances relating to Administration, by adding a new Chapter 38 relating to Living Wage and Responsible Public Spending.**

The City Council of The City of Minneapolis do ordain as follows:

Section 1: That the Minneapolis Code of Ordinances be amended by adding thereto a new Chapter 38 to read as follows:

**38.10. Short Title.** This ordinance shall be called the "Minneapolis Living Wage and Responsible Public Spending Ordinance."

**38.20. Findings and Purposes.** (a) Findings. The city council finds that:

- (1) Whenever the city invests public funds in private development projects, and whenever the city enters into contracts for services, those projects and contracts should create the greatest number of living wage jobs possible in Minneapolis.
- (2) It is therefore appropriate for the city to require that (1) contractors working on city business pay at least a living wage and (2) business subsidies create jobs that pay at least a living wage. It is also appropriate for the city to focus its job creation and retention assistance at businesses that demonstrate a clear and ongoing commitment to the community by providing living wage jobs to their employees by giving priority to those businesses over businesses that have not traditionally paid living wages. Finally, to the extent legally possible, the city will give preferential status for job creation and retention assistance to businesses that engage in responsible labor relations.

- (b) Purpose Recognizing that the city awards business subsidies and is a major contractor for services, the city enacts this ordinance to increase the wages of service employees and employees whose employers are subsidized by the city in order to improve public health and welfare, promote the economic strength of the city, and reduce the pressure on social service programs.

**38.30. Definitions.**

*"Basic health insurance"* means (1) an insurance plan where an employer pays at least 80 percent of the premium for individual coverage or the individual contribution plus 50 percent of the difference between the individual rate and the dependent care rate for family coverage; covers at least 80 percent of the costs for office visits, emergency care, surgery and formulary prescriptions; has annual out of pocket maximums of no more than \$1,500 for individual and \$3,000 for family; and maternity coverage for in-network services; and if an out-of-network option is provided, out-of-pocket maximums will not exceed \$2,000 for individual and \$4,000 for family; (2) a deductible insurance plan provided by an employer where in-network deductibles do not exceed 25 percent for office visits, inpatient care, outpatient care and/or urgent/emergency care, there is a \$1,500 out of pocket maximum for individual and \$3,000 out of pocket maximum for family, and any out-of-network deductible plan's out-of-pocket maximum does not exceed \$2,000 for individual and \$4,000 for family; or (3) an employer provides a health plan not less in value than that provided to first level supervisory employees provided that the benefit costs employers a minimum of 75% of the difference between 110% and 130% of the federal poverty level for a family of four.

*"City"* means the city or a principal unit of city government, including a city department, agency, commission, or board, acting on behalf of the city

*"City contractor"* means a for-profit entity or a 501(c) entity that has a city contract

*"City contract"* is defined as a contract for services with the city valued at \$100,000 or more; or a subcontract valued at \$100,000 or more for providing part or all of the services covered by another entity's contract with the city valued at \$100,000 or more

*"City business subsidy"* is defined as a grant, contribution of personal property, real property, the principal amount of a loan at rates below those commercially available to the recipient, any reduction or deferral of any tax or any fee, any guarantee of any payment under any loan, lease, or other obligation, or any preferential use of government facilities given to a business valued at \$100,000 or more with the intent or end result of creating or retaining jobs for that business.

*"City business subsidy recipient"* means a for-profit entity or a 501(c) entity that receives a city business subsidy

*"Job readiness and training services"* means services whose primary purpose and intent is to help individuals establish a stable work history by addressing the social and economic barriers to employability, including training, apprenticeship, and adequate day care

*"Multi-use project"* means a project that includes units of housing and commercially owned or leased units.

*"Responsible labor relations"* are defined as neutrality on union organizing, providing a complete and accurate list of names and addresses of employees, reasonable access to employees and facilities during non-working periods, voluntary recognition based on a card check demonstrating that a union represents a majority of employees in a bargaining unit, and binding arbitration on the first contract

*"Sole source"* means a source of products or services that is the only viable market option for the city.

