(Passed 9-2 (Barnach, Sabbagh))

ORDINANCE 05-08

TO AMEND TITLE 2 OF THE BLOOMINGTON MUNICIPAL CODE ENTITLED "ADMINISTRATION AND PERSONNEL"
(Adopting Chapter 2.28 entitled "City of Bloomington Living Wage Ordinance")

Whereas the payment of a living wage to employees of the City of Bloomington, to employees hired to carry out a service contract with the City, and to employees hired to realize the intent of a subsidy by the City will tend to decrease the amount of poverty in the City; and

Whereas, less poverty will decrease City expenditures and expenditures of other governmental organizations for social welfare programs and other forms of relief; and

Whereas, the payment of a living wage to those who were near, at, or below the poverty line will tend to increase their ability to be self-sufficient; and

Whereas, when low income individuals gain the ability to support themselves, all citizens of the City will tend to benefit by living in a community in which there is less illness, better housing, more public involvement, less truancy, and fewer incidents involving criminal justice; and

Whereas, with increased income, the consumer spending of lower income people will benefit not just themselves but also local businesses; and

Whereas, a responsible and ethical expenditure of public monies for services and subsidies promotes an economic standard that is reasonable, fair, and conducive to harmonious relations among different groups;

THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF BLOOMINGTON THAT:

Section 1. New Chapter. In the interests of social justice, public harmony, and fiscal responsibility, the Bloomington Municipal Code is hereby amended by inserting Chapter 2.28, which shall be known as the "City of Bloomington Living Wage Ordinance."

Section 2. Purpose. Section 2.28.010 shall be inserted into the Bloomington Municipal Code and shall read as follows:

Section 2.28.010. Purpose.

The purpose of the Bloomington Living Wage ordinance is to ensure that the City, City service contractors and subcontractors, and beneficiaries of a City grant, tax abatement or other forms of subsidy or assistance pay a wage sufficient for a working family to meet basic needs in housing, child care, food, clothing, household items, transportation, health care, and taxes.

Section 3. Definitions. Section 2.28.020 entitled "Definitions" shall be inserted into the Bloomington Municipal Code and include the following terms which shall appear in alphabetical order:

'Assistance' shall include a service contract or subcontract, or subsidy as defined in the following paragraphs.

(a) 'Service Contract or Subcontract' means:

(1) any agreement worth at least $10,000 which:

(A) is between the City of Bloomington and another party primarily for the performance of any of the following services for the City of Bloomington:

(i) food services on an on-going basis;
(ii) janitorial and custodial services;
(iii) security services;
(iv) parking lot management and attendance;
(v) waste management;
(vi) automotive repair and maintenance;
(vii) landscaping;
(viii) utility and building maintenance;
(ix) carpentry;
(x) clerical and office services;
(xi) street maintenance and repair;
(xii) sidewalk construction, maintenance and repair;
(xiii) laundry services;
(xiv) pest control;
(xv) resident and day shelter services; or

(B) delegates the performance of services obligated and enumerated under part (a)(1)(A) to another party through a subcontract or other agreement,

(C) is between a Beneficiary of a Subsidy and another party for the purpose of operating a social services program funded through a social services subsidy identified under the definition of "Subsidy."

(2) More than one agreement which, when viewed as whole:
(A) totals at least $10,000;
(B) provides services set forth in part (a)(1)(A); and
(C) has been divided without a legitimate and compelling business purpose in the event the agreements are between private parties, or without a legitimate and compelling public purpose in the event the City is one of the parties to the agreement(s). A legitimate business or public purpose does not include an intent to pay less than the living wage and a compelling business or public purpose does not include a lack of knowledge of this chapter.

(b) A 'Subsidy' means an award by the City of Bloomington to a person or entity with a total value of at least $25,000.

(1) The awards shall include the authorization or approval of benefits under the City's following economic development funds or programs:

(A) tax abatements pursuant to I.C. 6-1.1-12.1,
(B) grants from Business Investment Incentive Loan Fund (BIILF),
(C) all expenditures from the Industrial Development Fund except those associated with the acquisition of right-of-way for and the design, financing, construction, and maintenance of publicly-owned infrastructure serving a Community Revitalization Enhancement District (CRED) pursuant to I.C. 36-7-13.

