

BIG BOX LIVING WAGE & BENEFITS ORDINANCE

WHEREAS, the City of Chicago is a home-rule municipality in accordance with the constitution of the State of Illinois of 1970; and

WHEREAS, the City has the authority to adopt ordinances and to promulgate rules and regulations pertaining to its government and affairs in order to protect the health, safety and welfare of its citizens; and

WHEREAS, the City declares that it is the policy of the City declares to promote wages and benefits that allow working families in our community to meet basic needs; and

WHEREAS, the City finds that many large retailers pay very low wages and do not provide their workers with adequate benefits, and that many employees of large retailers, even full-time employees, qualify for a variety of public benefits such as Medicaid and food stamps; and

WHEREAS, responsible retailers that pay living wages and provide employee benefits, such as health care, face growing pressure to cut back when their competitors are permitted to pay poverty-level wages and no benefits; and

WHEREAS, taxpayers are likely to see increased public costs when businesses that provide health benefits either drop those benefits or are replaced by businesses that do not, because more working families will be forced to obtain necessary care from public health clinics, public hospitals, emergency rooms, and publicly funded programs such as Medicaid; and

WHEREAS, an increase in the percentage of low-wage jobs without benefits threatens the health and welfare of all Chicagoans because low-income working families without benefits have poor access to the health care system, lack preventive health care services, and are one step away from crushing financial debt should they fall sick; and

WHEREAS, large retailers are among our nation's largest companies and can afford to provide better wages and pay a fair share of their employees' health care costs while still operating profitably; and

WHEREAS, the City has determined that in order to safeguard the economic well-being of the public, and to reduce the burden on the taxpayers and protect the public safety net, it must ensure that large retailers pay their workers a living wage and encourage them to provide important benefits; now, therefore

BE IT ORDAINED by the City Council of the City of Chicago, Cook County, Illinois, that the Municipal Code of the City of Chicago is amended by adding thereto and inserting therein a new Chapter 4-404, entitled "Large Retailers," and amending Section 8-4-050:

SECTION 1. The foregoing recitals are incorporated herein as the findings of the City Council.

SECTION 2. A new chapter of the Municipal Code of the City of Chicago is hereby created as follows:

4-404-010 Definitions.

- a. “City” means the City of Chicago.
- b. “Agency” means the City department or agency designated by the City to administer this Ordinance.
- c. “Company” means any natural person, corporation, partnership, limited liability company, joint venture, sole proprietorship, association, trust or any other entity, and shall include all of the members of a “controlled group of corporations,” as defined in Section 1563(a) of the United States Internal Revenue Code, except that “more than 50 percent” shall be substituted for “at least 80 percent” each place it appears in Section 1563(a)(1) of the United States Internal Revenue Code and the determination shall be made without regard to Sections 1563(a)(4) and 1563(e)(3)(C) of the United States Internal Revenue Code.
- d. “Large retailer” means any company that operates a retail store located within the geographic boundaries of the City where:
 1. the company’s gross revenues total \$1 billion or more on an annual basis; and
 2. the indoor premises of the retail store comprise 75,000 square feet or more. For the purposes of this definition, the indoor premises of adjacent stores shall be aggregated if the stores share management, a controlling ownership interest, a warehouse, or a distribution facility.
- e. “Premises of a large retailer” means all retail store buildings occupied by a large retailer and associated indoor or outdoor areas including, but not limited to, parking lots, sidewalks, pedestrian areas, and employee break areas.
- f. “Subcontractor” means any business that performs services, including but not limited to janitorial or security services, on the premises of a large retailer, or that holds a sublease or contract authorizing that party to occupy, use, control or do business on the premises of a large retailer.
- g. “Large retail employer” means any large retailer or subcontractor.
- h. “Employee” means any person who in a particular week performs at least 5 hours of work on the premises of a large retailer for any large retail employer. This definition includes persons performing work on a full-time, part-time, temporary, or seasonal basis, including independent contractors, contracted workers, contingent workers, and persons made available to work through the services of a temporary services, staffing or employment agency or similar entity.
- i. “Benefits” means payments made by a large retail employer for any bona fide fringe benefits, paid directly to an employee or to a third party on behalf of an employee or

dependants of an employee, such as benefits related to health care, retirement security, disability, training and education, or paid leave, but excluding any payments that are tips or gratuities, deducted from an employee's wages or otherwise reimbursed by an employee, or required by any other local, state, or federal law. Also excluded from this definition is the value of any benefit for which an employee is eligible but for which no payment is actually made by a large retailer to the employee or to any other party on the employee's behalf because the employee either does not actually utilize or does not elect to receive the benefit for any reason.