**38.40. Living Wage.** (a) Payment of Living Wage & Receipt of Business Subsidy.

- (1) A city contract for services must require city contractors to pay an hourly wage that is at least the living wage for the duration of the contract to employees of the city contractor for hours worked by the employees on the city contract. If a city contract is subject to wage requirements under a collective bargaining agreement, the city contractor shall pay the wage under the collective bargaining agreement subject to the requirements set forth in section c below

- (2) It is a city goal that one (1) living wage job be created out of every \$25,000 of city business subsidy. A recipient of a city business subsidy must enter into a city business subsidy agreement with the city that includes a description of the subsidy, goals for the number of jobs created and/or retained, and wage goals for any jobs created and/or retained. In the agreement, the city's department of planning and economic development must negotiate the minimum number of required living wage jobs to be created by the business subsidy recipient. If the number of required jobs is less than the city's goal, the department of planning and economic development must supply written reasons for not meeting the city's goal to the city council.
- (3) City bond financing is subject to the requirements of this ordinance to the extent the intent of the bond financing is to create jobs and the financing results in a net economic benefit to recipient greater than \$100,000. This benefit must exceed that to which the recipient could have obtained in the capital markets.

(b) Calculation of Living Wage.

The living wage shall be a wage level equivalent to at least 130 percent of the federal poverty level for a family of four. For employers that provide employees basic health insurance benefits, the living wage shall be a wage level equivalent to at least 110 percent of the federal poverty level for a family of four. The living wage shall be based on the prevailing federal poverty level and shall be adjusted within one week after the federal government adjusts the rate.

(c) Exemptions

- (1) Subject to the requirements set forth in the enforcement section, section d below, the following entities, city contracts and business subsidy arrangements are exempt from the living wage and business subsidy requirements:
- a. An incorporated entity that falls within the definition of a small business under Minnesota Statute § 645.445; any 501(c) entity which falls under the criteria laid out in Minnesota Statute § 645.445, subdivision 2;
  - b. 501(c) entities that are sole source providers of service;
  - c. For-profit entities or 501(c) entities that provide contract health care benefits to city staff or that provide wellness or fitness related products or services to city staff;
  - d. For-profit entities or 501(c) entities involving city depository and financial service institutions;
  - e. A recipient of a city contract or city business subsidy that contains an express provision that the purpose of the contract or subsidy is job readiness and training services and that the recipient is exempt from the living wage requirement;
  - f. A recipient of a city contract or city business subsidy for whom the city council or responsible city agency determines that application of the living wage requirement would conflict with a county, state or federal program requirement;
  - g. A recipient of a city contract or city business subsidy which is bound by a collective bargaining agreement for the period of the contract or the subsidy;
  - h. A recipient of a city business subsidy where the purpose of the subsidy is assistance for housing. This exemption does not apply to non-housing portions of a city business subsidy;
  - i. Any business subsidy awarded solely to remediate redevelopment property polluted by contaminants as defined in Minnesota Statutes § 116J.552, subdivision 3;
  - j. Any business subsidies awarded solely for pollution control or abatement, including assistance from a TIF hazardous substance subdistrict are exempt from this ordinance;
  - k. Any projects that the recipient's investment in the purchase of the site and in site preparation was made at fair market value. This exemption does not apply to other portions of or separate business subsidies for the same city business subsidy recipient;
  - l. City contracts or business subsidies that lead to the employment of seasonal, part-time or temporary employees whose employment does not reduce or offset the

work of permanent employees, on the condition that no more than ten percent (10%) of the contract amount is for the employment of such seasonal, part-time or temporary workers, and on the condition that the city contractor or business subsidy recipient is not intending to utilize such labor to avoid the requirements of this ordinance;

- m. Temporary internships or similar positions that are intended to provide career exposure to new entrants into the relevant workforce;
- n. Conduit bonds and 501(c) bonds; and
- o. 501(c) entities that provide health and social services directly to low-income and at-risk populations.

(2) Historic preservation projects are exempted from living wage requirements except for jobs created as a result of the renovation, in which case at least seventy five percent (75%) of the new workers must be paid a living wage

(d) Enforcement.

