

### 113.01 DEFINITIONS.

For the purpose of this chapter, the following words, phrases and terms are defined as follows:

(a) “Applicable Department” means the City department(s) designated for the administration of this Chapter.

(b) “Assistance” means any form of City financial assistance, except for financial assistance provided for the development, rehabilitation or other means of providing residential housing, that is awarded, renegotiated or renewed after the effective date of this Ordinance. Assistance covered by this Chapter includes but is not limited to: grants, economic development loans; tax credits, incentives and abatements; subsidies; and bonds. For purposes of determining coverage under this Chapter, financial assistance shall be valued to the extent the recipient of the assistance derives a monetary benefit from the City. For instance, loans shall be considered Assistance only to the extent they are forgiven or discounted below the available market rate over the life of the loan. Tax credits, incentives and abatements shall be considered Assistance to the extent of the tax reduction realized by the recipient. For purposes of this Chapter, Assistance does not include financial assistance which is received from another government or other entity which the City acting only as a conduit or fiscal agent for the funds, where the City exercises no control over the identity of any recipient or of the terms of the contract. Community Development Block Grant funds are not considered Assistance under this Chapter.

(c) “City” means the City of Lakewood and all City divisions, departments, and offices.

(d) “Covered Employee” means:

(1) Any person employed by or working as a trainee, except as otherwise provided in subsection (2)(B) below, for a “Covered Employer.”

(2) The following are not “Covered Employees” for purposes of this Chapter:

A. An individual who provides solely volunteer services that are uncompensated except for reimbursement of expenses such as meals, parking or transportation;

B. An individual in a job training program where job training and classroom instruction is being provided to clients in order to develop new specialized skills for employment and the individual would be considered a client of the program even though the individual received compensation;

C. An individual employed in public construction work that is subject to the provision of state or federal law pertaining to **wage** rates for public works employment;

D. Employees covered by a collective bargaining agreement or the Railway Labor Act;

E. Employees of commercial retail establishments;

F. Persons not employed in the State of Ohio;

G. Persons who are enrolled full-time in high school or college and are under the age of 22;

H. Persons employed by a City owned and operated recreational facility that has the primary purpose of providing recreational services to the public;

(e) “Covered employer” means the following:

(1) Any person or entity that is a Recipient of Assistance from the City that has an aggregate value of at least \$75,000 that has not been granted an exemption from this Chapter pursuant to Section [113.06](#) and is either:

A. A for-profit employer having at least twenty (20) employees at the time of execution of the agreement with the City; or

B. A not-for-profit employer having at least fifty (50) employees at the time of execution of the agreement with the City and the salary ratio between the highest paid and the lowest paid employees at such not- for-profit is more than eight (8) to one (1).

As used in this division, “aggregate value” means the actual dollar benefit received from Assistance over the term of the Assistance.

(2) Any person or entity that has entered into one or more Service Contracts, as defined in this section, with the City that have an aggregate value of at least \$25,000, that has not been granted an exemption from this chapter pursuant to Section [113.06](#) and is either:

A. A for-profit employer having at least twenty (20) employees at the time of execution of the agreement with the City; or

B. A not-for-profit employer having at least fifty (50) employees at the time of execution of the agreement with the City and if the salary ration between the highest paid and lowest paid employees at such not-for-profit is more than eight (8) to one (1).

(3) Any subcontractor of a covered Service Contractor performing services pursuant to the Service Contract.

(4) The following are not “Covered Employers” for purposes of this Chapter:

A. Governmental agencies other than the City of Lakewood

B. Lakewood Hospital.

(f) “Fair Employment **Wage**” has the meaning stated in Section [113.02](#) of this Chapter.

(g) “Fair Employment **Wage** Board” (FEWB) has the meaning stated in Section [113.04](#) of this Chapter.

(h) “Health Benefits” mean providing or offering to provide single health care benefits for employees at employer cost or requiring an employee contribution toward the purchase of such health care benefits for employees, provided that the employee cost or contribution equals no more than fifteen percent (15%) of the employees’ **wages**.

