

City of Syracuse

CITY CLERK'S OFFICE

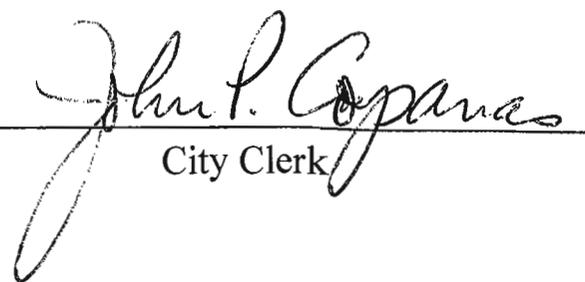
I, JOHN P. COPANAS, City Clerk of the City of Syracuse, New York do hereby certify that the attached is a true copy of an ORDINANCE:

Adopted by the Common Council on

December 17, 2012

Approved by the Mayor on

December 19, 2012


City Clerk

TO:

- Mayor
- Assessment Commissioner
- Aviation Commissioner
- Board of Elections
- Bureau of Accounts
- Citizen Review Board
- City Auditor
- City School District
- Code Enforcement
- Neighborhood and Business Development
- Finance Commissioner
- Corporation Counsel
- United States Congressperson
- Governor of New York State
- New York State Senate
- New York State Assembly
- New York State Senator
- Onondaga County Legislature

- Management & Budget Director
- Parks & Recreation Commissioner
- Personnel & Labor Relations Dir.
- Police Chief
- Public Works Commissioner
- Public Works/Bookkeeper
- Purchase Department
- Real Estate Division
- Research Director
- Water Department
- Zoning Administration
- United States Senator
- Department of Engineering
- Finance/Treasury
- Finance (Water Bureau)
- Fire Chief
- Grants Management Director
- Board of Education

**ORDINANCE AMENDING GENERAL
ORDINANCE NO. 25-2005 AS PREVIOUSLY
AMENDED BY GENERAL ORDINANCE NO.
23-2012 TO AMEND THE REVISED
GENERAL ORDINANCES OF THE CITY OF
SYRACUSE, AS AMENDED, TO MAKE
CLARIFICATIONS AND CORRECTIONS
TO CHAPTER 50 ENTITLED CITY OF
SYRACUSE LIVING WAGE ORDINANCE**

WHEREAS, the City of Syracuse awards many contracts to companies and other organizations for the purposes of providing services to the public; and

WHEREAS, many employees and families of companies and organizations that receive contracts from the City often live below or near the poverty line, and must resort to taxpayer-funded social services; and

WHEREAS, paying a living wage to such employees will promote productivity and workplace stability, increase consumer income, decrease poverty, invigorate communities, and reduce the need for taxpayer-funded social service programs; and

WHEREAS, the City seeks to ensure that all employees of contractors and subcontractors who deliver City services are healthy and productive citizens and have health insurance for themselves and their families; and

WHEREAS, the payment of a living wage by such employers will further all of the above stated interests; NOW, THEREFORE,

BE IT ORDAINED BY THE COMMON COUNCIL FOR THE CITY OF SYRACUSE:

The Revised General Ordinances of the City of Syracuse are hereby amended to add a new Chapter 50 entitled City of Syracuse Living Wage Ordinance as follows:

Section 50-1. Title and Purpose

(a) Syracuse Living Wage Ordinance

The purpose of this legislation is to ensure that employees of contractors and subcontractors with the City of Syracuse earn an hourly wage that will enable such employees and their families to live above the federal poverty level and reduce or eliminate their reliance on taxpayer-funded social services.

Section 50-2. Definitions

The following definitions shall apply:

(a) "Agency" means a department or office of the City that is responsible for formulating, soliciting, or reviewing proposals, bids, or for administering service contracts. For the purposes of this Chapter, "Agency" shall also mean any official, agent, or committee that is formed or designated by the City to consider, make decisions, or to make effective recommendations regarding the same. This definition shall in no event be deemed to include the Syracuse Industrial Development Agency, the Syracuse Economic Development Corporation, the Syracuse Housing Authority, or any agency not governed by the Charter of the City of Syracuse, as amended.

(b) "City" means the City of Syracuse and its agencies, departments and offices, including the Syracuse City School District for the limited purpose of City awarded service contracts only.

(c) "Concession Agreement" means a negotiated contract by which the City or Syracuse City School District gives a Contractor the right to operate a concession whose annual value to the City or Syracuse City School District in ongoing fees is at least \$20,000, whether as a fixed amount or a percentage of revenues, for the right to operate a specified business under specified conditions.

