

DRAFT

Int. No. 251-A

By Council Members Koppell, Palma, Arroyo, Cabrera, Chin, Dromm, Ferreras, James, Lander, Mendez, Sanders Jr., Mark-Viverito, Foster, Seabrook, Barron, Brewer, Gonzalez, Rivera, Rodriguez, Van Bramer, Vann, Williams, Rose, Jackson, Eugene, Levin, Dickens Mealy and Garodnick (by the request of the Bronx Borough President)

A Local Law to amend the administrative code of the city of New York, in relation to requiring the payment of a living wage to employees employed on property developed by recipients of financial assistance for economic development.

Be it enacted by the Council as follows:

Section 1. Subdivision b(2) of section 6-109 of the administrative code of the city of New York is amended to read as follows:

(2) The Living Wage. The living wage shall be an hourly wage rate as provided below. Provided, however, that for homecare services under the Personal Care Services program, the wage and health rates below shall only apply as long as the state and federal government maintain their combined aggregate proportionate share of funding and approved rates for homecare services in effect as of the date of the enactment of this section:

(a) As of the effective date of this section, \$8.10 per hour;

(b) As of July 1, 2003, \$8.60 per hour;

(c) As of July 1, 2004, \$9.10 per hour;

(d) As of July 1, 2005, \$9.60 per hour;

(e) As of July 1, 2006, \$10.00 per hour.

Section 2. Subdivisions b(4), b(5) and b(6) of section 6-109 of the administrative code of the city of New York are renumbered as subdivisions b(5), b(6) and b(7), respectively, and a new subdivision b(4) is inserted to read as follows:

(4) Indexing. Beginning January 1, 2011 and no later than January 1 of each year thereafter, the living wage established under subdivision b(2) of this section and the health benefits supplement rate established under subdivision b(3) of this section shall be adjusted based upon the twelve-month percentage increases, if any, in the Consumer Price Index for All Urban Consumers for All Items and the Consumer Price Index for All Urban Consumers for Medical Care, respectively, (or their successor indexes, if any) as published by the Bureau of Labor Statistics of the United States Department of Labor, based on the most recent twelve-month period for which data is available. The adjusted living wage and health benefits supplement rate shall each then be rounded to the nearest five cents, and shall become effective as the new living wage and health benefits supplement rate on April 1 of each year.

Section 3: The first two sentences of paragraph b of subdivision 1 of section 1301 of the New York city charter, as amended by local law number 69 of the year 1993, and local law number 373-A of the year 2005, is amended to read as follows:

b. to serve as liaison for the city with local development corporations, other not-for-profit corporations and all other entities involved in economic development within the city. In furtherance of this function, the department shall include in any contract with a local development corporation under which such local development corporation is engaged in

providing or administering economic development benefits on behalf of the city and expending city capital appropriations in connection therewith, (i) a requirement that such local development corporation comply with the requirements of section 130 of title 6 of the administrative code of the city of New York, and (ii) a requirement that such local development corporation submit to the mayor, the council, the city comptroller, the public advocate and the borough presidents by January 31 of each year, a report for the prior year in the form prescribed hereunder with regard to projected and actual jobs created and retained in connection with any project undertaken by such local development corporation for the purpose of the creation or retention of jobs, whether or not such project involves the expenditure of city capital appropriations, if in connection with such project assistance to a business entity was provided by such local development corporation in the form of a loan, grant or tax benefit in excess of one hundred fifty thousand dollars, or a sale or lease of land where the project is estimated to retain or create not less than twenty-five jobs.

Section 4: Title 6 of the administrative code of the city of New York is amended to add a new section 6-130, to read as follows:

§ 6-130 Living Wage for Employees in City Financially Assisted Workplaces.

a. This section shall be known as and may be cited as the “Fair Wages for New Yorkers Act”.

b. Definitions. For the purposes of this section, the following terms shall have the following meanings:

(1) “City” means city of New York, and all subordinate or component entities or persons.

(2) “City economic development entity” means a not-for-profit corporation, public benefit corporation, or other entity that is authorized to provide Financial

(3) Assistance, or that provides administrative support related to the provision of Financial Assistance.

(4) “Comptroller” means the Comptroller of the city of New York and its authorized or designated agents.

(5) “Entity” or “Person” means any individual, sole proprietorship, partnership, association, joint venture, limited liability company, corporation or any other form of doing business.