(i) “Person” means any individual, proprietorship, partnership, joint venture, corporation, limited liability company, trust, association or other entity that may employ individuals or enter into contracts and all other entities recognized at law by the State of Ohio.

(j) “Recipient of Assistance” means:

(1) Any person or entity who enters into one or more contracts with the City for Assistance, as defined in this section;

(2) Any person or entity that is a direct recipient of Assistance, as defined in this section.

(k) “Service Contract” means any contract or subcontract between a person, business or corporation and the City of Lakewood that primarily involves the furnishing of services to the City (as opposed to the purchase of goods or other property or the leasing of property), and shall be limited to the following categories of services: food service, janitorial, security services, parking lot attendants, home health care, health care aides, waste management, automotive repair services, landscaping, towing contracts, building and maintenance services, carpentry, clerical services, urban forestry, housekeeping, street maintenance and repair, and sidewalk maintenance and repair. This includes services performed on City-owned premises including the following City-opened locations: parking lots, municipal parking parks, recreational facilities, and City-owned buildings. Contracts that are primarily for the purchase of goods or other property are not considered Service Contracts for purposes of this Chapter.

(l) “Service Contractor” means a person who enters into a Service Contract with the City.

(m) “Subcontractor” means any person who enters into a contract with a Service Contractor that is a Covered Employer under subsection (e)(2) of this section to assist the Service Contractor in performing a City Service Contract.

(Ord. 30-03. Passed 7-21-03.)

**113.02 FAIR EMPLOYMENT WAGE.**

All Covered Employers shall pay no less than the Fair Employment **Wage** to Covered Employees. Determination of the Fair Employment **Wage** shall be in accordance with the following:

(a) Amount of Fair Employment **Wage**.

The Fair Employment **Wage** shall be calculated on an hourly basis and shall be paid effective the dates listed as follows:

With Health Benefits Paid by Employer	\$9.20
Without Health Benefits Paid by Employer	\$10.20

Thereafter, the Fair Employment **Wage** shall be adjusted by the City of Lakewood on an annual basis, beginning January 1, 2005 and each year thereafter in proportion to the Consumer Price Index for Northeast Ohio, as published by the Bureau of Labor Statistics, U.S. Department of Labor.

(b) All employees working for the City shall be paid at least a Fair Employment **Wage**.

(Ord. 30-03. Passed 7-21-03.)

**113.03 COMPLIANCE.**

(a) All bids, proposals and applications for City Service Contracts or for Assistance shall contain the following:

(1) The number of persons employed by the applicant for a service contractor or assistance and, if different, the number of persons who will be employed if the applicant obtains the contract;

(2) Whether the employer provides or offers to provide health benefits for its employees and the employer cost or contribution for any health care plan;

(3) A sworn declaration signed by a duly authorized officer of a Covered Employer stating that the applicant will comply with the requirements of this Ordinance or a sworn declaration signed by a duly authorized officer stating that the employer is not required to comply with this Chapter with an explanation of such exemption.

(b) All City Service Contracts and Assistance Agreements subject to this Chapter shall contain the following language:

This agreement is subject to the City of Lakewood Fair Employment **Wage** Chapter [113](#) of the Codified Ordinances of the City of Lakewood and requires, among other things, that unless specific exemptions apply, Covered Employers, as defined, under contracts with the City shall provide payment of a minimum level of compensation to employees. Failure to comply with that Chapter and/or any implementing regulations may result in termination of the contract or debarment from future contracts or financial assistance.

(c) All Assistance Agreements subject to this Chapter shall contain the following language:

In consideration of the financial assistance received, (insert name of Recipient of Assistance) agrees that it will only contract or subcontract with firms or agencies that pay a **living wage** equal to that required by Chapter [113](#) of the Lakewood Codified Ordinances for the provision of services related to this project/matter for which (insert name of Recipient of Assistance) has been granted such Assistance. Failure to comply with this provision may result in termination of the Contract or debarment from future contracts or financial assistance.

