

**LOCAL LAWS
OF
THE CITY OF NEW YORK
FOR THE YEAR 1996**

No. 79

Introduced by The Speaker (Council Member Vallone), Council Members Freed, Albanese, Robles, Spigner, McCaffrey, Pinkett, Duane, Fisher, The Public Advocate (Mr. Green), Council Members Clarke, Malave-Dilan, Eisland, Eldridge, Henry, Lasher, Michels, Miller, Powell IV, Stabile, Pagan and Wooten; also Council Members Cruz, DiBrienza, Fields, Foster, Koslowitz, Marshall, McCabe, O'Donovan, Robinson, Ruiz, Sabini, Watkins, White, Williams, Harrison, Linares, Povman, Warden, Weiner and Rosado.

A LOCAL LAW

To amend the administrative code of the city of New York, in relation to establishing a prevailing wage requirement in contracts for security, temporary, cleaning and food services funded through the city treasury.

Be it enacted by the Council as follows:

Section 1. Declaration of Legislative Findings and Intent. The Council finds that in several areas in which the city contracts for services there appears to be a trend toward paying low wages. This problem appears to be most egregious in the areas of security, temporary, cleaning and food services. Although the Council recognizes that this situation exists in other areas as well, it is an important first step to concentrate on these four industries where the problem is most blatant.

The city spends over \$3 billion annually on personal service contracts, including approximately \$200 million spent annually to purchase security, temporary, cleaning and food services. It is vital that the city receive the greatest level of service and economic return for its contractual expenditures. The Council, therefore, finds that it is in the best interest of the city to require as a condition of every contract for security, temporary, cleaning and food services that the contractor or subcontractor pay persons employed under such contract the applicable prevailing wage in the industry.

Recognizing that the not-for-profit sector is uniquely instrumental in the provision of services to the city's most vulnerable populations, such organizations are exempt from the requirements of this legislation. This is consistent with the state constitution's recognition that institutions whose mission is charity cannot be treated in the same manner as those organizations whose mission is profit-making.

§2. Section 6-109 of the administrative code of the city of New York is repealed and a new section 6-109 is enacted, to read as follows:

Section 6-109. Contracts for security, temporary, cleaning and food services. a. Definitions. For purposes of this section only, the following terms shall have the following meanings:

(1) "Cleaning services contract" means any contract for custodial or janitorial services, washing and waxing floors, window cleaning, cleaning of curtains, rugs, drapes, and disinfecting and exterminating services.

(2) "Contract" means any written agreement whereby the city is committed to expend or does expend funds in connection with any contract or subcontract for security, temporary, cleaning and food services whose value is greater than the city's small purchase limit except the term "contract" shall not include contracts with not-for-profit organizations and contracts awarded pursuant to the emergency procurement procedure as set forth in section three hundred fifteen of the charter.

(3) "Contracting agency" means a city, county, borough, or other office, position, administration, department, division, bureau, board or commission, or a corporation, institution or agency of government, the expenses of which are paid in whole or in part from the city treasury.

(4) "Food services contract" means any contract for the preparation and or provision of food. Such service shall include those as performed by workers employed under the titles as described in the federal dictionary of occupational titles for cook, kitchen helper, cafeteria attendant, and counter attendant. Any agency letting a food services contract under which workers will be employed who do not fall within the foregoing definitions must request the city comptroller to establish classifications and prevailing wage rates for such workers.

(5) "Not-for-profit organization" means a corporation having tax exempt status under section 501(c)(3) of the United States internal revenue code and recognized under New York state not-for-profit law.

(6) "Prevailing wage" means the rate of wage paid in the locality to workers in the same trade or occupation and annually determined by the city comptroller in accordance with the provisions of section 234 of the New York state labor law, or, for titles not specifically enumerated in this law, determined by the city comptroller at the request of the contracting agency in accordance with the provisions of section 234 of the New York state labor law.