(6) “Financial assistance” means financial assistance with a value of \$100,000 or more that is provided to a financial assistance recipient for the improvement or development of real property, economic development, job retention and growth, or other similar purposes, and that is provided either (a) directly by the city, or (b) indirectly by a city economic development entity and that is in whole or in part at the expense of the city. Financial assistance includes, but is not limited to, cash payments or grants, bond financing, tax abatements or exemptions (including, but not limited to, abatements or exemptions from real property, mortgage recording, sales and uses taxes, or the difference between any payments in lieu of taxes and the amount of real property or other taxes that would have been due if the property were not exempted from the payment of such taxes), tax increment financing, filing fee waivers, energy cost reductions, environmental remediation costs, write-downs in the market value of buildings, land or

leases, the cost of capital improvements related to real property that, under ordinary circumstances, the city would not pay for, and includes both discretionary and as of right assistance. In determining the value of assistance provided, the full value of all city, state and federal assistance received in connection with the project shall be included.

(7) “Project agreement” means a written agreement between the city or a city economic development entity and a private entity pertaining to a project undertaken for the purpose of improvement or development of real property, economic development, job retention and growth, or other similar purposes, and where the private entity has received or is reasonably expected to receive in the future financial assistance with a value of \$100,000 or more. A project agreement shall include any written agreement between such parties pertaining to such a project. A project agreement shall include an agreement to lease property from the city or a city economic development entity where financial assistance with a value of \$100,000 or more has been received or is reasonably expected to be received in the future. Each such agreement shall contain the provisions specified in paragraph 4 of subdivision f of this section.

(8) “Financial assistance recipient” means any person, individual, proprietorship, partnership, joint venture, corporation, limited liability company, trust, association, organization or other entity that receives financial assistance, or is an assignee or successor in interest of real property improved or developed with financial assistance.

(9) “Small business” has the meaning specified in paragraph 1 of subdivision d of this section.

(10) “Covered employer” means:

- a. A financial assistance recipient;
- b. A tenant, sub-tenant, leaseholder or subleaseholder who occupies property that is improved or developed with financial assistance, or that is leased from the city or a city economic development entity;
- c. Fee holders or other condominium owners of any portion of real property improved or developed with financial assistance who purchased the property from a prior owner or were assigned the property through foreclosure or other means; or
- d. Any person or entity that contracts or subcontracts with a financial assistance recipient or with a covered employer to perform work for a period of more than thirty days on the premises of the financial assistance recipient, on the premises of property improved or developed with financial assistance, or on the premises of property leased from the city or a city economic development entity, including but not limited to temporary services or staffing agencies, food service contractors, and other on-site service contractors.

(11) “Not-for-profit organization” means a corporation or entity that has tax exempt status under section 501(c)(3) of the United States internal revenue code, has been incorporated under state not-for-profit law, and is in compliance with all applicable federal, state and local laws and regulations.

(12) “Employee” means any person employed by a covered employer within the city of New York. This definition includes persons performing work on a full-time, part-time, temporary or seasonal basis, and includes employees, independent contractors, and contingent or contracted workers, including persons made available to work through the services of a temporary services, staffing or employment agency or similar entity.

Provided, however, that if the financial assistance is targeted to particular real property, then only persons employed at the real property to which the financial assistance pertains shall be deemed employees.

(13) “Living wage” or “paying a living wage” means an hourly compensation package that is no less than the sum of the living wage and the health benefits supplement rate for each hour worked, as those terms are defined in subdivisions b(2) through b(4) of section 6-109 of the administrative code of the city of New York as amended by the local law that added this section. As of the effective date of the local law that added this section, the living wage rate shall be ten dollars per hour and the supplemental health benefits rate shall be one dollar and fifty cents per hour. Financial assistance recipients must pay employees a minimum hourly wage of no less than the living wage. The balance of the hourly compensation package may be provided in the form of wages, health benefits or any combination of the two. The value of any health benefits provided shall be determined based on the prorated hourly cost to the employer of the health benefits provided to the employee.

c. Living Wage Required

(1) It is the policy of the city that jobs supported with financial assistance, whether conferred directly by the city or indirectly by a city economic development entity, should pay wages that allow working New Yorkers to support themselves with dignity.

(2) In furtherance of this policy, covered employers shall pay their employees no less than a living wage.

(3) Financial assistance recipients shall guarantee that all covered employers operating on their premises or on the premises of real property improved or developed with financial assistance pay their employees no less than a living wage and comply with all other requirements of this section.

(4) The requirements of this section shall apply for the term of the financial assistance or for thirty years from the date that the financially assisted project opens, whichever is longer.