(d) "Contractor" means any person or entity that enters into a service contract or concession agreement with the City, or the Syracuse City School District for the limited purpose of City awarded service contracts only, except other City agencies.

(e) "Employer" means a contractor or subcontractor that provides a service to the City under a service contract, or to the Syracuse City School District under a City awarded service contract in the amount of Twenty Thousand Dollars (\$20,000) or more. This definition shall not govern any service contract where the City retains a contractor pursuant to the terms of a service contract awarded by the federal government, the State of New York, the County of Onondaga, or any other municipal corporation as permitted under applicable federal, state or local law or under an intermunicipal agreement between the City and another municipal corporation as authorized by the General Municipal Law of the State of New York or contracts between City agencies.

(f) "Employee" means any individual who is employed by a contractor or subcontractor under a service contract for the period such individual performs services under the contract; provided, however, that "employee" shall not include:

- (i) any employee of the City or City School District including any member of a collective bargaining unit covered by a collective bargaining agreement with the City of Syracuse or the City School District;
- (ii) an individual engaged in construction work pursuant to federal or state prevailing wage laws;
- (iii) any full-time student employed in seasonal work or a student participating in a government or school sponsored work-study program;
- (iv) an individual participating in a job readiness or job training program;
- (v) an apprentice for whom the employer has received a certificate to pay special minimum wages under section 14 of the Federal Fair Labor Standards Act 29 U.S.C. 214;
- (vi) any individual designated as managerial, supervisory, or confidential by his or her employer as defined by the Federal Fair Labor Standards Act, 29 U.S.C. Section 214; or
- (vii) an employee of any Federal, State, or municipal corporation, agency, or public authority.

(g) "Full time" employee means any individual who is employed 30 (thirty) or more hours during a week or other consecutive seven (7) day period. "Part time" employee means any individual who is employed less than thirty (30) hours during a week or other consecutive seven (7) day period. This shall include employees classified as temporary, casual, and/or seasonal employees.

(h) "Health Benefits" means health care benefits provided by an employer for its employees and their dependents at employer cost or through an employer contribution, provided that such cost or contribution shall be no less than sixty-four percent (64%) of the cost of the employee's health insurance premium or expenses. Coverage shall include, at a minimum, comprehensive medical benefits.

(i) "Living Wage" means a wage equal to the rates established under paragraph (a) of section 50-3.

(j) "Person" means any individual, proprietorship, partnership, joint venture, profit or non-profit corporation, limited liability company, trust, association, or other entity that employs individuals.

(k) "Service Contract" means a contract that involves an expenditure by or through the City or Syracuse City School District of at least \$20,000 in a fiscal year awarded by the City to a contractor for the furnishing of services to or for the City or Syracuse City School District, excluding the purchase or leasing of goods or other property.

(l) "Subcontractor" means any person or entity, other than a contractor or employee, which enters into a contract to supply services to a City contractor, or to a Syracuse City School District contractor under City awarded service contracts, and which performs services that are required under the service contract.

Section 50-3. Living Wage

(a) Wages

An employer shall pay an hourly wage to each of its employees of \$12.19/hr (twelve dollars and nineteen cents) per hour if the employer provides health benefits as defined herein or \$14.40/hr (fourteen dollars and forty cents) per hour if the employer does not provide health benefits. An employer of an employee that customarily and regularly receives more than \$30.00 per month in tips may use that employee's tips as a credit against the employer's living wage obligation to the employee ("tip credit"), up to the maximum tip credit that the employer can claim at that time under the Fair Labor Standard Act (FLSA). Only tips actually received by the employee may be counted in determining whether the employee is a tipped employee and in applying the tip credit. The living wage rates set forth herein are subject to annual adjustment under paragraph (d).

A contractor shall be obligated to pay an hourly living wage to employees paid under any service contract that is executed, extended, or renewed on or subsequent to the effective date of this ordinance.

(b) Health Benefits

An employer who pays the lower living wage rate of \$12.19/hr (twelve dollars and nineteen cents) per hour shall provide health benefits as defined in Section 50-2(h) to each of its employees and their dependents. In order to be applicable, the lower living wage rate shall only apply in the case of an employee who actually receives health care benefits as defined in Section 50-2(h) and not in the case when said health benefits are just made available to the employee. If the employer is providing employee health benefits less than those specified in the definition in Section 50-2(h), such employer shall be required to pay the living wage rate of \$14.40/hr (fourteen dollars and forty cents) per hour unless the employee health benefits are increased to meet such definition.