(7) "Security services contract" means any contract for the provision of non-city employed security guards.

(8) "Temporary services contract" means any contract for any office service of a temporary nature. Such services shall include those performed by workers employed under the titles as described in the federal dictionary of occupational titles for secretary, word processing machine operator, data entry clerk, file clerk, and general clerk. Any agency letting a temporary services contract under which workers will be employed who do not fall within the foregoing definitions must request the city comptroller to establish classifications and prevailing wage rates for such workers.

b. Prior to soliciting bids or proposals for any contract for the provision of security, temporary, cleaning or food services, the contracting agency shall submit to the city comptroller a list of the classifications of employees to be employed on such contract. The city comptroller shall review the list and shall determine the classifications of employees to be employed and the wages required to be paid thereunder. Every solicitation for such contract shall have annexed to it a schedule of the classifications and wages determined by the city comptroller, which will be annexed to and form a part of the specifications for the contract.

c. Every contract for or on behalf of the city for the provision of security, temporary, cleaning and food services shall contain a provision or provisions stipulating the wages required to be paid to the employees under such contract, and each such contract shall further contain provisions obligating the contractor or subcontractor of such contractor to pay its employees on work thereunder not less than the applicable wages specified in the schedule of wage rates described in subdivision (b) of this section.

d. Any contractor or subcontractor of such contractor who performs security, temporary, cleaning or food services shall maintain original payroll records reflecting the days, times and wages paid to each employee working under such contract. The contractor shall submit copies of such records, certified by the contractor under penalty of perjury to be true and accurate, to the contracting agency with every requisition for payment. These records shall be maintained at the work site, or where impracticable, at the principal place of business of the contractor or subcontractor during the time the work under the contract is being performed and shall be preserved by the contracting agency for a period of three years after completion of the work. Every such contract shall contain a provision or provisions requiring the maintenance, submission and certification of such payroll records in accordance with this section. The contracting agency must maintain this information in the agency contract file and make it available for public inspection. The contracting agency shall forward to the council an annual report within thirty days of the close of the fiscal year listing each contract let pursuant to this section and include copies of the payroll records submitted by the contractor.

e. No later than the day on which any work begins under a contract awarded pursuant to this section, the contractor or subcontractor shall post in a prominent and accessible place at every work site a legible statement of the wages to be paid to workers employed under a contract awarded pursuant to this section. In circumstances where it is impracticable to post a statement of wages, each worker employed under such contract shall receive either personally or by regular mail, a copy of the statement of wages directly from the contractor or subcontractor who hired such worker, and for temporary service contracts, by the agency personnel officer, who shall maintain a record reflecting the employee's receipt thereof.

f. Whenever the city comptroller has reason to believe that a worker has been paid less than the prevailing rate of wages, or upon a verified complaint in writing from a worker affected by the provisions of this section, the city comptroller shall conduct an investigation to determine the facts relating thereto. In conducting such investigation, the city comptroller shall have the same investigatory, hearing and other powers as are conferred on the city comptroller by sections 234 and 235, respectively, of the state labor law. At the start of such investigation the fiscal officer may withhold any payment due the contractor in order to safeguard the rights of the workers employed on such contract, and shall proceed pursuant to the withholding procedures established by section 235.2' of the state labor law. Based upon such investigation and hearing, the city comptroller shall issue an order, determination or other disposition, including but not limited to, a stipulation of settlement. Such disposition may (i) direct payment of wages due; (ii) direct payment of interest at a rate of not less than six per cent per year and not more than the rate of interest then in effect, as prescribed by the superintendent of banks pursuant to section fourteen-a of the banking law, per annum from the date of the underpayment to the worker; (iii) direct payment of a further sum as a civil penalty in an amount not exceeding twenty-five percent of the total amount found to be due; and (iv) direct payment of the sums withheld at the commencement of the investigation and the interest that has accrued thereon to the contractor. In assessing the interest and penalty, due consideration shall be given to the size of the employer's business, the employer's good faith, the

gravity of the violation, the history of previous violations and the failure to comply with record-keeping or other non-wage requirements. The penalty shall be paid to the city comptroller for deposit in the city general revenue fund.

