

City of Philadelphia



(Bill No. 070259-A)

AN ORDINANCE

Amending Section 17-107 of The Philadelphia Code, entitled “Contractors: Labor-Management Relationships,” to require that building service employees, performing labor under certain building service contract, receive the prevailing wage and prevailing working conditions, all under certain terms and conditions.

THE COUNCIL OF THE CITY OF PHILADELPHIA HEREBY ORDAINS:

SECTION 1. Section 17-107 of The Philadelphia Code is hereby amended to read as follows:

§17-107.Contractors: Labor-Management Relationships.

(1) *Definitions.* In this section, the following definitions apply:

* * *

(b) *City-Work.* All building or construction work under a contract with the City, for compensation that exceeds two thousand dollars (\$2000), including repair, alteration and remodeling done on behalf of the City under a contract awarded by the City; and all offsite fabrication of sheet metal ducts or similar sheet metal products for heating, ventilating, and air-conditioning systems produced as non standard items for such work; and all other non-professional service contracts with the City for compensation that exceeds two hundred thousand dollars (\$200,000), *including building service contracts except that such contracts need only exceed one hundred thousand dollars (\$100,000).*

* * *

(d) *Building Service Employee.* A person performing work in connection with the care and maintenance of a building, including but not limited to watchman, guard, doorman, building cleaner, janitor, custodian, porter, maintenance person, handyperson, elevator operator or starter, window cleaner, desk clerk, housekeeper, gardener, and groundskeeper.

(e) *Building Service Contract.* Any contract for the provision of services performed by building service employees, and includes any subcontracts for such services.

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[(d)](f)

* * *

[(e)](g)

* * *

[(f)](h) *Service Contracts.* Contracts for the provision of the following services only: landscaping; building *care and* maintenance; custodial/janitorial housekeeping; security guard service; demolition; snow removal; stucco; roof capping; furniture moving; locking systems and repairs; mechanical/HVAC maintenance and repairs; elevators, escalators, and electrical maintenance and repair.

[(g)](i)

* * *

[(h)](j) *Employee.* Any workman, [or] mechanic, or building service employee of an employer who is performing city-work.

[(i)](k)

* * *

[(j)](l)

* * *

[(k)](m) *Prevailing Wages.*

(.1) *With respect to each classification of building service employee, as follows: The aggregate of (a) the wage paid to the majority (more than 50 percent) of workers in the classification at similar locations in the City of Philadelphia, or, if the same wage is not paid to a majority of those employed in the classification, the average of the wages paid weighted by the total employed in the classification at similar locations; provided that the Director is authorized to determine a reasonable approximation of the foregoing, and in doing so may, but need not, rely on the wages determined by the Secretary of Labor under the Service Contract Act, 41 U.S.C. § 351 or other related acts; and (b) the additional benefits, for which a monetary equivalent may be determined, and which are given building service employees pursuant to a bona fide collective bargaining agreement for such services in City of Philadelphia, or the monetary equivalent of such benefits. Similar locations means commercial office buildings of at least 25,000 square feet and residential buildings of at least twenty-five (25) dwelling units, whether owned or rented by the occupants thereof.*

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[(.1)](.2) With respect to any *other* occupational classification for which the Secretary of Labor of the United States has calculated a prevailing wage pursuant to the Davis-Bacon Act, 40 U.S.C. § 276a et seq., as follows:

* * *

[(.2)](.3)

* * *

[(1)](n)

* * *

[(m)](o)

* * *

[(n)](p)

* * *

[(o)](q)

* * *

[(p)](r)

* * *

(2) *Contracts.*

* * *

(b) Every City-work contract shall contain a provision that all employees performing city-work other than apprentices and job trainees as provided below shall be paid at least the applicable prevailing wages [for journeymen] and given at least the applicable working conditions; and that, upon any violation of this Section or any regulations promulgated hereunder, the City may withhold any sums remaining due on the contract until such time as the violation is remedied or, if the violation is not remedied promptly, the City may make such payments directly to affected employees, out of withheld sums, as may be necessary to remedy the violation. *For employees other than building service employees, the applicable prevailing wages shall be the prevailing wages for journeymen.*

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* * *

(.6) *No building service employee shall be or be deemed to be an apprentice or job trainee.*

* * *

(10) *City Related Agencies.* Any contract, lease, grant, condition or other agreement entered into by the City with any City-related Agency shall contain a provision requiring the City-related Agency, in the procurement of (i) all building or construction work for compensation that exceeds twenty-five thousand dollars (\$25,000), including repair, alteration and remodeling done on behalf of the City-agency under a contract awarded by the City-agency; and (ii) all offsite fabrication of sheet metal ducts or similar sheet metal products for heating, ventilating, and air-conditioning systems produced as non standard items for such work; and (iii) all other non-professional service contracts with the City-agency for compensation that exceeds two hundred thousand dollars (\$200,000), *including building service contracts except that such contracts need only exceed one hundred thousand dollars (\$100,000)*; purchased pursuant to such contract, lease, grant, condition or other agreement with the City, to abide by the provisions of subsection 17-107(2), as if such procurement were for City-Work. The City may waive the requirements of subsection 17-107(2) if the Procurement Commissioner certifies that applying said prohibition may result in the loss of federal, state or similar funds or grants. The requirements of this paragraph and subsection 17-107(2) shall not apply to any City funded or City-related Agency funded housing rehabilitation or construction project that involves eight (8) or fewer housing units.

