

BY: **Mr. Fairchild**.....

NO **31740-19**.....

AN ORDINANCE

Renewing Sections 35.70 to 35.74 of the Revised Code of General Ordinances Relating to the Payment of Living Wages; Enacting Section 35.75 of the Revised Code of General Ordinances; and Declaring an Emergency.

WHEREAS, One of the goals of welfare reform is to reduce the need for public assistance by encouraging people to enter the labor market and to become self-sufficient; and,

WHEREAS, The current federal minimum wage is not at a sufficient level and does not provide families with a self-sufficient standard of living; and,

WHEREAS, People who work for minimum wage often still live in poverty and must rely in part on continued private and public assistance to support their families; and,

WHEREAS, It is the desire of this Commission that those who work to support families be paid a living wage so that they may become self-sufficient and less dependent upon private and public assistance; and,

WHEREAS, The Commission wishes to provide additional requirements to ensure that contractors comply with this ordinance; and,

WHEREAS, For the immediate preservation of the public peace, property, health and safety and the usual daily operation of the various City departments, it is necessary that this Ordinance take effect at the earliest possible date; now, therefore,

BE IT ORDAINED BY THE COMMISSION OF THE CITY OF DAYTON:

Section 1. That Sections 35.70, 35.71, 35.72, 35.73 and 35.74 of the Revised Code of General Ordinances are renewed and shall read as follows:

PAYMENT OF LIVING WAGES

35.70 DEFINITIONS.

For the purposes of §§ 35.70 to 35.75 of the Revised Code of General Ordinances (R.C.G.O.), the following words and phrases shall have the following meanings ascribed to them respectively, regardless of whether or not the words and phrases are capitalized:

(A) “CONTRACTOR.” A party to a Service Contract with the city, including any subcontractor(s) of such Contractor retained to provide services covered under a Service Contract.

(B) “EMPLOYEE.” Individuals residing in the State of Ohio who may be required or directed by any Contractor or subcontractor, in consideration of direct or indirect financial gain or profit, to engage in any employment, but specifically excluding individuals working less than an average of thirty six (36) hours per week and those engaged as a Volunteer, Temporary Employee, or Intern.

(C) “SERVICE CONTRACT.” A contract, or multiple contracts in a single calendar year, between the city and a Contractor to provide the city with at least \$100,000 of services a year, but not including contracts for the lease or purchase of goods or other property, or requiring a license or use of intellectual property, or involving the mixed purchase of materials and services, unless the cost of the services exceeds the cost of the materials and the cost of such services equals at least \$100,000 a year.

(D) “VOLUNTEER.” Means a person who renders aid, performs a service, or assumes an obligation, without compensation.

(E) “TEMPORARY EMPLOYEE.” An individual who works a certain regular season or period of the year, for a maximum of thirty two (32) weeks per calendar year, performing some work or activity limited to that season.

(F) “INTERN.” Any full-time student enrolled in a two or four year degree program at a college or university and who works on special projects in connection with his or her field of study, whose work hours do not exceed 1500 hours per calendar year, and whose internship terminates no later than three (3) months after graduation from the college or university.

35.71 LIVING WAGE REQUIREMENTS AND EXEMPTIONS.

(A) A Contractor shall pay a living wage to its full-time permanent Employees, other than Volunteers, Temporary Employees, and Interns, providing direct and substantial services to the city pursuant to a Service Contract. This requirement does not apply to Employees performing services that are only ancillary and supportive of other services provided to the city, or which are insubstantial and limited in scope, or which only indirectly benefit the city.

(B) A “living wage” is:

- (1) an hourly wage of not less than 100% of the amount set forth as the poverty guideline for the forty eight (48) contiguous states and the District of Columbia, for a family unit of four, updated annually in the Federal Register by the U.S. Department of Health and Human Services under authority of 42 U.S.C. § 9902(2), divided by the number 2080, if the Employee is eligible to receive single coverage health care benefits within ninety (90) days of employment; or
- (2) an hourly wage of not less than 120% of the amount set forth as the poverty guideline for the forty eight (48) contiguous states and the District of Columbia, for a family unit of four, updated annually in the Federal Register by the U.S. Department of Health and Human Services under authority of 42 U.S.C. § 9902(2), divided by the number 2080, if the Employee is not eligible to receive single coverage health care benefits.

(C) The city shall pay its full-time permanent Employees, other than Volunteers, Temporary Employees, and Interns, no less than the living wage.

(D) The following Contractors are exempt from the requirements of this § 35.71:

- (1) non-profit organizations whose sole purpose is to provide cultural, social or educational services;
- (2) organizations whose primary mission is to provide job readiness and training services;
- (3) federal, state, and local government entities, including all departments, agencies and political subdivisions thereof; and
- (4) Contractors employing fewer than fifty (50) Employees.

(E) Contractors awarded a Service Contract that specifically requires compliance with federal or state prevailing wage laws, including the Davis Bacon Act, are exempt from the requirements of this § 35.71, but only with respect to performance of services under that particular Service Contract.

