

Int. No. 66-A

By The Speaker (Council Member Miller), Council Members Perkins, Jackson, Lopez, Comrie, Quinn, Rivera, Addabbo, Avella, Baez, Barron, Boyland, Brewer, Clarke, Davis, DeBlasio, Gioia, Katz, Liu, McMahon, Monserrate, Nelson, Recchia, Reed, Reyna, Rodriguez, Sanders, Sears, Diaz, Dilan, Fidler, Felder, Foster, Gennaro, Gerson, Jennings, Koppell, Martinez, Seabrook, Serrano, Stewart, Vann, Weprin and Yassky and the Public Advocate (Ms. Gotbaum)

A LOCAL LAW

To amend the administrative code of the City of New York in order to ensure that low-wage workers employed by firms receiving certain service contracts or economic development benefits from the City of New York are paid a living wage and are provided health benefits.

Be it enacted by the Council as follows:

Section 1. Legislative findings and intent. The City Council finds and declares that the City of New York and other government agencies funded by the city each year award billions of dollars in contracts to provide services to the public and to city government. Too often, the firms receiving these service contracts do not pay their employees adequate wages or health benefits. Such poverty-level wages deny the employees of service contractors the resources they need to support their families. Moreover, where employers do not pay a living wage, their employees' families are forced to rely on the public social services system for support, increasing the burden on the city, state and federal governments and taxpayers. Equally importantly, sub-standard wages paid by city contractors often result in high employee turnover, compromising the quality of the services provided to the city. Permitting city contractors to continue paying poverty wages also risks tempting public agencies to contract out services that are currently performed by city employees simply to cut wage and benefits costs. By contrast, jobs paying an adequate wage will increase consumer income, decrease poverty and invigorate neighborhood businesses.

Through the New York City Economic Development Corporation, the city also expends substantial resources each year to provide grants, loans, tax incentives and other forms of assistance to businesses for the purpose of retaining or creating employment opportunities in New York. The Council finds that it is not in the city's best interests to expend scarce public resources to subsidize the creation or retention of poverty-wage jobs. Requiring the recipients of economic development subsidies to pay a living wage will ensure that these scarce subsidy dollars are targeted where they will do the greatest good.

The City spends millions more dollars each year leasing commercial office space for city agencies. Most of the city's large leases are in buildings where janitors and other building service workers receive wages that enable them and their families to escape poverty. Some, however, are not. The Council finds that it is not in the city's best interests to expend public revenues to lease office space where building service workers receive sub-standard pay. By beginning to shift the remainder of the city's large leases to buildings where janitors are paid prevailing wages, the city will ensure that its leasing policies support the creation decent jobs for all New Yorkers.

The city has also increasingly relied on business improvement districts to provide important services for the city's businesses, neighborhoods and residents. The Council finds that our large business improvement districts can and should do their part to create decent jobs for working New Yorkers by ensuring that their hardworking security and cleaning staffs that keep our city safe and beautiful are paid a living wage.

The City of New York has a long and rich history of national leadership in promoting policies to help working families help themselves. As early as 1961 under Mayor Robert

Wagner, New York was the first city in the United States to enact a “living wage” law.

However, Mayor Wagner’s law was not subsequently updated and eventually became irrelevant when the value of the federal minimum wage surpassed it in 1978.

In 1996, as the living wage movement began to sweep the country, New York enacted a modest living wage law requiring that employees of city service contractors in four sectors — janitorial, security, food service, and office temporary services — pay their workers no less than the prevailing industry wage. But the law reaches only a small fraction of the employees of city service contractors and does not apply at all to firms receiving other forms of taxpayer-funded economic assistance. As a result, New York lags conspicuously behind other major U.S. cities that have enacted broader living wage laws that set a benchmark standard for responsible employers by requiring that firms receiving substantial public benefits pay their subsidized employees a living wage and provide them health benefits.

The Council finds that the city now faces deepening economic hardship for working New Yorkers, compounded by new budgetary constraints. In light of these growing needs but limited resources, the city must take a first step toward bringing a living wage to working New Yorkers. These times call for a prudently tailored living wage policy that raises pay for our vulnerable residents where this can be done at a reasonable cost to the city’s budget and without imposing an undue burden on our corporate citizens. We begin by asking employers providing city-contracted services in a handful of selected sectors, businesses receiving major economic development subsidies or leases from the city, and large business improvement districts to pay a living wage.

Raising wages for low-income New York households will not only protect them from extreme economic hardship, but will help stimulate the economy as poor families spend this desperately needed income at local businesses in the low-income city neighborhoods where they overwhelmingly reside. With hundreds of thousands of New Yorkers economically vulnerable, the city must do all it can to leverage current city spending and programs to maximize the supply of family-supporting jobs for working New Yorkers. We can afford no less.