(5) Where the financial assistance is targeted to particular real property, then the requirements of this section shall apply only for hours worked by employees at or in connection with such real property.

d. Small Business, Not-for-Profit and Affordable Housing Exemptions

The wage and benefits requirements established under this section shall not apply to:

(1) Any otherwise covered employer that is a small business, which shall be defined as an entity that has annual gross revenues of less than one million dollars. For purposes of determining whether an employer qualifies as a small business, the revenues of any parent entity, of any subsidiary entities, and of any entities owned or controlled by a common parent entity shall be aggregated.

(2) Any otherwise covered employer that is a not-for-profit organization including, but not limited to, a not-for-profit social services organization, or a not-for-profit arts and cultural organization.

(3) Any otherwise covered employer, operating on the premises of a project that is comprised chiefly of affordable housing, which shall be defined as a project where

residential units comprise more than 75% of the project area, and no less than 75% of the residential units are affordable for families earning less than 125% of the area median income. Provided, however, that an otherwise covered employer operating a retail store on such premises shall not be exempt.

(4) Any otherwise covered employer that is a construction contractor or a building services contractor.

e. Notice Posting, Recordkeeping and Retaliation

(1) No later than the day on which any work begins at a work site subject to the requirements of this section, a covered employer shall post in a prominent and accessible place at every work site and provide each employee a copy of a written notice, prepared by the comptroller, detailing the wages, benefits, and other protections to which employees are entitled under this section. Such notice shall also provide the name, address and telephone number of the comptroller and a statement advising employees that if they have been paid less than the living wage they may notify the comptroller and request an investigation. Such notices shall be provided in English, Spanish, and other languages spoken by ten percent or more of a covered employer's employees. The comptroller shall provide the city with sample written notices explaining the rights of employees and covered employers' obligations under this section, and the city shall in turn provide those written notices to covered employers.

(2) A covered employer shall maintain original payroll records for each of its employees reflecting the days and hours worked, and the wages paid and benefits provided for such hours worked. Such records shall be maintained for the duration of the

period that an employer qualifies as a covered employer and shall be retained for a period of four years after such period. Failure to maintain such records as required shall create a rebuttable presumption that the covered employer did not pay its employees the wages and benefits required under the section. Upon the request of the comptroller or the city, the covered employer shall provide a certified original payroll record.

(3) It shall be unlawful for any covered employer to retaliate, discharge, demote, suspend, take adverse employment action in the terms and conditions of employment or otherwise discriminate against any employee for reporting or asserting a violation of this section, for seeking or communicating information regarding rights conferred by this section, for exercising any other rights protected under this section, or for participating in any investigatory or court proceeding relating to this section. This protection shall also apply to any covered employee or his or her representative who in good faith alleges a violation of this section, or who seeks or communicates information regarding rights conferred by this section in circumstances where he or she in good faith believes this section applies. Taking adverse employment action against an employee or his or her representative within sixty days of the employee engaging in any of the aforementioned activities shall raise a rebuttable presumption of having done so in retaliation for those activities. Any employee subjected to any action that violates this paragraph may pursue administrative remedies or bring a civil action as authorized pursuant to subdivision e of this section in a court of competent jurisdiction.

f. Implementation and Reporting

(1) The city shall cause all financial assistance recipients to be contractually obligated to comply with the requirements of this section, and shall not approve any development project that does not comply with such requirements.

(2) The city shall include in any contract with a city economic development entity a requirement that such entity shall in turn require all financial assistance recipients to comply with the requirements of this section.

(3) Payments in lieu of taxes, or other city funds or real property may not be conveyed to a city economic development entity unless that entity has agreed to require all financial assistance recipients to comply with the requirements of this section.

(4) Every project agreement shall contain provisions:

a. Obligating the financial assistance recipient to guarantee that all covered employers operating on their premises or on the real property, improved or developed with financial assistance will pay their employees no less than a living wage, and comply with all other requirements of this section;

b. Granting the city or city economic development entity, as applicable, remedial authority (1) to rescind the award of and suspend any further disbursement of financial assistance, and (2) to require the financial assistance recipient to repay previously disbursed or received financial assistance, including but not limited to repayment of any taxes or interest abated or deferred, if the financial assistance recipient is found to be in violation of any of the requirements of this section.