4-404-020 Living Wage and Benefits Rates.

- a. **Hourly Compensation Package.** All large retail employers shall provide employees an hourly compensation package with a total value of no less than the sum of the living wage rate and the benefits rate for each hour that the employee works on the premises of a large retailer. The wage component of any hourly compensation package shall be no less than the living wage rate. The balance of the hourly compensation package may be provided in wages, benefits, or any combination of the two, so long as the total hourly value of the wages and any benefits provided an employee are no less than the total required hourly compensation package for each hour worked. A large retail employer may use any reasonable methodology, consistent with any regulations issued by the Agency, for determining the value of any benefits paid for and may, at its election, use each quarter, month or pay period as the relevant period for calculating the prorated hourly value of any benefits paid for by the employer on behalf of the employee and/or his or her dependents.
- b. Beginning on the effective date of this Ordinance, the living wage rate shall be an hourly rate of \$10.60 — a wage which will enable a full-time worker to earn an income that will lift a family up to approximately 110% of the Federal Poverty Guidelines for a family of four. The living wage rate shall be increased on January 1, 2007 and on January 1 of successive years by the increase in the cost of living.
- c. **Benefits Rate.** Beginning on the effective date of this Ordinance, the benefits rate shall be \$3.00 per hour. The benefits rate shall be increased on January 1, 2007 and on January 1 of successive years by the increase in the cost of living.
- d. The increase in the cost of living shall be measured by the percentage increase as of August of the immediately preceding year over the level as of August of the previous year of the Consumer Price Index for All Items, Urban Wage Earners and Clerical Workers, Chicago Consolidated Metropolitan Statistical Area, or its successor index as published by the U.S. Department of Labor or its successor agency. The amount of the increase in both the living wage rate and the benefits rate shall be rounded to the nearest multiple of five cents. The Agency shall announce by November 1 of each year the adjusted living wage rate and benefits rate, which shall take effect the following January 1.

4-404-030 Notice, Posting and Payroll Records.

- a. By December 1 of each year, the Agency shall publish and make available to large retail employers (1) a bulletin announcing the adjusted living wage rate and benefits rate for the upcoming year; and (2) a notice, in English and Spanish, informing employees of the current living wage rate and benefits rate and of their rights under this Ordinance, which all large retail employers shall post in a conspicuous place at any workplace or job site where an employee works.
- b. Large retail employers shall allow the Agency access to payroll and benefits records to monitor compliance with the requirements of this Ordinance. Large retail employers shall permit an employee or an employee's designated representative to inspect the large retail employer's payroll and benefits pertaining to that employee. Where a large retail employer does not maintain or retain adequate records documenting wages or benefits paid, or does not allow the Agency reasonable access to such records, there shall be a rebuttable presumption that the large retail employer has not paid the requisite hourly compensation package. This presumption may be overcome if the large retail employer proves by clear and convincing evidence that the large retail employer has paid the requisite hourly compensation package.

4-404-040 Access to Public Areas of Large Retailers.

- a. Any member of the public shall have access to the public areas of a large retailer to engage in non-commercial speech with customers and employees on matters relating to community affairs, religion, politics, business practices, workplace rights or topics of public concern. Such speech may include distributing literature relating to such matters and soliciting signatures on forms or petitions addressed to public officials, government agencies, religious organizations, business entities, or other community institutions. "Public areas" means parking lots, sidewalks, pedestrian areas, outdoor employee break areas, and other similar outdoor areas.
- b. Reasonable Time, Place, and Manner Restrictions. Such speech shall be conducted in an orderly manner and may be subject to any of the following time, place and manner restrictions that the large retailer chooses to establish:
 1. A restriction on the use of bright lights, loudspeakers, musical instruments, radios, televisions, amplifiers, and similar devices; and
 2. A restriction on littering, including a reasonable charge, not to exceed \$100, for cleanup costs resulting from the distribution of literature.Provided, however, such restrictions shall not discriminate based on the subject matter or content of the speech.
- c. Enforcement by the Chicago Police. The Chicago Police shall not remove for trespass from the premises of a large retailer any person or group engaging in any speech activity in public areas. Provided, however, the Chicago Police may enforce any injunction issued by a court prohibiting an individual or group from entering the premises of a large retailer for violating time, place and manner restrictions established by the management

pursuant to Section 4-404-050. The Chicago Police shall be free to enforce any non-trespass related violations of the law by any individual or group.

4-404-050 First Source Hiring Requirements.