- (1) A recipient of a city contract that fails to meet the living wage requirement at any time during the duration of the contract shall not be eligible for a city contract in the next contract cycle or the next calendar year. Any recipient of a city contract that fails to meet the living wage requirement shall be liable to the city for liquidated damages at 20% of the value of the contract.
- (2) A recipient of a city business subsidy that fails to meet the living wage requirement at any point in the duration of the subsidy within the agreed upon timeframe for the creation of living wage jobs shall not be eligible for a business subsidy for the next calendar year. Any recipient of a city business subsidy shall be liable for liquidated damages to the city. The amount of damages shall be four times the value of the subsidy proportional to the rate at which the recipient failed to create living wage jobs. For example, if a recipient received a subsidy of \$1,000,000 and only created 39 living wage jobs, instead of 40, it would owe \$100,000 to the city or four times their proportional rate of failure of \$25,000
- (3) No city contractor, subcontractor or recipient of a city business subsidy shall discharge, demote, harass, or otherwise take adverse action against any individual because such individual seeks enforcement of the living wage requirements or testifies, assists, or participates in any manner in an investigation, hearing, or other proceeding to enforce this ordinance
- (4) No city contractor or recipient of a city business subsidy shall split or subdivide a contract or subsidy, pay an employee through a third party, or treat an employee as a subcontractor or independent contractor to avoid payment of a living wage. Work presently being performed by city employees may not be contracted out unless the contractors pay employees performing that work a living wage or the current city wage and benefits for similar work, whichever is higher
- (5) This ordinance's business subsidy provisions shall be enforced by the department of community planning and economic development, or its successor agency, which shall promulgate regulations as are necessary to implement and administer compliance. This ordinance's contract provisions shall be enforced by the civil rights department or its successor agency, which shall promulgate regulations as are necessary to implement and administer compliance.
- (6) Upon the request of the appropriate city staff, each city contractor or city business subsidy recipient shall furnish within five (5) working days, a copy of payrolls showing wages paid or records substantiating jobs created from the business subsidy. In the event of noncompliance with staff requests for records and documents, city staff shall promptly notify the city finance officer who shall withhold payments for such periods of noncompliance. During the course of and upon completion of the contract work or business subsidy work, city staff shall have the right to require an appropriate audit of contractor's books to determine compliance or noncompliance with the provisions of this ordinance. Each city contractor or business subsidy recipient shall retain the

relevant records and documents for a period of not less than one year after the completion of the work

(7) In the event that noncompliance with this ordinance is found, city staff shall place the city contractor or business subsidy recipient on a suspended list and, by written notice, terminate their rights to proceed with the work or such part of the work as to which there has been a violation of this ordinance. The city contractor or business subsidy recipient shall be liable to the city for damages sustained in investigating or enforcing this ordinance, including attorney's fees, costs of remediation and investigation. The city reserves the right to withhold contract payments to the extent of the underpayment of required wages.

(8) A finding or conclusion by city enforcement staff may be appealed to the director of the civil rights department.

**38.50. Waiver.** The requirements of this ordinance may be waived in whole or in part upon a majority vote of the entire city council upon a written showing of sufficient cause by a recipient. The city council must make written findings regarding the reasons for the waiver after a public hearing at a ways & means/budget committee meeting. Enforcement staff and the living wage work group shall 120 days after the effective date of this ordinance, and only city enforcement staff annually thereafter, provide the city council with a list of criteria that the city council may consider in making a waiver decision. Such waiver criteria may include economic hardship, financial infeasibility based on the application of the ordinance, if a city business subsidy cannot reasonably be considered economic development, or if the imposition of the ordinance provisions would cause the city contractor or city business subsidy recipient to make business decisions that adversely impact the city.

**38.60. Effective Date.** This ordinance shall take effect on January 1, 2006 and shall apply to any city contract or city business subsidy established after December 31, 2006 or any city contract or city business subsidy renewed after December 31, 2006.

**38.70. Severability.** If any provision or application of this ordinance is declared illegal, invalid, or inoperative, in whole or in part, by any court of competent jurisdiction, the remaining provisions and portions thereof and applications not declared illegal, invalid, or inoperative shall remain in force or effect.

**38.80. Intergovernmental Cooperation & Coordination.** City staff is directed to coordinate with other local, regional and state agencies and other units of government that have existing living wage and business subsidy policies, or are considering such policies, for the purpose of uniformity, consistency and cooperation.

Adopted 11/4/05. Yeas, 11; Nays, 2 as follows:

Yeas - Johnson Lee, Benson, Goodman, Samuels, Johnson, Colvin Roy, Zimmermann, Schiff, Zerby, Lilligren, Ostrow

Nays - Niziolek, Lane.

Ostrow moved approval of the following:

"The City Council recognizes the need for a regional approach to a living wage requirement for business subsidies and public contracts. 'A regional approach requires, at a minimum, the adoption of living wage ordinances in St. Paul, Ramsey County and Hennepin County. The City Coordinator is directed to report back to the Ways and Means Committee, the Intergovernmental Relations Committee and the City Council on or before September 15, 2006 on the status of living wage ordinances in those jurisdictions and any other jurisdictions in the metropolitan area.'"

Adopted 11/4/05. Yeas, 12; Nays, none as follows:

Yeas - Johnson Lee, Niziolek, Benson, Goodman, Samuels, Johnson, Colvin Roy, Zimmermann, Schiff, Zerby, Lilligren, Ostrow

Declining to vote - Lane.

**W&M/Budget-** Your Committee recommends passage of the accompanying Resolution authorizing settlement of legal matters, as recommended by the City Attorney.

Adopted 11/4/05.