(d) Maintenance of Payroll Records. Each Covered Employer shall maintain payrolls for all Covered Employees and basic records related thereto and shall preserve them for a period of three (3) years following termination of the Covered Employer's agreement with the City. The records shall contain the following for each Covered Employee:

(1) His or her name and address, job title and classification;

(2) The number of hours worked each day, gross **wages** earned, deductions made, and net **wages** paid;

(3) A record of contributions to health care plans; and

(4) Any such other data the Applicable Department or Lakewood City Council may require.

(e) Access. Upon demand by the Applicable Department, Covered Employers shall provide to such department access to the Payroll Records required to be maintained by this section, and will permit representatives of such department to observe work being performed upon the work site and to interview employees as deemed necessary by the department to monitor compliance or to investigate a charge of noncompliance with the terms of this Chapter.

(f) Notice Requirements. Covered Employers shall be required to provide notice to Covered Employees of their rights arising from this Chapter. The notice will be provided by the FEWB, shall be in both English and Spanish, and must be posted in a conspicuous place frequented by Covered Employees in the Covered Employer's workplace(s).

(g) Compliance with Federal Labor Laws. Covered Employers must comply with all applicable federal labor laws, including the National Labor Relations Act.

(Ord. 30-03. Passed 7-21-03.)

**113.04 FAIR EMPLOYMENT WAGE BOARD.**

(a) The Fair Employment **Wage** Board (FEWB) shall review the effectiveness of the **living wage** ordinance to ensure that the community is informed on whether those companies that are being awarded service contracts by the City are adhering to the ordinance. The FEWB shall make recommendations to the Administration and Lakewood City Council, when appropriate, regarding issues pertaining to the **living wage** policy.

(b) The FEWB shall be composed of seven (7) members, six of whom shall be electors of the City, the seventh member shall be a representative of the Mayor's administration. Three members of the Board shall be appointees of the Mayor, and three members shall be appointees of Council. The Mayor and Council shall appoint one appointee from the business community, a labor organization, and a community group. The appointing authority of a Board member may remove that member for cause. No person shall be appointed to the FEWB who has any interest in a contract with the City of Lakewood.

(c) The Mayor shall initially appoint three (3) members of the FEWB for one-year terms, two (2) members for two (2) year terms, and two (2) members for a three (3) year term. Thereafter, all members shall serve three-year terms, including the representative from City Council. Appointees named after June 1, 2005, shall be appointed alternately by the Mayor and Council as existing Board member's terms expire, with Council having the first appointment. Members may serve more than one term.

(d) At the beginning of each year the FEWB members shall elect a chairperson and vice-chairperson by majority vote. The FEWB shall hold semi-annual meetings and in special sessions as called by the chairperson or by a majority of the members. All meetings of the FEWB shall be open to the public and minutes shall be taken. An employee of the City of Lakewood shall be assigned to serve as secretary to the FEWB.

(e) The FEWB shall be provided with and shall review:

- (1) All reports on compliance filed by the Applicable Department as provided by this Chapter;
- (2) The results of any investigations of Covered Employers as provided by this Chapter;
- (3) All applications for exemptions from coverage filed by Service Contractors as provided by this Chapter.

The FEWB shall provide recommendations regarding such matters to City Council.

(Ord. 20-05. Passed 6-20-05.)

### **113.05 MONITORING AND ENFORCEMENT.**

(a) Monitoring.

(1) Enforcement of the provisions of this Chapter will primarily depend on charges of noncompliance filed by Covered Employees who will have been informed of their rights through posting of the notice of such rights and such other educational efforts as may be undertaken by the FEWB. Such charges will result in investigations by the Applicable department, as described below.

(2) The Applicable Department shall have authority to conduct random audits to determine compliance with this Chapter. Failure to cooperate with an audit or the investigation of a complaint may result in sanction as outlined in subsection (i) below.

(b) Any person including a Covered Employee who alleges that his or her employer is not complying with the requirements of this Chapter, may allege that a violation of this section has occurred by filing a charge of noncompliance with the Applicable Department within 180 days of the alleged violation or knowledge thereof. Such charge shall state, in writing and under oath, the name and address of the person making the charge, the name and address of the employer(s) alleged to have committed violation of this Chapter and the particular facts thereof and such other information as may be required. Upon the filing of a charge of noncompliance, the Applicable Department shall acknowledge the receipt of the charge, and shall forward the charge to the FEWB.