(2) The value of the awards under the foregoing economic development funds or programs shall be presented in the legislation necessary for Council approval of these Subsidies and shall reflect the monetary benefit derived by the Beneficiary as estimated by the City at that time.

(3) The obligation to pay a living wage under the foregoing economic development funds or programs shall commence upon the receipt of the award and shall run for a period of years determined by the following formula. The period of obligation to pay a living wage shall equal the value of the award as estimated in the legislation

divided by $25,000, rounded down to the nearest whole number, but not to exceed 10 years. In the event the award is in the form of a tax abatement, receipt of the award shall mean the first year in which the Beneficiary is eligible to take the tax deduction.

(4) The awards shall also include the authorization or approval of grants for the operation of social service agency programs under the:

(A) Community Development Block Grant (CDBG) funds, and

(B) Jack Hopkins Social Services Funding Program.

(5) The value of the foregoing awards for the operation of social service agencies shall be presented in the legislation necessary for the Council approval of these Subsidies and shall be aggregated in order to determine whether the $25,000 monetary threshold has been met.

(6) The obligation to pay a living wage under the foregoing social services awards shall commence upon receipt of the award and shall run until the end of the fiscal year of the program.

(7) In the event the City develops or pursues new awards under new or existing economic development or social service programs, City officials shall notify the Common Council in order for it to decide whether the award(s) should be included as a Subsidy and, therefore, subject to this chapter before those awards may be offered.

(8) A monetary benefit to a person or entity shall be considered an award when it is the direct result of an authorization or approval by the City or its officials who had discretion over the identity of the recipient(s) as well as significant terms of the benefit at the time of the decision.

(c) Exclusions. The term "Assistance" shall not apply to interlocal cooperation agreements between the City of Bloomington and other governmental entities which are enabled by Indiana Code 36-1-7.

'Beneficiary' – means any person or entity receiving Assistance.

'City of Bloomington' – means the departments of the City whose budgets are approved by the Common Council. The term, however, does not include the Bloomington Public Transportation Corporation.

'Covered Employee' means a person who is employed in a part time, share time, temporary, or full time status who meets the following conditions:

(a) The person is employed by:

(1) the City of Bloomington, except the seasonal employees in the Parks and Recreation department whose accumulated compensated hours in a calendar year is less than 0.75 FTE (and whose primary location of work is not within the main offices of those departments).

(2) a Covered Employer, during a period when an Economic Development Subsidy is in effect *(see definition of "Subsidy")*; and the person holds a position identified as either retained or created as a result of that subsidy or the person performs duties substantially similar to one of those previously identified positions;

(3) a Covered Employer, during a period when a Social Services Subsidy is in effect *(see definition of "Subsidy")* and the person performs work operating the program;

(4) a Covered Employer, who has entered into a Service Contract or Subcontract and the person performs services directly and specifically toward fulfilling that contract or subcontract.

(b) The person is not:

(1) employed pursuant to common construction wage laws as long as the employee is paid a Living Wage;

(2) less than 18 years of age, who is hired as part of a school-to-work program or is hired in seasonal or part-time work;

(3) a student who serves in a work-study program or as an intern in a position that advances the student's career potential;

(4) a trainee participating for not more than six months in a training program;

(5) employed in concert with enrollment in a governmentally funded vocational rehabilitation program;

(6) a volunteer working without pay; or

(7) exempted under Section 14(c) of the Fair Labor Standards Act due to his or her disabilities.

'Covered Employer' means an employer who must pay at least some of its employees a living wage and includes:

(a) The City of Bloomington;

(b) A Beneficiary who is a for-profit entity with at least 10 employees or a not-for-profit entity with at least 15 employees.

'Tipped Employee' – Any Covered Employee engaged in an occupation in which he or she customarily and regularly receives tips or gratuities from patrons and others.

Section 4. Amount of Living Wage. Section 2.28.030 shall be inserted into the Bloomington Municipal Code and shall read as follows:

Section 2.28.030 Amount of Living Wage

(a) For all Covered Employees, except Tipped Employees, the Living Wage shall begin at $10 per hour, of which up to 15% may be in the form of the Covered Employer's contribution to health insurance available to Covered Employees, regardless of whether the Covered Employee elects to receive the employer's health insurance. For purposes of this chapter, health insurance shall not include disability insurance and shall be valued at the average amount the employer paid per hour for each employee for health insurance in the previous year or other more accurate measure of such benefit.