§ 2. Chapter 109 of title 6 of the administrative code of the City of New York is hereby repealed and replaced by the following:

Section 6-109. a. Definitions. For purposes of this section, the following terms shall have the following meanings:

- (1) “City” means the City of New York.
- (2) “Entity” or “Person” means any individual, sole proprietorship, partnership, association, joint venture, corporation or any other form of doing business.
- (3) “Homecare Services” means the provision of homecare services under the city’s Medicaid Personal Care / Home Attendant or Housekeeping Programs.
- (4) “Building Services” means work performing any custodial, janitorial, streetcleaning, groundskeeping or security guard services, whether indoors or outdoors, including but not limited to washing and waxing floors, cleaning windows, cleaning of curtains, rugs, or drapes, and disinfecting and exterminating services. This definition includes, but is not

limited to, any work performed by any “building service employee” as that term is defined in section 230 of the state labor law.

(5) “Day Care Services” means provision of day care services through the city’s “fully-funded” center-based day care program administered under contract with the city’s administration for children’s services. No other day care programs shall be covered, including family-based day care programs administered by city-contracted day care centers.

(6) “Head Start Services” means provision of head start services through the city’s “fully-funded” head start program administered under contract with the city’s administration for children’s services. No other head start programs shall be covered.

(7) “Services to Persons with Cerebral Palsy” means provision of services to enable persons with cerebral palsy and related disabilities to lead independent and productive lives through an agency that provides health care, education, employment, housing and technology resources to such persons under contract with the new york city board of education.

(8) “Food Services” means the work preparing and/or providing food. Such services shall include, but not be limited to, 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 city-affiliated agency letting a food services contract under which workers will be employed who do not fall within the foregoing definitions must request that the comptroller establish classifications and prevailing wage rates for such workers.

(9) “Temporary Services” means the provision of any office service pursuant to a contract with a temporary services, staffing or employment agency or other similar entity where

the workers performing the services are not employees of the city-affiliated agency. 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 city-affiliated agency letting a temporary services contract under which workers will be employed who do not fall within the foregoing definitions must request the comptroller to establish classifications and prevailing wage rates for such workers.

(10) “City Service Contract” means any agreement between any entity and a city affiliated agency whereby a city-affiliated agency is committed to expend or does expend funds in order to provide homecare services, building services, day care services, head start services, services to persons with cerebral palsy, food services or temporary services where the value of the agreement is greater than the city's small purchases limit pursuant to section 314 of the city charter. This definition shall not include contracts awarded pursuant to the emergency procurement procedure as set forth in section 315 of the city charter. In the case of a city-affiliated agency that is a large business improvement district, this definition shall be limited to agreements for the provision of building services.

(11) “City Service Contractor” means any entity that enters into a city service contract with a city-affiliated agency. An entity shall be deemed a city service contractor for the duration of the city service contract that it receives or performs.

(12) “City Service Subcontractor” means any entity, including a temporary services, staffing or employment agency or other similar entity, that is engaged by a city service contractor

to assist in performing any of the services to be rendered pursuant to a city service contract. This definition does not include any contractor or subcontractor that merely provides goods relating to a city service contract or that provides services of a general nature (such as relating to general office operations) to a city service contractor which do not relate directly to performing the services to be rendered pursuant to the city service contract. An entity shall be deemed a city service contractor for the duration of the period during which it assists the city service contractor in performing the city service contract.

(13) “City-Affiliated Agency” means the city, a city agency, the city council, a county, a borough, or other office, position, administration, department, division, bureau, board, commission, corporation, or an institution or agency of government, the expenses of which are paid in whole or in part from the city treasury, or a large business improvement district located in whole or in part in the city or, in the case of services to persons with cerebral palsy, the new york city board of education. This definition includes the new york city economic development corporation.

(14) “City Economic Assistance” or “City Economic Assistance Award” means any economic assistance package agreed to or awarded by, through or with the participation of the new york city economic development corporation or the new york city department of business services for purposes of business development, job creation or job retention where the total value of the economic assistance package, excluding any tax-exempt bond financing, is projected to be at least \$500,000 at the time of the agreement or award of the economic assistance package, or where the package includes at least \$10,000,000 in tax-exempt bond financing. For purposes of this definition:

(a) Economic assistance shall include only discretionary awards of economic assistance in the form of tax abatements (including, but not limited to, abatements of property tax, sales tax or mortgage recording tax), cash payments or grants, or the donation, sale, lease, assignment or transfer at less than fair market value of property owned or controlled by a city-affiliated agency. Economic assistance shall not include tax benefits such as the new york city industrial and commercial incentive program (ICIP) that, as a matter of state law, are as-of-right benefits.