(c) Investigations. The Applicable Department shall initiate an investigation to determine whether a violation of this Chapter has occurred under any of the following circumstances:

(1) Upon receiving a charge of noncompliance;

(2) If the Department's review of information maintained or reported by a Covered Employer indicates that the Covered Employer may have violated this Chapter;

(3) The Department has other reason to believe that a Covered Employer may have violated this Chapter.

(d) Any investigation shall be completed within thirty (30) days of the occurrence triggering the investigation. To the extent permitted by law, the City shall not make public in any manner and shall retain as confidential all information obtained as a result of the preliminary investigation. At the completion of the investigation, the Director of the Applicable Department shall take one of the following actions:

(1) Notify the charging party, if any, the FEWB and the Covered Employer that it is not probable that a violation of this Chapter has been or is being engaged in and that a complaint will not issue in the matter; or

(2) Notify the charging party, if any, the FEWB and the Covered Employer that it is probable that a violation of this Chapter has occurred, initiate a complaint against the Covered Employer and schedule it for informal methods of conciliation pursuant to Division (e) of this section.

(e) Conciliation. If the investigation leads to a finding by the Director of the Applicable Department of probable cause to believe that a Covered Employer is in noncompliance with this Chapter, the Director shall attempt to conciliate the matter. The Director shall send out notice to the Covered Employer(s), the affected Covered Employee(s) and to the FEWB with a time and date set for the conciliation meeting. The conciliation meeting must be scheduled to occur within fifteen (15) working days of completion of the investigation, though for good cause shown it can be rescheduled. If the investigation resulted from a filed charge of noncompliance, a conciliation agreement may not be entered without the consent of both the Covered Employer and the charging party. If the investigation was initiated by the Applicable Department on its own, the Director has authority to enter into a

conciliation agreement.

(f) Hearing. If conciliation does not result in a settlement of the complaint, the Director of the Applicable Department shall appoint a Hearing Officer to conduct a hearing on the complaint. Any Hearing Officer shall be either a member of Ohio's Judiciary or an attorney licensed to practice law in Ohio. The Hearing Officer shall schedule a hearing with a 30-day notice of the hearing provided to the Covered Employer, Covered Employee(s) or other charging parties, if any, and the FEWB. In conducting such hearings, the Hearing Officer shall be empowered to subpoena witnesses, compel their attendance, administer oaths, take sworn testimony and require the production for examination of any documents relating to the complaint.

(g) After the conclusion of the hearing, the Hearing Officer shall report his or her findings to the Director within fifteen (15) days. The Director may adopt, reject or modify the findings of the Hearing Officer. Within seven (7) days after receipt of the findings of the Hearing Officer, the Director shall render a decision in the form of a written order which shall include findings of fact, a statement as to whether the Covered Employer has violated this Chapter and such remedial actions as the Director may order. The order shall be served upon the parties by certified mail within fifteen (15) days of the date of the decision. A copy of the decision shall be provided to the FEWB.

(h) Appeals. Any Covered Employer or Employee who objects to any decision of the Director of the Applicable Department relative to enforcement of this Chapter may appeal such decision to the Common Pleas Court or as otherwise permitted by law.

(i) Sanctions. Any Covered Employer found not to be in compliance with the provisions of this Chapter, who has submitted false or fraudulent information, or who fails to cooperate in an investigation or an audit pursuant to this section, may be subject to one or more of the following sanctions imposed by the City of Lakewood:

- (1) Withholding of payments, either in whole or in part, until the Covered Employer cures the default or is in full compliance with this chapter.
- (2) Termination, suspension or cancellation of the contract in whole or in part.
- (3) Denial of the right of the Covered Employer to bid on future contracts for no more than five (5) years after the violation is found.
- (4) In the case of Assistance, to refund any sums disbursed by the City.
- (5) The filing of a complaint with any pertinent federal agency.

No remedy set forth in this Chapter is intended to be exclusive or a prerequisite for asserting a claim for relief to enforce any rights granted under this chapter in a court of law.