(b) The Living Wage for Covered Employees who are Tipped Employees of a Covered Employer shall be the Living Wage for other Covered Employees minus 10% of the annual sales for the employer prorated on an hourly basis per employee.

(c) Inflation Adjustment. The Living Wage shall be increased at the beginning of each calendar year by the same percentage that the Consumer Price Index for All Urban Consumers increases during the year ending the previous June 30.

(d) Phase-in Period for Not-for-Profits. Upon the effective date of this Chapter, a not-for-profit Covered Employer shall not be obligated to pay the full Living Wage in the first two years it receives Assistance from the City. However, during those two years, which need not be consecutive, the not-for-profit organization shall reduce the gap between its wages and the Living Wage by 15% at the beginning of the first year and by 35% at the beginning of the second year of award.

Section 5. Applicability of Chapter. Section 2.28.040 shall be inserted into the Bloomington Municipal Code and shall read as follows:

Section 2.28.040 Applicability of Chapter.

The City of Bloomington and all Covered Employers who are Beneficiaries of Assistance from the City either in the form of a Service Contract or Subcontract or a Subsidy are subject to this chapter and shall pay all Covered Employees a Living Wage.

Section 6. Obligations of Covered Employers. Section 2.28.050 shall be inserted into the Bloomington Municipal Code and shall read as follows:

Section 2.28.050 Obligations of Covered Employers

(a) Applications and contracts for Assistance. The Beneficiary of Assistance shall submit:

(1) A written commitment to pay all Covered Employees at least a Living Wage pursuant to this Chapter;

(2) The identity of the program under which Assistance would be awarded, a contact name, the address and phone number for the Beneficiary;

(3) Projected employment needs under the anticipated award, projected net increase or decrease in jobs for Covered Employees by job title that will result from awarding the Assistance, and the smallest hourly wage to be earned by each of these Covered Employees or an indication that the Covered Employee will earn at least the Living Wage.

(b) Record keeping and Reporting

A Covered Employer shall provide the City Legal Department with a statement in the first quarter of the year following that in which the provisions of this Chapter apply. That statement shall be provided in a format provided by the City Legal Department and shall include:

1) a list for the applicable year of each Covered Employee that includes:

(A) the employee's job title;

(B) the smallest hourly wage earned by the employee in the year the provisions of this Chapter apply or an indication that the Covered Employee earns at least the Living Wage;

(C) if the smallest hourly wage earned by the employee in the year the provisions of this Chapter apply is less than the Living Wage, then an indication of whether the Covered Employee had access to a health insurance plan sponsored by the Covered Employer;

(D) If the smallest hourly wage earned by the employee in the year the provisions of this Chapter apply is less than the Living Wage and the Covered Employee had access to a health insurance plan sponsored by the Covered Employer:

(i) what the hourly equivalent value of the Covered Employer's contribution to that health insurance plan on behalf of the Covered Employee (= annual contribution divided by 2,080) either was, or

(ii) if the Covered Employee elected not to participate in the health insurance plan, but could have done so, then what the hourly equivalent value of the Covered Employer's contribution to that health insurance plan (= annual contribution divided by 2,080) would have been.

2) A signed attestation by an officer of the Covered Employer that the information provided in the statement is truthful and accurate, and that the officer is aware of the provisions of this Chapter.

(c) Notification. Covered Employers shall provide notice to Covered Employees of this chapter. The notice shall be provided by the City Legal Department to be posted conspicuously in areas of the workplace frequented by Covered Employees.

(d) Contract Terms. Covered Employers shall include in all contracts subject to this chapter a provision approved the City Legal Department which refers the parties to this chapter and the obligations it imposes upon them.

(e) Retaliation Prohibited. The Covered Employer shall not discriminate in any manner against any employee for making a complaint, participating in the complaint proceedings, or using civil, statutory or collective bargaining remedies to advance their interests under the chapter. The Corporation Counsel, or his or her designee, shall investigate allegations of retaliation or discrimination, ordering appropriate relief if they are found to be true.