(b) Where an economic assistance package includes the donation, sale, lease, assignment or transfer at less than fair market value of property owned or controlled by a city-affiliated agency, that component of the economic assistance package shall be valued at the difference between the donation, sale, lease, assignment or transfer price and the fair market value thereof.

(c) Where the same entity, or one or more of its affiliates or subsidiaries, receives in connection to the same facility or project more than one economic assistance package agreed to or awarded by, through or with the participation of the new york city economic development corporation or the new york city department of business services during the same or overlapping periods of time, the value of those economic assistance packages shall be combined for purposes of determining whether the size thresholds of this definition are met.

(d) Economic assistance shall not include economic assistance agreed to or awarded by, through or with the participation of the new york city economic development

corporation or the new york city department of business services for purposes unrelated to business development, job creation or job retention, or where the purpose of the economic assistance is to finance the construction or rehabilitation of an educational, cultural, or social services facility or affordable housing. In no event shall economic assistance include the sale, assignment, lease or transfer of city-owned property at less than fair market value to a not-for-profit organization that is a community-based housing development organization or faith-based institution where the purpose of the transfer is to promote community or housing development in low-income neighborhoods.

(e) In the event that the city transfers or assigns to any other city-affiliated agency or entity the responsibilities for negotiating and/or awarding economic assistance packages, currently vested in the new york city economic development corporation or the new york city department of business services, the requirements of this section shall apply to economic assistance packages as agreed to or awarded by that new city-affiliated agency or entity.

(15) “City Economic Assistance Agreement” means an agreement pursuant to which any entity receives or will receive city economic assistance.

(16) “City Economic Assistance Recipient” means any entity that receives, or enters into an agreement to receive, city economic assistance. An entity covered under this definition shall be deemed a city economic assistance recipient for the duration of the period during which the city economic assistance that triggers coverage is received or, if the assistance has no

extended duration, for five years. For purposes of this section, that period shall be deemed the term of the city economic assistance.

(17) “Contractor Providing On-Site Services to a City Economic Assistance Recipient or to a Major Tenant in a Subsidized Building” or “Contractor Providing On-Site Services” means an entity that (a) under contract or agreement with a city economic assistance recipient or a major tenant, provides building services, food services, office services or staffing services on the premises of the office, facility or building that is the subject of city economic assistance, (b) employs at least five persons providing such services to the city economic assistance recipient or major tenant at that location, and (c) provides such services for a period of more than thirty days. Where city economic assistance is not associated with a specific office, facility or building of the city economic assistance recipient, the office(s) or facility(ies) that the city economic assistance recipient occupies in the city shall be deemed the office(s) or facility(ies) that are the subject of the city economic assistance.

(18) “Major Tenant in a Subsidized Building” or “Major Tenant” means an entity that occupies at least 5,000 square feet in a building that is constructed or renovated with city economic assistance awarded after the effective date of this section, and that employs at least twenty persons at the facility.

(19) “City Lease” means any agreement whereby a city-affiliated agency contracts for, or leases or rents commercial office space or facilities of at least 20,000 square feet from a non-governmental entity in a commercial, institutional, industrial, or retail building of at least

100,000 square feet, or in a residential building of at least thirty units, but does not include leases between a not-for-profit organization and a city-affiliated agency.

(20) “City Lessor” means any entity entering into a city lease with a city-affiliated agency.

(21) “Building Services Contractor in a City-Leased Building” means any entity providing building services in a building that is the subject of a city lease entered into or renewed after the enactment date of this section.

(22) “Large Business Improvement District” means any business improvement district, as defined in section 980 of the state general municipal law located in whole or in part in the city and having annual revenues of \$500,000 or more.

(23) “Covered Employer” means a city service contractor, a city service subcontractor, a city economic assistance recipient, a major tenant, a contractor providing on-site services, a city lessor, a contractor providing building services in a city-leased building or a large business improvement district.

(24) “Employee” means any person who performs work on a full-time, part-time, temporary, or seasonal basis and includes employees, independent contractors, and contingent or contracted workers, including persons made available to work through the services of a temporary services, staffing or employment agency or similar entity. For purposes of this definition and this section, “employ” means to maintain an employee, as defined in this section. For purposes of counting numbers of employees or employed persons when required by this section, full-time, part-time, temporary, or seasonal employees shall be counted as employees.

Where an employer's work force fluctuates seasonally, it shall be deemed to employ the highest number of employees that it maintains for any three month period. However, in the case of city service contractors and city service subcontractors that provide day care services, independent contractors that are family-based day care providers shall not be deemed employees of the agencies and shall not be subject to the requirements of this section.

(25) "Covered Employee" means an employee entitled to be paid the living wage or the prevailing wage and/or health benefits as provided in subdivision b of this section.

(26) "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 state not-for-profit law.