(j) Retaliation and Discrimination Barred. During the term of the contract, a Covered Employer shall not discharge, reduce the compensation or otherwise discriminate against any employee for making a complaint to the City or otherwise asserting his or her rights under this chapter, participating in any of its proceedings or using any remedies to enforce his or her rights under this Chapter. A person who believes he or she has been retaliated against in violation of this section may file a charge of noncompliance with the Applicable Department. Such charge shall be processed, investigated and, if necessary, conciliated and heard according to the procedure set forth in this Chapter. If, after a hearing, the allegations of retaliation are found to be true, the Director of the Applicable Department shall order appropriate sanctions, including the denial of the right to bid on future City contracts for a specified time period, as provided in subsection (i) in this section.

(k) This Chapter shall not prevent the City or any person from exercising any right or seeking any remedy to which that person might otherwise be entitled, or from filing any complaint with any other agency or court of law or equity.

(Ord. 30-03. Passed 7-21-03.)

### 113.06 EXEMPTIONS.

(a) Construction and Prevailing-Wage Exemption. Nothing in this Chapter shall apply to jobs in public construction work that are subject to federal and/or state law pertaining to **wage** rates or covered by prevailing **wage** agreements or collective bargaining agreements.

(b) Granted Exemptions.

(1) Lakewood City Council may, through the passage of legislation, grant a partial or whole exemption from the requirements of this Chapter on the following grounds:

A. A hardship exemption for otherwise Covered Employers that can demonstrate a specific, particular harm that would be felt uniquely by the Covered Employer if this Chapter were to be applied. Economic harm alone will not suffice to demonstrate hardship unless it is of a type that would not affect any other actual competitor for the contract, subcontract or lease. The following types of specific particular harm may provide grounds for a hardship exemption:

1. A loss of profitability that will result in the elimination of jobs;
2. A loss in profits that will substantially impact the Covered Employer's long-term stability.

(2) Procedures. Application for an exemption shall be made to the Applicable Department. If the need for the exemption is known to the applicant at the time it applies or during the term of the contract for a Service Contract, the application for the exemption should be submitted with the application for the Service Contract.

A. The Director of the Applicable Department shall review and make a determination on the application within ten (10) days and respond to the applicant in writing, setting forth the reasons for the determination.

1. Notice of the request for an exemption shall be forwarded to the FEWB and the Clerk of Council.
2. A copy of the Director's determination regarding the application for the hardship exemption shall be forwarded to the FEWB and the Clerk of Council.

B. Should the exemption be recommended by the Director, the Director shall cause legislation to be drafted and acted upon by Council granting the exemption. At such time, the Director shall forward to Council along with the recommendation all supporting documents and other materials, including those supplied by the applicant for the exemption, as provided in the next section. If the exemption is recommended and Council adopts the recommendation before the Service Contract is entered into, the legislation authorizing such contract shall include a provision granting the exemption.

(3) Contents of exemption request.

- A. Hardship Exemption requests shall include:
1. The lower **wage** to be paid by the Covered Employer;
  2. A detailed explanation of how the payment of the Fair Employment **Wage** will cause particular harm; and
  3. Supporting financial statements and/or other documents.

(Ord. 30-03. Passed 7-21-03.)

**113.07 WAIVERS.**

(a) Council reserves the right to waive the requirements of this Chapter upon a finding and determination that it is in the best interests of the City; for example, when the City has declared an emergency due to natural disasters and needs immediate services.

(b) Waivers from the Chapter are disfavored, and will be granted only where the balance of the competing interests weighs clearly in favor of granting the waiver. If waivers are to be granted, partial waivers are favored over blanket waivers. Moreover, any waiver shall not be granted for no more than one year.

(Ord. 30-03. Passed 7-21-03.)

**113.08 EVALUATION.**

After a three (3) year period from the effective date of this ordinance, an evaluation on the impact of this ordinance shall be done. The Mayor, City Council and the FEWB shall decide on who shall perform the evaluation and the scope of the evaluation. After one (1) year following the effective date of this ordinance, Lakewood City Council shall hold a hearing for the purpose of reviewing this legislation.

(Ord. 30-03. Passed 7-21-03.)