g. In circumstances where a contractor or subcontractor fails to perform in accordance with any of the requirements of this section, and there is a continued need for the service, a contracting agency may obtain the required service as specified in the original contract, or any part thereof, by issuing a new solicitation and charging the non-performing contractor or subcontractor for any difference in price resulting from the new solicitation, any administrative charge established by the contracting agency, and shall, as appropriate, invoke such other sanctions as are available under the contract and applicable law.

h. Before issuing an order, determination or any other disposition, the city 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 or contractor affected thereby. The city 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 person or contractor shall be notified of a hearing date by the office of administrative trials and hearings and shall have the opportunity to be heard with respect to the matters complained of.

i. In an investigation conducted under the provisions of this section, the inquiry of the city comptroller shall not extend to work performed more than three years prior to: (i) the filing of the complaint; or (ii) the commencement of the investigation upon the city comptroller's own volition, whichever is earlier.

j. Nothing contained herein shall operate to impair any existing contract, except that renewal, amendment or modification of such contract occurring on or after the enactment of this provision shall be subject to the conditions specified in this section.

k. 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 a court of appropriate jurisdiction against the contractor or subcontractor found to have violated this section for the recovery of the difference between the sum, if any, actually paid to him pursuant to said disposition and the amount found to be due him as determined by the disposition. Such action must be commenced within three years of the date of filing of said disposition, or if said disposition is reviewed in a proceeding pursuant to article seventy-eight of the civil practice law and rules, within three years after the termination of such review proceeding.

l. When, pursuant to the provisions of this section, a final disposition has been entered against a contractor or subcontractor in two instances within any consecutive six-year period determining that such contractor or subcontractor has willfully failed to pay the prevailing wages in accordance with the provisions of this section, such contractor or subcontractor, and any principal or officer of such contractor or subcontractor who knowingly participated in such failure, shall be ineligible to submit a bid on or be awarded any contract by or on behalf of the city for a period of five years from the date of the second disposition. Nothing in this section shall be construed as affecting any provision of any other law or regulation relating to the awarding of public contracts.

m. When a final determination has been made in favor of a worker and the contractor or subcontractor found violating this section has failed to make payment as required by the order of the city comptroller, and provided that no proceeding for judicial review shall then be pending and the time for initiation of such proceeding shall have expired, the city comptroller may file a copy of such order containing the amount found to be due with the county clerk of the county of residence or place of business of the contractor or any principal or officer of the contractor or subcontractor 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 city comptroller in the same manner, and with like effect, as that prescribed by the civil practice law and rules for the enforcement of a money judgment.

n. Notwithstanding any inconsistent provision of this law or of any other general, special or local law, ordinance, 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 pursuant to a disposition entered under the provisions of this law because of the prior receipt by the employee without protest of wages paid or on account of the employee's failure to state orally or in writing upon any payroll or receipt of which the employee is required to sign that the wages 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 due the employee for the period covered by such payment.

o. (1) Before payment is made of any sums due on any contract let under this law, it shall be the duty of the contracting agency to require the contractor and each and every subcontractor to file a written statement certifying to the amounts then due and owing from such contractor or subcontractor to or on behalf of any and all employees for wages for labor performed under the contract, setting forth the names of the persons whose wages are unpaid and the amount due to or on behalf of each respectively. This statement shall be verified as true and accurate by the contractor or subcontractor under penalty of perjury.