(27) "Prevailing Wage and Supplements" means the rate of wage and supplemental benefits per hour paid in the locality to workers in the same trade or occupation and annually determined by the comptroller in accordance with section 234 of the state labor law or, for titles not enumerated in or covered by that law, determined by the comptroller at the request of a city-affiliated agency or a covered employer in accordance with the procedures of section 234 of the state labor law, except that for all employees performing building services, including security guard services, the prevailing supplemental benefits rate per hour shall be no less than that of cleaners in class c buildings, as that term of art is used in the real industry in new york city. As provided under section 231 of the state labor law, the obligation of an employer to pay prevailing supplements may be discharged by furnishing any equivalent combinations of fringe benefits or

by making equivalent or differential payments in cash under rules and regulations established by the comptroller.

(28) “Living Wage” has the meaning provided in paragraph 2 of subdivision b of this section.

(29) “Health Benefits” has the meaning provided in paragraph 3 of subdivision b of this section.

(30) “Health Benefits Supplement Rate” has the meaning provided in subparagraph b of paragraph 3 of subdivision b of this section.

b. Living Wage, Prevailing Wage and Health Benefits. (1) Coverage. (a) A city service contractor or city service subcontractor that provides homecare services, day care services, head start services or services to persons with cerebral palsy must pay its employees that are engaged in performing the city service contract or subcontract no less than the living wage and must either provide its employees health benefits or must supplement their hourly wage rate by an amount no less than the health benefits supplement rate. This requirement applies for each hour that the employee works performing the city service contract or subcontract.

(b) A city service contractor or city service subcontractor that provides building services, food services or temporary services must pay its employees that are engaged in performing the city service contract or subcontract no less than the living wage or the prevailing wage, whichever is greater. Where the living wage is greater than the prevailing wage, the city

service contractor or city service subcontractor must either provide its employees health benefits or must supplement their hourly wage rate by an amount no less than the health benefits supplement rate. Where the prevailing wage is greater than the living wage, the city service contractor or city service subcontractor must provide its employees the prevailing wage and supplements as provided in paragraph 27 of subdivision a of this section. These requirements apply for each hour that the employee works performing the city service contract or subcontract.

(c) A city lessor or a building services contractor in a city-leased building as to which a city lease is entered into or renewed after the effective date of this section must pay its employees performing building services no less than the prevailing wage or the living wage, whichever is greater. Where the living wage is greater than the prevailing wage, the city lessor or a building services contractor in a city-leased building must either provide its employees health benefits or must supplement their hourly wage rate by an amount no less than the health benefits supplement rate. Where the prevailing wage is greater than the living wage, the city lessor or a building services contractor in a city-leased building must provide its employees the prevailing wage and supplements as provided in paragraph 27 of subdivision a of this section. This requirement applies for the duration of the lease and for each hour that an employee works in the building as to which the city lease relates.

(d) A city economic assistance recipient, a major tenant in a subsidized building, or a contractor providing on-site services to a city economic assistance recipient or to a major tenant in a subsidized building must pay its employees no less than the living wage and, for employees performing building services or food services, must pay its employees no less than the living wage or the prevailing wage, whichever is greater. Where the living wage is greater than the

prevailing wage, the employer must either provide its employees health benefits or must supplement their hourly wage rate by an amount no less than the health benefits supplement rate. Where the prevailing wage is greater than the living wage, the employer must provide its employees the prevailing wage and supplements as provided in paragraph 27 of subdivision a of this section. These requirements apply to city economic assistance awarded after the enactment date of this section and for the term of the city economic assistance, and for each hour that the employee is employed at the office or in the building that has been the subject of city economic assistance. Provided, however, that the requirements of this section shall not apply to employees engaged primarily in the performance of construction-related work.

(e) A large business improvement district must pay its employees no less than the living wage and, for employees performing building services or food services, must pay the employees no less than the living wage of the prevailing wage, whichever is greater. Where the living wage is greater than the prevailing wage, the employer must either provide its employees health benefits or must supplement their hourly wage rate by an amount no less than the health benefits supplement rate. Where the prevailing wage is greater than the living wage, the employer must provide its employees the prevailing wage and supplements as provided in paragraph 27 of subdivision a of this section.

(2) The Living Wage. The living wage shall be an hourly wage rate defined as follows:

- (a) As of the effective date of this section, \$8.10 per hour;
- (b) As of July 1, 2003, \$8.60 per hour;

(c) As of July 1, 2004, \$9.10 per hour;

(d) As of July 1, 2005, \$9.60 per hour;

(e) As of July 1, 2006, \$10.00 per hour.

(f) Beginning on July 1, 2007 and on July 1 of each year thereafter, the living wage rate shall be increased at the same rate as the annual increase, if any, over the preceding year in the consumer price index for all urban consumers for the new york city-northern new jersey-long island area for all items.