(5) Each financial assistance recipient shall provide to the comptroller and the city or the city economic development entity that approved or awarded the financial assistance an annual certification, executed under penalty of perjury, stating that all of its

employees and all other employees employed by covered employers on its premises or on the property to which the financial assistance pertains are paid no less than a living wage, and providing the names, addresses and telephone numbers of such additional covered employers operating on its premises or on said property. Where the financial assistance applies only to certain property, such statement shall be required only for the employees employed on such property. The statement shall be certified by the chief executive or chief financial officer of the covered employer, or the designee of any such person, and shall be made a part of the award, grant or assistance agreement. Where there are multiple covered employers operating on the premises of a financial assistance recipient or associated with a property to which the financial assistance pertains, each covered employer shall, prior to commencing work at such premises, provide such a statement certifying that all the employees employed on that property are paid no less than a living wage. An otherwise covered employer that qualifies for an exemption from the wage and benefits requirements of this section under subpart d of this section shall provide a statement, executed under penalty of perjury, certifying alternatively that the employer qualifies for an exemption and specifying the basis for that exemption. Such an employer shall update or withdraw such statement on a timely basis if its eligibility for the claimed exemption should change. A violation of any provision of the certified statement shall constitute a material violation of the conditions of the project agreement. Such certification shall also include copies of records indicating the days and hours worked, and the wages paid and benefits provided to each employee. The city agency or city economic development entity approving or awarding the financial assistance shall maintain this information and make it available for public inspection.

(6) Within ninety days of the enactment date of the law that added this section, the department of finance, in consultation with city agencies and the city Council, shall publish a list of available types of financial assistance that are subject to the requirements of this section. Such list shall include, but not be limited to, the types of financial assistance enumerated in section b(5). Such list shall be updated and published as often as is necessary to keep it current.

g. Monitoring, Investigation and Enforcement

(1) The comptroller shall monitor covered employers' compliance with the requirements of this section, and may upon its own initiative or upon receipt of a complaint investigate specific covered employers. Any employee, individual or organization may file a complaint with the comptroller concerning a violation of this section. The name of any employee identified in a complaint shall be kept confidential as long as possible, and may be disclosed only with the employee's consent. For the purpose of enforcing this section, the comptroller shall have the authority to observe work being performed on the work site, to interview employees during or after work hours, and to examine the books and records relating to the payrolls being investigated to determine whether or not the covered employer is in compliance with this section.

(2) Whenever the comptroller has reason to believe that an employee has been paid less than a living wage or has been discriminated or retaliated against in violation of this local law, or upon a verified complaint in writing from an employee, former employee, or an employee's representative, the comptroller shall conduct a hearing to determine the facts relating thereof. In conducting such investigation, the comptroller

shall have the same investigatory, hearing, and other powers as are conferred on the comptroller by sections 234 and 235 of the state labor law. At the start of such investigation, the comptroller may, in a manner consistent with the withholding procedures established by section 235(2) of the state labor law, request that the city or the city economic development entity that approved the project or awarded the financial assistance withhold any payment due to the financial assistance recipient in order to safeguard the rights of the employees. Based upon such investigation, hearing, and findings, the comptroller shall issue an order, determination, or other disposition, including but not limited to, a stipulation of settlement. Such disposition may:

(a) Direct payment of wages and/or the monetary equivalent of benefits wrongly denied, including interest from the date of underpayment to the employee, based on the interest rate then in effect as prescribed by the superintendent of banks pursuant to section 14-a of the state banking law, but in any event at a rate no less than six percent per year;

(b) Direct payment of a further sum as a civil penalty in an amount not exceeding two hundred percent of the total amount found to be due in violation of this section;

(c) Direct the filing or disclosure of any records that were not filed or made available to the public as required by this section;

(d) Direct the reinstatement of, or other appropriate relief for, any person found to have been subjected to retaliation or discrimination in violation of this section; and

(e) Direct payment of the sums withheld at the commencement of the investigation and the interest that has accrued thereon to the financial assistance recipient. In assessing an appropriate remedy, due consideration shall be given to the gravity of the

violation, the history of previous violations, the good faith of the covered employer, and the failure to comply with record-keeping, notice, reporting, or other non-wage requirements. Any civil penalty shall be deposited in the city general revenue fund.

(3) Before issuing an order, determination, or any other disposition, the comptroller shall give notice thereof, together with a copy of the complaint, or a statement of the facts disclosed upon investigation, which notice shall be served personally or by mail on any person affected thereby. The comptroller may negotiate an agreed upon stipulation of settlement or refer the matter to the office of administrative trials and hearings for a hearing and disposition. Such covered employer shall be notified of a hearing date by the office of administrative trials and hearings and shall have the opportunity to be heard in respect to such matters.

(4) In an investigation conducted under the provisions of this section, the inquiry of the comptroller shall not extend to work performed more than three years prior to the filing of the complaint, or the commencement of such investigation, whichever is earlier.

(5) When, pursuant to the provisions of this section, a final disposition has been entered against a financial assistance recipient or other covered employer in two instances within any consecutive six year period determining that such person has willfully failed to pay or to ensure the payment of the required wages in accordance with the provisions of this section or to comply with the anti-retaliation, recordkeeping, notice, or reporting requirements of this section, such person, and any principal or officer of such person who knowingly participated in such failure, shall be ineligible to receive financial assistance from the city or from a city economic development entity, or to operate as a

covered employer on the premises of a financial assistance recipient or on real property improved or developed with financial assistance, for a period of five years from the date of the second disposition.