(2) If any interested person shall have previously filed a protest in writing objecting to the payment to any contractor or subcontractor on the basis that wages are due and owing to one or more employees under any contract of the contractor or subcontractor, or if for any other reason it may be deemed advisable, the city comptroller or the department of finance may deduct from the whole amount of any payment to the contractor or subcontractor sums admitted by the contractor or subcontractor in the verified statement or statements to be due and owing to any employee before making payment of the amount certified for payment in any estimate or voucher, and may withhold the amount so deducted for the benefit of the employee whose wages are unpaid as shown by the verified statements and may pay directly to any person the amount shown by the statements to be due to the employee.

p. (1) Any contractor or subcontractor who submits any statement made under penalty of perjury which is required to be submitted under this law which he knows to be false shall be guilty of perjury and punishable as provided by the penal law.

(2) When any contract let pursuant to this law contains a schedule of wages as provided for herein, any contractor or subcontractor who fails to pay any employee the wages specified in such wage schedule is guilty of a misdemeanor and upon conviction shall be punished for a first offense by a fine of five hundred dollars or by imprisonment for not more than thirty days or both; for a second offense by a fine of one thousand dollars; and in addition the contract violated shall be forfeited; and the contractor or subcontractor shall forfeit all payments due on such contract. Any principal or officer of the contractor who knowingly participates in a violation of this section shall also be guilty of a misdemeanor and the criminal and civil penalties herein shall attach to the principal or officer upon conviction or upon an order, determination or other disposition arrived at by the city comptroller finding that this law has been violated. In addition, every contract let pursuant to this law shall contain a provision or provisions whereby the contractor acknowledges that the willful submission of any false statement whose

submission is required by this law will result in the automatic forfeiture of the contract and any rights of the contractor thereunder.

q. If the city comptroller finds that any contractor who performs security, temporary, cleaning or food services and fails to comply with or evades the provisions of this section, the city comptroller shall present evidence of such noncompliance or evasion to the contracting agency. Where such evidence indicates a noncompliance or evasion on the part of a subcontractor, the contractor shall be responsible for such noncompliance or evasion. It shall be the duty of the contracting agency in charge of such service work to enforce the provisions of this section.

§3. This local law shall take effect immediately for all contracts for the provision of security and cleaning services, and shall only apply to contract solicitations issued after its effective date.

§4. This local law shall take effect one hundred eighty days after it shall be enacted into law for all contracts for temporary and food services, and shall only apply to contract solicitations issued after its effective date. Actions to effectuate the implementation of this local law as it applies to contracts for temporary and food services, including, but not limited to, establishing the prevailing wage rates for the following occupations found in the federal dictionary of occupational titles: secretary; word processing machine operator; data entry clerk; file clerk; general clerk; cafeteria attendant; counter attendant; cook; and kitchen helper, shall begin immediately.

THE CITY OF NEW YORK, OFFICE OF THE CITY CLERK, s.s.:

I hereby certify that the foregoing is a true copy of a local law of the City of New York, passed by the Council on July 11, 1996, disapproved by the Mayor on August 7, 1996, and repassed by the Council members on September 11, 1996 and said law is adopted notwithstanding the objection of the Mayor.

CARLOS CUEVAS, City Clerk, Clerk of the Council

CERTIFICATION PURSUANT TO MUNICIPAL HOME RULE LAW §27

Pursuant to the provisions of Municipal Home Rule Law §27, I hereby certify that the enclosed Local Law (Local Law 79 of 1996, Council Int. No. 793-A) contains the correct text and:

Received the following vote at the meeting of the New York City Council on July 11, 1996: 41 for, 7 against.

Was disapproved by the Mayor on August 7, 1996.

Was returned to the City Clerk on August 7, 1996.

Was reconsidered by the Council on September 11, 1996 and received the following vote of the Council members at a meeting of the Council on September 11, 1996: 44 for, 5 against.

JEFFREY D. FRIEDLANDER, Acting Corporation Counsel

The validity of this local law is currently a subject of disagreement between the Mayor and the City Council. This certification is not intended as a legal opinion as to the validity of the local law, other than certifying the truth of the facts presented herein.