(3) Health Benefits. (a) Health Benefits means receipt by a covered employee of a health care benefits package for the covered employee and/or his or her family and/or dependents where the employer's contribution to the purchase or provision of the health care benefits package is valued at no less than the value of the health benefits supplement rate for each hour that the employee works as a covered employee.

(b) The health benefits supplement rate shall initially be \$1.50 per hour. Beginning on July 1, 2003 and on July 1 of every year thereafter, the health benefits supplement rate shall be increased at the same rate as the annual increase, if any, over the preceding year in the consumer price index for all urban consumers for the new york city-northern new jersey-long island area for medical care. However, for all employees performing building services, including security guard services, the health benefits supplement rate shall be no less than the prevailing supplemental benefits rate for cleaners in class c buildings as determined by the comptroller in accordance with the provisions of section 234 of the state labor law.

(c) In the case of city service contractors or subcontractors providing homecare services, the health benefits requirement of this section may be satisfied by provision of a health care benefits package under which the employer's contribution to the purchase or provision of the health care benefits package is valued at less than the value of the health benefits supplement rate but which, when combined with a government supplement, results in provision of a health care benefits package valued at no less than the value of the health benefits supplement rate for each hour worked by the covered employee.

(d) In the case of city service contractors or subcontractors providing homecare services, the health benefits requirements of this section may be waived by the terms of a bona fide collective bargaining agreement with respect to employees who have never worked a minimum of eighty (80) hours per month for two consecutive months for that covered employer, but such provision may not otherwise be waived for any employees once they have achieved a minimum of eighty (80) hours for two consecutive months and no other provisions of this section may be so waived. In the case of covered employers providing food services, any requirements of this section may be waived by the terms of a bona fide collective bargaining agreement provided that the waiver is explicitly set forth in the agreement in clear and unambiguous terms. Unilateral implementation of terms and conditions of employment by either party to a collective bargaining relationship shall not constitute a waiver of any of the requirements of this section.

(4) Compensated Days Off. (a) Covered employers shall provide covered employees at least twelve compensated days off per year for holidays, sick leave, vacation, or personal necessity. Covered employees shall accrue one compensated day off per month of full-time-equivalent employment based on hours during which the covered employee is entitled to be

paid the living wage or the prevailing wage. Covered employees shall be eligible to use accrued days off after the first six months of employment or consistent with employer policy, whichever is more generous. All paid days off provided by an employer, including paid holidays and paid days off provided pursuant to a collective bargaining agreement, may, consistent with established employer policy, be counted toward provision of the required twelve compensated days off.

(b) Covered employers shall also permit covered employees to take at least an additional ten days per year of uncompensated days off to be used for sick leave necessitated by illness of the covered employee or a member of his or her immediate family where the employee has exhausted his or her compensated days off for that year. This provision does not mandate the accrual from year to year of uncompensated days off. The uncompensated leave requirements of this provision shall not apply to any employee entitled to more extensive uncompensated leave pursuant to the federal family and medical leave act. Where an employer provides more than twelve compensated days off per year, those days above twelve may be counted towards satisfaction of this requirement.

(5) Exemption for Employment Programs for the Disadvantaged. The following categories of employees shall not be subject to the requirements of this section:

(a) Any employee who is:

(i) Under the age of eighteen who is claimed as a dependent for federal income tax purposes and is employed as an after-school or summer employee; or

(ii) Employed as a trainee in a bona fide training program consistent with federal law where the training program ensures that the employee advances into a

permanent position; provided, however, that this exemption shall apply only when the employee does not replace, displace or lower the wages or benefits of any existing position or employee, and when the employee's employment does not exceed six months; or

(b) Any disabled employee, where such disabled employee:

(i) Is covered by a current sub-minimum wage certificate issued to the employer by the United States department of labor; or

(ii) Would be covered by such a certificate but for the fact that the employer is paying a wage equal to or higher than the federal minimum wage.

(6) Retaliation and Discrimination Barred. It shall be unlawful for any person to retaliate or discriminate against an individual for reporting or asserting a violation of this section, for seeking or communicating information regarding rights conferred by this section, for exercising any other right protected under this section, or for participating in any proceeding relating to this section. This protection shall also apply to any individual who mistakenly, but in good faith, alleges a violation of this section, or who seeks or communicates information regarding rights conferred by this section in circumstances where he or she mistakenly, but in good faith, believes this section applies. Taking adverse action against an individual within sixty (60) days of the individual's engaging in any of the aforementioned activities shall raise a rebuttable presumption of having done so in retaliation for those activities.

c. Obligations of Covered Employers. (1) A covered employer shall comply with the wage, benefits and other requirements of this section

(2) Certification of Compliance. (a) Prior to the award or renewal of a city service contract, city economic assistance, or a city lease, the applicant for award or renewal shall provide the awarding city-affiliated agency a certification containing the following information:

(i) The name, address, and telephone number of the chief executive officer of the applicant;

(ii) A statement that, if the city service contract, city economic assistance, or city lease is awarded or renewed, the applicant agrees to comply with the requirements of this section, and with all applicable federal, state and local laws;

(iii) The following workforce information concerning employees of the applicant that will be covered employees under the planned city service contract, city economic assistance award, or city lease: (a) the absolute number of covered employees and the number of full-time equivalent covered employees; (b) the number of new jobs created as a consequence of the city service contract, city economic assistance award or city lease; (c) for all categories of covered employees, the following information broken down by category: (1) job classifications of covered employees in each category; (2) the wages and benefits provided covered employees in each category (including a description of individual and family health coverage, and sick, annual and terminal leave);

(3) the union status of covered employees in each category; and (4) annual employee turn-over rates for covered employees in each category;

(iv) The name, address, telephone number, name of the chief executive officer, and the same workforce information enumerated in the preceding clause for any city service subcontractor, major tenant, contractor providing on-site services, or contractor providing building services in a city-leased building, that will be involved; where city service subcontractors, major tenants, contractors providing on-site services, or contractors providing building services in a city-leased building are not yet known as of the date of the certification, the applicant shall so state and shall submit an updated certification providing required information regarding such parties within ninety days after they are identified;

(v) A record of any instances during the preceding five years in which the applicant has been found by a court or government agency to have violated federal, state or local laws regulating payment of wages or benefits, labor relations or occupational safety and health, or in which the applicant has settled a complaint charging a violation of such laws, or in which any government body initiated a judicial action, administrative proceeding or investigation of the applicant in regard to such laws; and

(vi) An acknowledgement that a finding by the comptroller that the applicant has violated the requirements of this section may result in the

cancellation or rescission of the city service contract, city economic assistance or city lease.

The certification shall be signed under penalty of perjury by an officer of the applicant, and shall be annexed to and form a part of the city service contract, city economic assistance agreement, or city lease. The certification (including updated certifications) and the city service contract, city lease, or city economic assistance agreement shall be public documents and the city-affiliated agency and the covered employer shall make them available to the public upon request for inspection and copying.

(b) A city service contractor, city economic assistance recipient, or city lessor shall each year throughout the term of the city service contract, city lease, or city economic assistance, submit to the city-affiliated agency an updated certification, identifying any changes to the current certification.

(c) A large business improvement district shall within ninety days of the effective date of this section complete and submit to the city department of business services, and update annually, a certification containing the information described in subparagraph a of this paragraph as regards its own workforce. A large business improvement district shall require its city service contractors to comply with the requirements of this section, including the certification requirements of this paragraph, and shall submit copies of such certifications to the city department of business services.

(d) A covered employer shall maintain original payroll records for each of its covered employees reflecting the days and hours worked on contracts, projects or assignments that are

subject to the requirements of this section, and the wages paid and benefits provided for such hours worked. The covered employer shall maintain these records for the duration of the term of the city service contract, city lease, or city economic assistance, and shall retain them for a period of four years after completion of the term of the city service contract, city lease, or city economic assistance. Failure to maintain such records as required shall create a rebuttable presumption that the covered employer did not pay its covered employees the wages and benefits required under this section.

(e) A city service contractor providing building services, food services or temporary services shall, as required by the predecessor version of this section, continue to submit copies of such payroll records, certified by the city service contractor under penalty of perjury to be true and accurate, to the city-affiliated agency with every requisition for payment.

(f) A city service contractor providing homecare, day care, head start or services to persons with cerebral palsy may comply with the certification and other reporting requirements of this paragraph by submitting, as part of the contract proposal/contract and periodic requests for payment, detailed, categorical information about the wages, benefits and job classifications of covered employees of the city service contractor, and of any city service subcontractors, which is the substantial equivalent of the information required in clause iii of subparagraph a of this paragraph.

(3) Requirement to Inform Third Parties of Requirements and to Include Requirements in Contracts. A city service contractor shall ensure that its city service subcontractors comply with the requirements of this section, and shall provide written

notification to its city service subcontractors of those requirements, and include in any contract or agreement with its city service subcontractors a provision requiring them to comply with those requirements. A city economic assistance recipient shall ensure that its on-site contractors and major tenants comply with the requirements of this section, and shall provide written notification to its on-site contractors and major tenants of those requirements, and include in any contract or agreement with its on-site contractors and major tenants a provision requiring them to comply with those requirements. A city lessor shall ensure that its building services contractors in a city-leased building comply with the requirements of this section, and shall provide written notification to its building services contractors in a city-leased building of those requirements, and include in any contract or agreement with building services contractors in a city-leased building a provision requiring them to comply with those requirements. A large business improvement district shall ensure that its city service contractors comply with the requirements of this section, and shall provide written notification to its city service contractors of those requirements, and include in any contract or agreement with its city service contractors a provision requiring them to comply with those requirements.