Section 7. Enforcement. Section 2.28.060 shall be inserted into the Bloomington Municipal Code and shall read as follows:

Section 2.28.060 Enforcement.

Enforcement of this Chapter may be based on complaints of noncompliance by Covered Employees or on monitoring for compliance by the City Legal Department.

(a) Monitoring

(1) The City Legal Department may develop rules to review contract documents to ensure that relevant language and information are included in City request for proposals, agreements and other relevant documents.

(2) The City Legal Department may request that Covered Employers allow it to verify their compliance with the provisions of this Chapter.

(b) Complaint process

(1) Any Covered Employee who believes his or her employer is not complying with this chapter may file a complaint in writing with the City Legal Department within a year after the alleged violation.

(2) The City Legal Department shall conduct an investigation of the complaint, during which it may require from the Covered Employer evidence such as may be required to determine whether the Covered Employer has been compliant, and shall make a finding of compliance or noncompliance within a reasonable time after receiving the complaint.

(3) Prior to ordering any penalty, the City Legal Department shall give notice to the Covered Employer. The Covered Employer may dispute a finding of noncompliance by requesting a hearing from the Corporation Counsel or his or her designee within 30 days of the finding. The Corporation Counsel or his or her designee shall appoint a Hearing Officer, who shall affirm or reverse the finding based on evidence presented by the City Legal Department and the Covered Employer.

If at any time during these proceedings, the Covered Employer voluntarily makes restitution of the wages not paid to the Covered Employee, or otherwise remedies the violation alleged, then the City Legal Department shall thereafter dismiss the complaint against the employer.

(c) Remedies

(1) If, after notice of finding and hearing, a Covered Employer is found to be noncompliant, the Covered Employer shall correct violations and make restitution of wages retroactively to the beginning of the contract term within 15 days, unless otherwise extended by way of agreement between the Covered Employer and City Legal Department.

(2) If violations are not corrected within 15 days or within the timeframe otherwise agreed upon between the City Legal Department and Covered Employer, the Corporation Counsel or his or her designee may do one or more of the following:

(A) freeze the Covered Employer's Assistance, until the City Legal Department determines that the violations have been corrected;

(B) terminate the Covered Employer's Assistance;

(C) order the Covered Employer ineligible for future Assistance for three years or until all restitution has been paid, whichever is longer.

(3) Liability for payment of a living wage shall rest solely with the Covered Employer and the City shall not be liable for any incorrectly paid amounts except when it acts in the capacity of a Covered Employer. In that regard, if the accumulated compensated hours of a seasonal employee of the City of Bloomington Parks and Recreation department exceeds 0.75 FTE in a calendar year, and that employee had not been paid a Living Wage for any portion of those compensated hours, then the Parks and Recreation department shall pay that employee the difference between the Living Wage and his or her actual paid compensation for the accumulated hours of that calendar year and within eight weeks after the end of that calendar year.

Section 8. Waivers. Section 2.28.070 shall be inserted into the Bloomington Municipal Code and shall read as follows:

Section 2.28.070 Waivers.

(a) A Covered Employer may request that the Mayor propose that the Common Council grant a partial or whole waiver to the requirements of this Chapter.

(b) General Waiver. Waivers may be granted where application of this chapter to a particular form of Assistance is found by Corporation Counsel to violate a specific state or federal statutory, regulatory, or constitutional provision or provisions and where the City Council approves the waiver on that basis. A General Waiver request shall be submitted to the City Legal Department which, if endorsed by the Mayor, shall be forwarded to the Common Council for action in the form of a resolution.

(c) Special Waiver. The Mayor may apply for a Special Waiver where payment of the Living Wage by a Covered Employer will: substantially curtail the services provided by the Covered Employer; have an adverse financial impact on the City; or is not in the best interests of the City. The Common Council must find that the costs of paying the Living Wage outweigh the benefits. All Special Waiver requests shall be submitted to the City Legal Department which, if endorsed by the Mayor, shall be forwarded to the Common Council for action in the form of a resolution. All Special Waivers shall include the following:

(1) The nature of the contract or subsidy;

(2) An explanation of why payment of the Living Wage will have one or more of the adverse influences outlined above in 8(c); and

(3) A statement of lower wages paid by the Covered Employer.