(c) Proof of Health Benefits

In order to qualify for the wage rate of an employer providing health care benefits under paragraph (a), an employer shall furnish proof of health care coverage and payment thereof satisfactory to an appropriate agency or department designated by the City. Such proof shall be provided by an employer not later than thirty (30) days after execution of the service contract. That proof must include a sworn statement from the employer or its carrier on behalf of the employer regarding the availability of employee health care coverage. The designated City agency or department shall make this documentation available to the Mayor, Common Councilors, members of the Living Wage Advisory Committee, or other appropriate agencies of the City upon request.

(d) Rate Adjustment

The wage rates under paragraph (a) of this section shall be adjusted annually where required under this paragraph effective April 1st of each year following the effective date of this Ordinance. The percentage used to calculate the adjustment of the wage rates shall be the percentage change in the Consumer Price Index ("CPI") for All Urban Consumers (Northeast Urban) All Items for the immediately preceding calendar year (January through December) from the end of the next previous calendar year (i.e., April 1, 2006 adjustment will be based on the percentage increase, if any, of the CPI for All Urban Consumers (Northeast Urban) All Items Annual 2005 from the CPI for All Urban Consumers (Northeast Urban) All Items Annual 2004). In no event shall the wage rates be adjusted downward. In the event the CPI change is either negative or there is no change, the annual wage rates for the previous year shall remain in effect.

(e) Notice of Rate Adjustments

The City shall publish an annual notice announcing the annual rates as soon as it has received the applicable Consumer Price Index. This notice shall be provided promptly to all agencies, contractors and subcontractors affected by this ordinance and shall specify the rates to become effective on April 1st.

(f) Reduction in Wages or Hours

Nothing in this section or chapter shall require or authorize an employer to reduce the wages or hours of any employee in order for that employer to come into compliance. This section shall not be construed so as to reduce wages established under any collective bargaining agreement or applicable prevailing wage law.

(g) Changes in Job Titles or Job Functions

An employer shall not violate the intent of this Ordinance by changing an employee's job title or making a non-substantial alteration in job functions or responsibilities solely to avoid the payment of a living wage.

(h) Compensated Days Off

An employer shall provide to each employee twelve (12) compensated days off per year. Part-time employees shall accrue compensated days off on a pro-rated basis. An employee shall be eligible to use such accrued days off after the first six (6) months of employment or consistent with employer policy, whichever is sooner. Employers may count paid holidays and any combination of paid sick or family leave, vacation, or personal days toward provision of the twelve (12) days off.

Section 50-4. Exemptions for Employers

An employer shall be exempt from the requirements of this chapter if it employs fewer than five employees, as full-time equivalents for that employer, for each week in the immediately preceding twelve (12) months.

Section 50-5. Requests for Proposals and Service Contracts

All requests for proposals and service contracts subject to this Ordinance shall include the following or substantially equivalent language:

(a) This contract is subject to the Living Wage Ordinance of the City of Syracuse. The Ordinance requires that, absent an exemption, all contractors having a service contract with the City shall pay their employees the living wage then in effect for the period during which services are being covered by this contract.

(b) The City shall have the authority to suspend or terminate a service contract and consider other penalties for violations of this Ordinance.

Section 50-6. Retaliation and Discrimination Barred

(a) An employer shall not discharge, reduce the compensation of, or otherwise discriminate against an employee for making a complaint, participating in any proceedings, reporting non-compliance, or otherwise asserting his or her rights under this chapter.

(b) A violation for retaliation as provided under paragraph (a) of this section is punishable by a fine of up to \$500 (five hundred dollars) for each week that an adverse action is in force and until the aggrieved employee(s) are made whole. The total fine for a particular adverse action shall not exceed \$10,000 (ten thousand dollars).

(c) An employer shall not use any payments received under a City service contract to discourage, impede, or promote unionization, including but not limited to the preparation or distribution of materials which advocate for or against unionization, holding meetings intended to influence employees to support or resist unionization, hiring legal counsel or other consultants to provide advice or assistance in discouraging,

impeding, or promoting unionization, or otherwise acting to impede a union from communicating with employees or fulfilling its representational responsibilities.

(d) Employers are prohibited from discriminating against any employee or job candidate in hiring, promotion or retention based on race, national origin, ethnicity, religion, age, gender, disability or sexual orientation.

Section 50-7. Obligations of Employers

(a) An employer shall comply with the living wage and other requirements of this chapter.

(b) An employer shall post in a conspicuous place on its premises, where notices to employees and applicants for employment are customarily posted, a notice provided by the City informing employees of their rights under this chapter. Such notice shall also state the current living wage rate and the procedure for filing a complaint pursuant to this chapter.