(4) A city economic assistance recipient or a city lessor shall not sell, assign, lease or otherwise transfer by any means, in whole or in part, an interest in any property, lease or other entity that is subject to the requirements of this section without requiring the entity acquiring that interest to provide the certification described in paragraph 2 of this subdivision to the appropriate city-affiliated agency and making compliance with such certification a material condition of the sale, lease, assignment or transfer agreement.

(5) No later than the day on which any work begins under a city service contract, city economic assistance award or city lease subject to the requirements of this section, the covered employer shall post in a prominent and accessible place at every work site, shall provide each covered employee a copy of a written notice, prepared by the comptroller, detailing the wages, benefits, and other protections to which covered employees are entitled under this section, and shall maintain a record reflecting the receipt thereof by covered employees. Such notices shall be provided in english, spanish and other languages spoken by a significant number of a covered employer's covered employees. The comptroller shall provide city-affiliated agencies with sample written notices explaining for covered employees their rights and covered employers' obligations under this section, and city-affiliated agencies shall in turn provide those written notices to city service contractors, city economic assistance recipients, and city lessors, which shall in turn provide them to any city service subcontractors, major tenants, contractors providing on-site services, or building services contractors in a city-leased building.

(6) City service contractors and subcontractors that provide homecare services shall submit to the city the names, addresses and telephone numbers of all employees performing homecare services pursuant to a city service contract or subcontract. The city service contractor or subcontractor shall agree that by providing such information, the city service contractor or subcontractor represents that it has informed all employees performing homecare services pursuant to the city service contract or subcontract that the information is being submitted to the city, that the information may be subject to public disclosure, and that the city service contractor or subcontractor has obtained consent to provide such information from each employee performing homecare services pursuant to a city service contract or subcontract. This reporting

requirement shall be deemed a material element of the city service contract or subcontract. The city service contractor or subcontractor shall agree to maintain program and statistical records and to produce program narrative and statistical data at times as prescribed by, and on forms furnished by the city, as duly authorized by the New York State Department of Health.

d. City Implementation and Reporting. (1) Coordination by the Comptroller. The comptroller shall have primary responsibility within city government for implementing this section, including coordinating and ensuring effective compliance by all city-affiliated agencies, and providing covered employers and employees with the information and assistance necessary to ensure that the section is implemented in an thorough, fair, and efficient manner.

(a) The comptroller shall be responsible for calculating and publishing all applicable living wage, prevailing wage and health benefits supplement rates. The comptroller shall annually publish the adjusted rates. The adjusted living wage and health benefits supplement rate shall take effect on July 1 of each year, and the adjusted prevailing wage rates shall take effect on whatever date revised prevailing wage rates determined under section 230 of the state labor law are made effective. At least 30 days prior to their effective date, the comptroller in cooperation with the relevant city-affiliated agencies, shall provide notice of the adjusted rates to city service contractors, city economic assistance recipients, city lessors and large business improvement districts, which shall in turn provide written notification of the rate adjustments to each of their covered employees, and to any city service subcontractors, major tenants, contractors providing on-site services, or contractors providing building services in a city-leased

buildings, which shall in turn provide written notification to each of their covered employees.

Covered employers shall make necessary wage and health benefits adjustments by the effective date of the adjusted rates.

(b) The comptroller shall promulgate implementing rules, regulations, forms, bid and contract provisions, and other materials, as appropriate, consistent with this section, which shall be binding on covered employers, covered employees and city-affiliated agencies. Implementing rules, regulations, forms, bid and contract provisions, and other materials promulgated by the comptroller shall be subject to review and comment by the mayor, the city council, the living wage advisory committee, and the public before they take effect. Through such implementing rules and regulations, the comptroller may clarify and elaborate on the requirements of this section, as appropriate. Such rules and regulations shall have the force and effect of law and may be relied on by covered employers, covered employees and other parties in order to determine their rights and obligations under this section. Where the comptroller deems appropriate, or where state or city law so requires, authority over any particular implementation function may be assigned to another body or agency such as the new york city procurement policy board.

(c) The comptroller and the mayor shall ensure that the information set forth in the certifications (including annual updated certifications and alternatives to certifications authorized for city service contractors providing homecare, day care, or head start services or services to persons with cerebral palsy) required to be submitted under paragraph 2 of subdivision c of this section is integrated into and contained in the city's contracting and financial management database established pursuant to section 6-116.2 of the administrative code. Such information

shall be made available to the public over the internet. Provided, however, that the comptroller and the mayor may agree to restrict from disclosure to the public any information from the certifications required under paragraph 2 of subdivision c of this section that is of a personal nature.