- a. All large retailers shall enter into a first source hiring agreement with one or more community referral agencies, under which the parties shall agree to comply with the following terms:
 1. Prior to announcing or advertising a first source employment position, whether the position is pre-existing or newly created, a large retailer shall notify the community referral agency about the position, including a description of job responsibilities and qualifications, including expectations, salary, work schedule, duration of employment, required standard of appearance, and any special requirements (e.g. language skills, drivers' license, etc.);
 2. The large retailer shall not make such public announcement or advertisement for a period of five (5) business days after providing the community referral agency with such notification. Such five (5) day period is hereinafter referred to as the "advance notice period." The advance notice period shall be waived if the community referral agency has no qualified candidates to refer to the large retailer;
 3. The community referral agency shall maintain a database of job opportunities subject to this Ordinance and shall provide information on such job opportunities to all Chicago residents who receive services. Targeted job applicants shall be referred in the following order: (a) First priority: individuals whose place of employment has been displaced or seen job loss due to the opening of a large retailer's store; (b) Second priority: individuals living in the local community; (c) Third priority: low-income individuals living in the city of Chicago;
 4. The agreement shall not require the large retailer to comply with these procedures if it fills first source employment position by transfer or promotion from existing staff or from a file of qualified applicants previously referred by a community referral agency;
 5. The agreement shall not require the large retailer to hire any applicant referred under the terms of this agreement;
- b. Community referral agencies shall institute a tracking system and record which applicants were interviewed, which applicants were not interviewed, and which applicants were hired for the positions;
- c. Large retailers shall, on a quarterly basis, notify the Agency of the number, by job classification and starting salary, of targeted job applicants hired by the large retailer during that quarter and the total number of employees hired by the large retailer and their salaries during that quarter. Community referral agencies shall also report the number, by job classification, of applicants referred to large retailers. Large retailers shall retain

records sufficient to report compliance with this first source hiring policy, including records of referrals from community referral agencies, job applications, the number of targeted job applicants hired, and their current incomes. To the extent allowed by law, and upon reasonable notice, these records shall be made available to the Agency for inspection upon request. Records may be redacted so that individuals are not identified by name and so that other confidential information is excluded;

- d. 90% of all first source employment positions not filled by internal transfer or promotion must be filled through a community referral agency. In the event a large retailer has not met the 90% first source requirement during a particular six-month period, the Agency may require the large retailer to provide reasons it has not met the goal, and the Agency may determine whether the large retailer has nonetheless adhered to this policy.
- e. No large retailer or community referral agency shall discriminate directly or indirectly against any individual in job placement or hiring or other term or condition of employment because of the individual's race, color, sex, gender identity, age, religion, disability, national origin, ancestry, sexual orientation, marital status, parental status, status as an ex-offender, military discharge status or source of income.
- f. "First source employment position" means all employee categories, excepting construction employment involving laborers, workers or mechanics.
- g. "Ex-offender" means any applicant for employment who has a criminal record, but who supplies proof of community ready socialization, which may include but is not limited to, sworn testimony, reference letters, self-improvement courses, educational or vocational attainment, and counseling.
- h. "Community referral agency" means any organized job registry and referral service operated by a not-for-profit organization or union provided that the not-for-profit organization has the following:
 - 1. An established record of conducting outreach in low and moderate income Chicago communities;
 - 2. A computerized skills bank and established processes whereby individuals can register for employment and training opportunities, large retailers can post job openings, and referrals can begin within 48 hours of such posting;
 - 3. A governing board comprised of a majority of low and moderate income Chicago residents; or the majority of services provided by the entity are furnished to low and moderate income Chicago residents;
 - 4. A proven track record of non-discriminatory job placement; and
 - 5. Is certified as meeting requirements (1) through (4) by the Agency.
- i. All contracts, including those for construction, made with subcontractors by large retailers shall follow the guidelines specified in applicable ordinances of the City

governing contracting with minority and women-owned business enterprises, prohibiting discrimination and requiring appropriate affirmative action with respect to minority and women participants in the work force, including but not limited to Section 2-92-390 (relating to hiring of women and minorities) and Sections 2-92-420 through 2-92-570 (relating to contracting with minority-owned and women-owned business enterprises), to the extent permitted by law. Large retailers shall file semi-annual reports with the Agency documenting compliance with such ordinance guidelines with respect to work performed and disclosing the extent to which that work is performed by minority and women workers and minority-owned and women-owned business enterprises.

4-404-060 Reuse of Vacated Premises of a Large Retailer

- a. Any time that a larger retailer vacates or abandons the premises of a large retailer following the closure, relocation, or similar move of a large retail store, those premises shall be made available for reuse, redevelopment, lease, or purchase by other retail businesses without limitation.

4-404-070 Implementation and Enforcement.