(c) An employer shall permit access by the City to work sites and payroll records to investigate and monitor compliance with this chapter on prior notice to employer by City during normal business hours.

(d) An employer shall maintain payroll records with the name, job title, hourly wage rate and benefits paid to each employee and shall submit a certified payroll on a semiannually basis to an appropriate agency or department designated by the City. The documents may be redacted or edited to protect confidential and proprietary information. The designated City agency or department shall make this documentation available to the Mayor, Common Councilors and members of the Living Wage Advisory Committee upon request. Employers shall maintain related payroll records for a period of five (5) years after termination of an individual's employment.

Section 50-8. Compliance for Contractors and Subcontractors

(a) The City shall develop rules and regulations to receive and investigate complaints and procedures to determine compliance with this chapter. The City is affirmatively obligated to do on-site visits and/or to review payroll records to monitor compliance in order to ensure compliance. All records reviewed shall be kept confidential and all parties with access to these records shall be required to keep that information confidential, except as necessary to enforce this ordinance.

(b) Upon a determination through on-site visits or review of payroll records that an employer has not complied with a provision of this chapter, the City shall provide the employer with written notice of such non-compliance. The notice shall include a demand for compliance within thirty (30) days, a warning that the service contract may be suspended or terminated after such date for non-compliance, and a statement that

compliance must be demonstrated by submission of payroll records to the City that establish proof of restitution made to affected workers.

(c) An employer may request a hearing within thirty (30) days after receipt of a notice of non-compliance. The City shall conduct a hearing within thirty (30) days at which the parties may present documentation. Thereafter, the City shall issue written findings and a decision within thirty (30) days subject to the provisions of Section 50-10(e).

(d) An employer shall have the right to appeal a determination of noncompliance in an Article 78 proceeding in New York State Supreme Court.

(e) If an employer fails to comply with a demand for compliance within thirty (30) days, or does not prevail after a hearing, the City shall impose any or all of the following:

- (1) suspend or terminate the service contract and, as yet, unpaid;
- (2) demand repayment of monies provided under the service contract in whole or in part;
- (3) require restitution in the form of payment by the employer to the employees of any unpaid living wages; and
- (4) upon a determination that an employer's noncompliance with the requirements of this chapter was willful or egregious, the city may bar an employer from any further service contract for a period of five (5) years.

(f) Service contracts payments that have been suspended for non-compliance according to this section may be renewed, but only after the employer submits written proof satisfactory to the City that the employer has come into full compliance with this ordinance.

Section 50-9. Living Wage Advisory Committee

Within ninety (90) days of the enactment of this law, the City shall create and convene a Living Wage Advisory Committee. The purpose and function of this committee shall be (1) to review the activities of the City and its agencies that are responsible for implementing and enforcing the Living Wage Ordinance; (2) to advise the Common Council and the Mayor about the implementation and enforcement of this law; and (3) recommend administrative changes, including, but not limited to, requiring administrative procedures to shield proprietary and confidential information. The review function of this committee shall include, but not be limited to, reviewing relevant records to ensure compliance with the Living Wage Ordinance. This committee shall meet

quarterly, and may hold additional meetings if deemed necessary. Committee meetings shall be open to the public and at an accessible location.

This committee shall be composed of nine (9) people including four (4) individuals appointed by the Common Council, two (2) individuals appointed by the Mayor, two (2) individuals recommended by the Greater Syracuse Labor Council, and one (1) individual recommended by the CNY Labor Religion Coalition to the Common Council. Of the individuals appointed by the Common Council, two (2) shall be from the business community. Of the individuals recommended by the Greater Syracuse Labor Council, one (1) shall be a worker affected by the Living Wage Ordinance. The individuals recommended for appointment by the Greater Syracuse Labor Council and the CNY Labor Religion Coalition shall be subject to confirmation by the Common Council. Committee members shall serve a term of two (2) consecutive years but may not serve more than two (2) consecutive terms. Appointments to fill vacancies in the positions appointed by the Common Council shall be made by the Common Council. Appointments to fill vacancies in positions appointed by the Mayor shall be made by the Mayor. In the event of a vacancy in a position subject to recommendation by the Greater Syracuse Labor Council, the Greater Syracuse Labor Council shall make a recommendation of an individual for appointment to fill the vacancy which appointment shall be subject to confirmation by the Common Council. In the event of a vacancy in a position subject to recommendation by the CNY Labor Religion Coalition, the CNY Labor Religion Coalition shall make a recommendation of an individual for appointment to fill the vacancy which appointment shall be subject to confirmation by the Common Council. The vacancies shall be filled only for the term of the individual being replaced. All records reviewed shall be kept confidential and all Committee members shall be required to keep that information confidential.