(6) When a final disposition has been made in favor of an employee and the person found violating this section has failed to comply with the payment or other terms of the remedial order of the comptroller, and provided that no proceeding for judicial review shall then be pending and the time for initiation of such proceeding has expired, the comptroller shall file a copy of such order containing the amount found to be due with the city clerk of the county of residence or place of business of the person found to have violated this section, or of any principal or officer thereof who knowingly participated in the violation of this section. The filing of such order shall have the full force and effect of a judgment duly docketed in the office of such clerk. The order may be enforced by and in the name of the comptroller in the same manner and with like effect as that prescribed by the state civil practice law and rules for the enforcement of a money judgment.

(7) Upon determining that a covered employer is not in compliance, and where no cure is effected and approved by the comptroller, the comptroller shall provide evidence of the noncompliance to the city or the city economic development entity, as applicable, that approved the project or awarded the financial assistance, and request in writing that the city or the city economic development entity (1) to rescind the award of and suspend any further disbursement of financial assistance, and (2) to require the financial assistance recipient to repay previously disbursed or received financial assistance, including but not limited to repayment of any taxes or interest abated or

deferred, if the financial assistance recipient is found to be in violation of any of the requirements of this section. Upon receipt of the comptroller's request, the city or the city economic development entity that approved the project or awarded the financial assistance shall take such actions as may be appropriate and provided for by law, rule, or contract, including, but not limited to: declaring the financial assistance recipient in default of the project agreement; imposing sanctions; or recovering the financial assistance disbursed or provided, including but not limited to requiring repayment of any taxes or interest abated or deferred.

(8) When a final disposition has been made and such disposition is in favor of an employee, such employee may, in addition to any other remedy provided by this section, institute an action in any court of appropriate jurisdiction against the person found to have violated this section. For any violation of this section, including failure to pay applicable wages, provide required benefits, or comply with other requirements of this section, including protections against retaliation and discrimination, the court may award any appropriate remedy at law or equity, including, but not limited to, back pay, payment for wrongly denied benefits, interest, other equitable or make-whole relief, reinstatement, injunctive relief, and/or compensatory damages. The court shall award reasonable attorneys' fees and costs to any complaining party who prevails in such enforcement action. Such action must be commenced within three years of the date of the final disposition of any administrative complaint or action concerning the alleged violation, or if such a disposition is reviewed in a proceeding pursuant to article 78 of the state civil practice law and rules, within three years of the termination of such review proceedings. No procedure or remedy set forth in this section is intended to be exclusive

or a prerequisite for asserting a claim for relief to enforce any rights hereunder in a court of law. This section shall not be construed to limit an employee's right to bring a common law cause of action for wrongful termination.

(9) Notwithstanding any inconsistent provision of this section or any other general, specific, or local law, ordinance, city charter or administrative code, an employee affected by this law shall not be barred from the right to recover the difference between the amount paid to the employee and the amount which should have been paid to the employee under the provisions of this section because of the prior receipt by the employee without protest of wages or benefits paid, or on account of the employee's failure to state orally or in writing upon any payroll or receipt which the employee is required to sign that the wages and benefits received by the employee are received under protest, or on account of the employee's failure to indicate a protest against the amount, or that the amount so paid does not constitute payment in full of wages or benefits due the employee for the period covered by such payment.

h. Miscellaneous

(1) The provisions of this section shall not apply to any financial assistance that was provided prior to the enactment of the local law that added this section, nor shall they apply to any project agreement that was entered into prior to the enactment of the local law that added this section, except that extension, renewal, amendment or modification of such project agreement occurring on or after the enactment of the local law that added this section shall make the financial assistance recipient and any other covered employers operating on the premises of the financial assistance recipient or at the

real property improved or developed with financial assistance subject to the requirements of this section.

(2) In the event that any requirement or provision of this section, or its application to any person or circumstance, should be held invalid or unenforceable by a court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other requirements or provisions of this section, or the application of the requirement or provision held unenforceable to any other person or circumstance. To this end, the parts of this section are severable.

(3) This section shall be liberally construed in favor of its purposes. This section shall not be construed to preempt or otherwise limit the applicability of any law, policy, contract term or other action by the city or a city economic development entity that provides for payment of higher or supplemental wages or benefits, or for additional penalties or remedies for violation of this or any other law.

Section 4. This local law shall take effect in ninety days.