(11) *Leases and Subleases.*

(a) *Lease means a lease of City property or property owned or managed by a City-related agency which contains, or will contain, a commercial office building of at least 25,000 square feet or a residential building of at least twenty-five (25) dwelling units, whether owned or rented by the occupants thereof. Leases shall be deemed to include subleases, including tenant leases.*

(b) *Building service employees employed at properties subject to a lease as defined herein, whether employed directly by the lessee, or by a sub-lessee or tenant, or through a property management company or a contractor, will receive the prevailing wage.*

(c) *Every lease entered into by the City or a City-related agency shall contain a provision that all building service employees at the subject premises shall be paid at least the applicable prevailing wages; that the lessee will require all sub-lessees and tenants to, and the lessee shall itself, comply with and be bound by all provisions of this Section, as if such work were City-work and lessee a contractor; and that, upon any*

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violation of this Section and any regulations promulgated hereunder, which is not promptly remedied, such additional sums as may be necessary to remedy the violation shall become due and owing under the lease. The City may make payments directly to affected employees, out of such additional sums, as may be necessary to remedy the violation.

(d) This subsection applies to all leases entered into, renewed, or extended after the effective date of this subsection.

(12) Recipients of Financial Assistance.

(a) Financial assistance means any grant, loan or loan guarantee, incentive, or subsidy provided by, or with the authority or approval of, the City or a City-related agency, including, but not limited to, bond financing; tax increment financing; use of the power of eminent domain; Community Development Block Grant loans or grants; Enterprise Zone designations, and waiver of City fees; subject to any restrictions imposed under applicable laws, financial assistance includes any transaction managed or administered by the City or a City-related agency, or over which, the City or a City-related agency has oversight authority, which offers financial benefits or assistance under City law or relief from the financial requirements or burdens of City law. For the purposes of this Section, the term “financial assistance” shall not include any real estate tax exemptions awarded pursuant to §§19-1303(2),19-1303(3), 19-1303(4) or 19-1303(5).

(b) Building service employees employed at properties that benefit from financial assistance, whether employed by the owner, developer or lessee of the property, or through a property management company or a contractor, will receive the prevailing wage; this requirement applies at commercial office buildings of at least 25,000 square feet or residential buildings of at least twenty-five (25) dwelling units, whether owned or rented by the occupants thereof, for the duration of the assistance or ten (10) years from the issuance of a certificate of approval, whichever is later.

(c) Conditions.

(.1) Unless prohibited under state law, any contract, grant, condition or other agreement entered into by the City or any City-related Agency with a recipient of financial assistance shall contain a provision that all building service employees at the property shall be paid at least the applicable prevailing wages; and that the recipient will require all developers, owners, lessees and tenants to, and the recipient shall itself, comply with and be bound by all provisions of this Section, as if such work were City-work and the recipient a contractor.

(.2) Unless prohibited under state law, as a condition of obtaining financial assistance, the City or City-related agency shall require the recipient to post a

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bond in an amount sufficient to ensure compliance with the provisions of this Section and any regulations promulgated hereunder; if a violation is not promptly remedied, the City may make or direct payments to be made directly to affected employees, out of the proceeds of such bond, as may be necessary to remedy the violation.

(.3) Where state law prohibits the City or City-related agency from placing the conditions set forth above in subsections (.1) and (.2) on the receipt of financial assistance, a recipient of financial assistance shall in all other respects be bound by the terms of this Section and shall be required to post a bond in an amount sufficient to ensure compliance with the provisions of this Section and any regulations promulgated hereunder; if a violation is not promptly remedied, the City may make or direct payments to be made directly to affected employees, out of the proceeds of such bond, as may be necessary to remedy the violation.

(d) This subsection applies to financial assistance awarded or renewed after the effective date of this subsection.

(13) Sale of Property.

(a) Every contract or agreement entered into by the City for the sale of City property or by a City-related agency for the sale of property transferred to it by the City, which property contains, or will contain, a commercial office building of at least 25,000 square feet or a residential building of at least twenty-five (25) dwelling units, whether owned or rented by the occupants thereof, shall contain a provision that all building service employees employed at the property shall be paid at least the applicable prevailing wages for ten (10) years from the date of the sale or issuance of a certificate of approval, whichever is later; that the purchaser shall require all property managers, contractors, lessees and tenants to, and shall itself, comply with and be bound by all provisions of this Section, as if such work were City-work and purchaser were a contractor; and that the purchaser will comply with the requirements of subsection 13(c).

(b) The City or City-related agency shall require the purchaser to post a bond in an amount sufficient to ensure compliance with the provisions of this Section and any regulations promulgated hereunder; if a violation is not promptly remedied, the City may make or direct that payments be made directly to affected employees, out of the proceeds of such bond, as may be necessary to remedy the violation.

(c) Every contract or agreement entered into by a purchaser, within the ten (10) year period set forth in subsection 13(a), for the sale of property subject to this subsection shall contain a provision that all building service employees employed at the property shall be paid at least the applicable prevailing wages during the ten (10) year period; that the transferee shall require all property managers, contractors, lessees and tenants to, and shall itself, comply with and be bound by all provisions of this Section, as if such work were City-work and transferee were a contractor. The purchaser shall

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require the transferee to post the bond required under subsection 13(b) as a condition of the transfer; a failure to do so will result in forfeiture of the purchaser's bond, the proceeds of which may be used to make payments directly to affected employees in the event of a violation of this subsection.

(d) This subsection applies to contracts of sale entered into after the effective date of this subsection.

SECTION 2. Effective Date. This Ordinance shall take effect immediately upon final approval.

Explanation:

[brackets] indicate matter deleted
Italics indicate new matter added

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CERTIFICATION: This is a true and correct copy of the original Bill, Passed by the City Council on May 10, 2007. The Bill was Signed by the Mayor on May 23, 2007.

A handwritten signature in black ink, reading "Patricia Rafferty". The signature is written in a cursive style with a large, stylized "P" and "R".

Patricia Rafferty
Chief Clerk of the City Council