Section 50-10. Enforcement

(a) An employee who believes that an employer has violated any provision of this chapter may file a written complaint with the City within six (6) months of such violation. The City shall make complaint forms available upon request in English and Spanish. The City shall have an affirmative duty to enable any individual to lodge a complaint, regardless of any language or communication barrier.

(b) The City shall develop rules and regulations to receive and investigate complaints and procedures to pursue the City's obligations as outlined in sections (c) through (e) of this section.

(c) Within thirty (30) days of receiving a written complaint, the City shall provide such employer with a notice of the allegations contained in the complaint. Within thirty (30) days thereafter, the employer shall submit a response in writing to the City. If the employer denies the complaint or fails to respond, the City shall conduct an investigation. Within sixty (60) days of the initiation of an investigation, the City will issue a written determination as to whether probable cause exists to support the complaint.

(d) Within thirty (30) days of a finding of cause to support the complaint, the City shall issue a hearing notice to the employer. No less than thirty (30) days after the issuance of the hearing notice, the City shall conduct a hearing in which the City shall have subpoena powers, and the parties shall have the right to present evidence and to be represented by counsel. The City may delay or extend such a hearing by no more than thirty (30) additional days at the request of an employer or based on a determination by the City that it needs more time to prepare for a hearing.

(e) Within thirty (30) days of the conclusion of the hearing, the City shall issue its written findings and a written decision. The City may delay the date by which it will issue its written findings and decision by no more than two (2) increments of thirty (30) days each if the City determines that it needs more time to review the evidence related to a complaint. In issuing its written decision:

- (1) A finding of noncompliance with Section 50-3, Section 50-6(c), Section 50-6(d) or Section 50-7 of this Ordinance shall be accompanied by a decision to impose, at the end of thirty (30) days, any or all of the penalties listed in Section 50-8(e) unless the employer submits written proof satisfactory to the City that it has come into full compliance with the Ordinance before the thirtieth (30th) day. Service contracts or pending economic assistance payments that have been suspended for non-compliance according to this section may be renewed, but only after the employer submits written proof satisfactory to the City that the employer has come into full compliance with this ordinance; and
- (2) A finding that an employer has violated Section 50-6(a) of this Ordinance shall be accompanied by a decision to impose the penalty listed in Section 50-6(b); and (3) An aggrieved party has the right to appeal such decision in an Article 78 proceeding in New York State Supreme Court.

(f) In lieu of seeking redress through a complaint to the City under paragraphs (a), (b), (c) and (d) of this Section, an employee may elect to bring an independent civil action against an employer in a court of competent jurisdiction.

(g) The court may award damages, costs and attorney fees to the prevailing party, and may direct any other remedy at law or equity, including but not limited to injunctive relief, reinstatement, back wages and punitive damages.

(h) The City shall not disclose the identity of an employee to an employer except where necessary to investigate, pursue or defend a complaint.

Section 50-11. Reports to the Mayor, Common Council and Living Wage Advisory Committee

An appropriate agency or department designated by the City shall provide, on a date one year subsequent to the effective date of this Ordinance and on that date in each

subsequent year, an annual report to the Mayor and Common Council and the Living Wage Advisory Committee regarding compliance by employers with this chapter; actions taken by the City for non-compliance; complaints filed for violations and the dispositions; and a list of all service contracts awarded for a one year period since the effective date or its anniversary in each subsequent year.

Section 50-12. Syracuse Regional Airport Authority

Any Operating Agreement, Management Agreement, Lease Agreement, or other terms of agreement between the City of Syracuse and the Syracuse Regional Airport Authority (SRAA) for Hancock International Airport (the "Airport") shall require that any Service Contract or Concession Agreement made by the SRAA with any entity for (a) the operation and/or management of the Airport Parking Facilities (Parking Garage and Open Lot) and (b) any Food and Beverage concession at the Airport shall incorporate by direct reference the Living Wage Ordinance of the City of Syracuse; and establishing that all personnel working directly or indirectly under any such Service Contract or Concession Agreement shall be entitled to all the benefits and standards established by the Living Wage Ordinance as if those individuals were working directly under such Service Contract or Concession Agreement made with the City or Syracuse City School District.

Section 50-13. Severability Clause and Effective Date

1) In the event any provision of this law shall be held invalid or unenforceable by a final determination of any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provisions of this chapter.

2) This ordinance shall take effect one hundred twenty (120) days after its enactment, however service contracts executed, extended or renewed prior to the effective date of this ordinance shall not be governed by the terms of this ordinance except as provided in Section 50-3(a) of this Ordinance.