- a. The Agency is authorized to interpret, implement and enforce this Ordinance, including issuing regulations and administrative findings of violations and instituting legal actions to enforce administrative findings. The Agency shall establish appropriate civil penalties payable to the City for violations of the requirements and standards prescribed by this Ordinance or any implementing regulations. Civil penalties shall be retained by the Agency and used to finance activities to enforce this Ordinance. Any regulations, guidelines or rules promulgated by the Agency shall have the force and effect of law and may be relied on by employers, employees and other parties to determine their rights and responsibilities under this Ordinance.
- b. For the purpose of enforcing this Ordinance, the Agency or other law enforcement officer shall have the authority to enter and inspect the records and place of business or employment of any large retail employer and to interview employees away from the place of business or employment of any large retail employer, and no large retail employer or other person shall hinder any such investigation.
- c. No large retail employer or other person shall discharge or take any other adverse action against any person in retaliation for asserting any claim or right under this Ordinance, for assisting any other person in doing so, or for informing any person about their rights. Taking adverse action against a person within ninety days of a person's engaging in the foregoing activities shall raise a presumption that such action was retaliation, which may be rebutted by clear and convincing evidence that such action was taken for other permissible reasons.
- d. Any person or organization may file an administrative complaint with the Agency charging that a large retail employer has violated this Ordinance as to any employee or other person. The Agency shall promptly investigate administrative complaints and may interview and review records regarding any or all employees at the large retail employer's worksite in order to determine whether a pattern of violations has occurred

and to protect the identity of any employee identified in the complaint. 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. Where prompt compliance is not forthcoming, the Agency shall take any appropriate enforcement action to secure compliance, including initiating a civil action and/or instructing City agencies or departments to revoke or suspend any registration certificates, permits or licenses held or requested by the large retail employer or person until such time as the violation is remedied.

- e. An action for equitable and monetary relief may also be brought against a large retail employer by an employee or person acting on behalf of an employee or on behalf of all similarly situated employees in any court of competent jurisdiction for any violation of this Ordinance or any law or regulation implementing it. Such action may be commenced no later than three years after the violation or of when the violation ceased if it was of a continuing nature, or within one year after final disposition by the Agency of a complaint for the same violation, whichever is later. Such action may encompass all violations that occurred as part of a continuing course of employer conduct regardless of their date. Any investigation of a large retail employer by the Agency or other law enforcement officer shall not bar a person from bringing such action, and there shall be no exhaustion requirement, no procedural, pleading or burden of proof requirements beyond those that apply generally to civil suits in order to maintain such action and no liability for costs or attorney's fees on an employee.
- f. Any large retail employer who fails to pay the total hourly compensation required under this Ordinance shall be required to pay the employee the balance of the compensation owed, including interest thereon, and an additional amount equal to twice the underpaid compensation. Any large retail employer who retaliates against an employee or other person in violation of this Ordinance shall be required to pay the employee an amount set by the Agency or a court sufficient to compensate the employee and deter future violations, but not less than one hundred fifty dollars for each day that the violation continued or until legal judgment is final. The Agency and the courts shall have the authority to order payment of such unpaid compensation, other amounts, and civil penalties and to order any other appropriate legal or equitable relief for violations of this Ordinance. A prevailing plaintiff shall be entitled to reasonable attorney's fees and costs of suit.
- g. The City and any agency or department thereof may consider violations of this Ordinance in determining whether employers may receive or renew public contracts, financial assistance, or licenses.
- h. The Agency shall make information regarding all large retail employers' compliance with this Ordinance publicly available. This information shall be updated every six months for the first two years of a large retail employer's operation in the City, and every year thereafter.

4-404-080 Miscellaneous.

- a. This Ordinance shall be liberally construed in favor of its purposes. All ordinances, regulations, resolutions, motions or orders in conflict with this ordinance are hereby repealed to the extent of such conflict; however, this Ordinance shall not be construed to preempt or otherwise limit the applicability of any such law that provides for payment of higher or supplemental wages or benefits.
- b. The provisions of this Ordinance may not be waived, except that the wages and benefits for employees covered by a bona fide collective bargaining agreement in force on this Ordinance's effective date may be the wages and benefits provided for in that collective bargaining agreement during the remaining term of that agreement.
- c. This Ordinance shall take effect upon enactment.
- d. If any part of this Ordinance, or the application of the Ordinance to any person or circumstance, is held invalid, the remainder of this Ordinance, including the application of such part to other persons or circumstances, shall not be affected by such a holding and shall continue in full force and effect. To this end, the parts of this law are severable.

SECTION 3. Section 8-4-050 of the Municipal Code of the City of Chicago is hereby amended by adding the following:

No person commits trespass when engaging in non-commercial speech on the premises of a large retailer as specified in Section 4-404-040.