35.72 LIVING WAGE COMPLIANCE, ENFORCEMENT AND NOTICES.

(A) All Contractors, which are required to comply with §§ 35.70 to 35.75, shall post a notice stating that its Employees may be subject to this ordinance and conspicuously listing the current living wage with and without single coverage medical benefits. This notice shall be written in English and Spanish and shall state the following:

“This Employer is subject to the payment of living wages pursuant to Revised Code of General Ordinances § 35.71, and must pay eligible Employees 100% of the updated federal poverty level for a family of four divided by the number 2080, plus make available single coverage health care benefits within ninety (90) days of employment. If the Employer does not make single coverage health care benefits available, the wages paid to those Employees must be 120% of the updated federal poverty level for a family of four divided by the number 2080.”

(B) All Contractors, which are required to comply with §§ 35.70 to 35.75, also shall inform its Employees earning less than Twelve Dollars and Zero Cents (\$12.00) per hour of their possible right to the federal Earned Income Credit (EIC) under Section 32 of the Internal Revenue Code of 1954, 26 U.S.C. § 32, and shall make available to its Employees forms informing them about the EIC and forms required to secure advance EIC payments.

(C) Prior to entering into a Service Contract, a Contractor shall provide the city with such information as is reasonably necessary to enable the city to determine that Employees performing services subject to § 35.71 are receiving a living wage. The City Manager, or authorized designee, upon receipt of a complaint or other evidence of a violation, may investigate and determine if a violation of §§ 35.70 to 35.75 has occurred. The city shall notify a Contractor of an alleged violation and afford the Contractor a reasonable opportunity to respond. Thereafter, the City Manager, or authorized designee, shall determine whether a violation has occurred, and shall notify the Contractor in writing of that determination. Upon finding a violation, the City Manager, or authorized designee, may impose such sanctions as are reasonable including, but not limited to, the following: require the Contractor to pay all affected Employees a living wage, including back-pay, if necessary; suspend or terminate the Service Contract upon non-compliance; prohibit the Contractor from performing Service Contracts for a fixed period of time or, upon multiple egregious violations, indefinitely.

(D) All Contractors subject to compliance with the requirements of §§ 35.70 to 35.75 are expressly prohibited from retaliating against any Employee who claims a violation of the provisions of §§ 35.70 to 35.75 or reports or testifies against the Employer regarding an alleged violation. Affected Employees also have the right to sue a Contractor to enforce payment of the Living Wage as provided in this ordinance.

35.73 LIVING WAGE REVIEW; SEVERABILITY.

If any provision of §§ 35.70 to 35.75 is declared legally invalid by any court of competent jurisdiction, the remaining provisions shall remain in full force and effect.

35.74 LIVING WAGE EFFECTIVE DATES.

The modifications and enactments of this ordinance to §§ 35.70 to 35.75 shall apply to all Service Contracts consummated by the City after the effective date of this ordinance and to existing Service Contracts that are amended after the effective date of this ordinance, but only if the amendment triggers the requirement for the Contractor to pay the Living Wage to its Employees. Otherwise, the previously enacted Sections 35.70 through 35.74 shall control contracts entered into prior to the effective date of this ordinance. The provisions of §§ 35.70 to 35.75 shall expire five (5) years from the effective date of this ordinance, unless extended by the Commission.

Section 2. That Section 35.75 of the Revised Code of General Ordinances is enacted and shall read as follows:

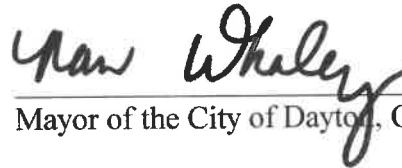
35.75 CONTRACTOR PAYMENT REQUESTS

All Contractors subject to compliance with the requirements of §§ 35.70 to 35.75, shall submit weekly payroll reports when requesting payments, which reports shall be certified by the Contractor that the payroll is correct and complete and the wage rates shown are not less than those required by the Contract. The Contractor shall be responsible for submitting all payroll reports of the Contractor's subcontractors. The payroll report shall indicate the week covered and shall include a list containing the name, address, telephone number, and social security number of each Employee of the Contractor and the Contractor's subcontractors paid for the services. The payroll report shall list the number of hours each Employee worked each day on the contract during the reporting period, the total hours each week on the project, the Employee's hourly rate of pay, job classification, fringe benefits and all deductions from wages and net pay. The payroll report shall also list each fringe benefit and state if it is paid as cash to the Employee or to a named plan. The Contractor shall not be paid until it complies with the requirements of this § 35.75, unless the contract is subject to a grant which prohibits these requirements, and in such a case the requirements governing the grant shall apply.

Section 3. That for the reasons stated in the preamble hereof, this Ordinance is declared to be an emergency measure and shall take effect immediately upon its passage.

PASSED BY THE COMMISSION.....**June 12**....., 2019

SIGNED BY THE MAYOR.....**June 12**....., 2019



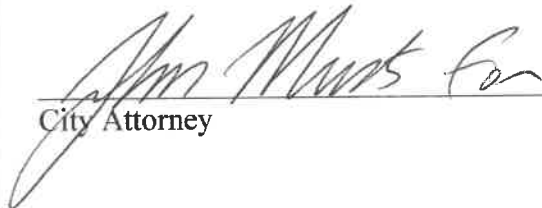
Mayor of the City of Dayton, Ohio

ATTEST:



Clerk of the Commission

APPROVED AS TO FORM:



City Attorney