(d) Hardship Waiver for Not-for-Profits. A Not-for-Profit Covered Employer may apply for a Hardship Waiver with the City Legal Department where payment of the Living Wage would cause a demonstrated harm to services and the Common Council finds that said harm outweighs the benefits of this Chapter. All requests for Hardship Waivers for Not-for-Profits shall be submitted to the City Legal Department which, if endorsed by the Mayor, shall be forwarded to the Common Council for action in the form of a resolution. All Hardship Waiver requests shall include the following:

(1) The award to which this Chapter applies;

(2) An explanation of how the payment of the Living Wage will cause undue hardship;

(3) A statement of lower wage paid by the Covered Employer; and

(4) A written plan to fully comply with this Chapter within a reasonable period of time, not to exceed three years.

(e) Hardship Waiver for Recipients of Tax Abatements. A Covered Employer receiving a tax abatement award may apply for a waiver when:

(1) The estimated tax deductions associated with the award are significantly higher than the eventual tax deductions available to the recipient; and

(2) This disparity results in undue hardship.

(f) When an emergency has been declared by the Mayor or Common Council, waivers shall be granted without the need for consideration by the Common Council when said services are required by the emergency. In the event the emergency waiver is triggered by mayoral declaration, the Mayor shall submit a report to the Common Council at its next regular session explaining the emergency and reason(s) for the waiver.

Section 9. Annual Reporting. Section 2.28.080 shall be inserted into the Bloomington Municipal Code and shall read as follows

Section 2.28.080 Annual Reporting.

Each year the City Legal Department shall forward a City Assistance report to the City Council, indicating for each contract for Assistance during the previous year:

(a) The contract's purpose when awarded;

(b) Its cost to the City in terms of expenditures; and

(c) The number of jobs associated with the contract broken down by job title, and the wage rate for each or an indication for each that the Covered Employee earns at least the Living Wage.

Section 10. Effective Date. Section 2.28.090 shall be inserted into the Bloomington Municipal Code and shall read as follows:

Section 2.28.090 Effective Date.

This Chapter shall go into effect on January 1, 2006. However, it shall apply to Assistance in the form of Social Services Subsidies (Section 3 – Assistance (b) (4) – (6)) which is awarded on or after January 1, 2008.

Section 11. Severability. If any sections, sentence or provision of this ordinance, or the application thereof to any person or circumstances shall be declared invalid, such invalidity shall not affect any of the other sections, sentences, provisions, or applications of this ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this ordinance are declared to be severable.

PASSED AND ADOPTED by the Common Council of the City of Bloomington, Monroe County, Indiana, upon this 24th (12:15AM) day of March, 2005.

ANDY RUFF, President
Bloomington Common Council

ATTEST:

Regina Moore
REGINA MOORE, Clerk
City of Bloomington

PRESENTED by me to the Mayor of the City of Bloomington, Monroe County, Indiana, upon this 24th day of March, 2005.

Regina Moore

REGINA MOORE, Clerk
City of Bloomington

SIGNED and APPROVED by me upon this 24th day of March, 2005.

MARK KRUZAN, Mayor
City of Bloomington

Synopsis

This ordinance amends Title 2 of the Bloomington Municipal Code entitled "Administration and Personnel" by adopting Chapter 2.28 entitled the "City of Bloomington Living Wage Ordinance." This Chapter requires the City and employers who receive City service contracts and/or City assistance of other forms to pay employees at least a minimum living wage and creates procedures for enforcement in the event of violations of this requirement.

This ordinance was revised between the time it was distributed in the packet and the time it was introduced at the Regular Session on March 2, 2005.

On March 23, 2005, the Common Council adopted Amendment 5 which modifies Sections 3, 4, 6, 7, 8, 9 & 10 of the ordinance.

Signed copies to:
legal (5)
controller
Econ dev. (2)
Employee svcs

CDBG committee
JACK HOPKINS committee
ALL CITY DEPARTMENTS (26)
POLICE
FIRE
UTILITIES

CA/CA(2)
BLC file
file
Clerk