(d) The comptroller shall submit annual reports to the mayor, the city council, and the living wage advisory committee summarizing and assessing the implementation and enforcement of this section during the preceding year, and include such information in the summary report on contracts required under section 6-116.2 of the administrative code.

(2) Implementation by City-Affiliated Agencies. (a) City-affiliated agencies shall comply with and enforce the requirements of this section, including requirements set forth in implementing rules and regulations. The requirements of this section shall be a term and condition of any city appropriation, grant, or payment of funds by the city to, or of any contract or agreement between the city and, the new york city economic development corporation, a large business improvement district, or the new york city board of education. Any appropriation, grant or payment of funds by the city to, or any contract or agreement between the city, and the new york city economic development corporation, a large business improvement district, or the new york city board of education shall include a provision whereby the new york city economic development corporation, a large business improvement district, or the new york city board of education agrees to comply with the requirements of this section. No city-affiliated agency may expend city funds in connection with any city service contract, city economic assistance award, or city lease that does not comply with the requirements of this section.

(b) Every city service contract, city economic assistance award or city lease shall have annexed to it the following materials which shall form a part of the specifications for and terms of the city service contract, city economic assistance award, or city lease:

(i) A provision obligating the city service contractor, city economic assistance recipient or city lessor to comply with all applicable requirements under this section;

(ii) The certification required under paragraph 2 of subdivision c of this section;

(iii) A schedule of the current living wage and health benefits supplement rates, a schedule of job classifications for which payment of the prevailing wage is required under this section together with the applicable prevailing wage rates for each job classification, as determined by the comptroller, and notice that such rates are adjusted annually;

(iv) A provision providing that: (a) Failure to comply with the requirements of this section shall constitute a material breach by the city service contractor, city economic assistance recipient or city lessor of the terms of the city service contract, city economic assistance agreement or city lease; (b) Such failure shall be determined by the city-affiliated agency and/or the city in its sole discretion; and (c) If, within thirty days after the city service contractor, city economic assistance recipient or city lessor receives written notice of such a breach, the city service contractor, city economic assistance recipient or city

lessor fails to cure such breach, the city shall have the right to pursue any rights or remedies available under the terms of the city service contract, city economic assistance agreement or city lease or under applicable law, including termination of the contract, agreement or lease.

(3) Living Wage Advisory Committee. The city shall create a living wage advisory committee to advise the city in implementing this section. The committee shall consist of thirteen members, who shall serve as volunteers and not be deemed officers of the city, and who shall be appointed as follows: (a) four appointments by the mayor, two of whom shall be covered employers; (b) four appointments by the comptroller, two of whom shall be covered employees or representatives of labor unions; (c) four appointments by the speaker of the city council; and (d) one appointment by the public advocate. The living wage advisory committee shall meet periodically and its members shall have access to all reports and documents required to be submitted to city-affiliated agencies or to the comptroller pursuant to this section. Meetings of the living wage advisory committee shall be open to the public and shall allow for public testimony on issues involving implementation and enforcement of this section.

e. Monitoring, Investigation and Enforcement. (1) Enforcement by the comptroller.

(a) Whenever the comptroller has reason to believe that a covered employer or other person has not complied with the requirements of this section, or upon a verified complaint in writing from an employee, an employee's representative, a labor union with an interest in the

city service contract, city economic assistance award, or city lease at issue, or any other party claiming a violation of this section, the comptroller shall conduct an investigation to determine the facts relating thereto. In conducting such investigation, the comptroller shall have the same investigatory, hearing and other powers as are conferred on the comptroller by sections 234 and 235 of the state labor law. At the start of such investigation, the comptroller may, in a manner consistent with the withholding procedures established by section 235.2 of the state labor law, instruct the relevant city-affiliated agency to withhold any payment due the covered employer in order to safeguard the rights of the covered employees. Provided, however, that in the case of city service contractors providing day care or head start services, no such withholding of payment may be ordered until such time as the comptroller has issued an order, determination or other disposition finding a violation of this section and the city service contractor has failed to cure the violation in a timely fashion. Based upon such investigation and hearing, the 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 and/or the monetary equivalent of benefits wrongly denied, including interest from the date of the underpayment to the worker, based on the rate of interest per year then in effect as prescribed by the superintendent of banks pursuant to section 14-a of the state banking law, but in any event at a rate no less than six percent per year;

(ii) Direct the filing or disclosure of any records that were not filed or made available to the public as required by this section;

(iii) Direct the reinstatement of, or other appropriate relief for, any person found to have been subject to retaliation or discrimination in violation of this section;

(iv) Direct payment of a further sum as a civil penalty in an amount not exceeding \$500 for each day and each employee or other person as to whom the covered employer violated the wage, benefits, record-keeping, reporting, anti-retaliation or other requirements of this section;

(v) Direct payment of the sums withheld at the commencement of the investigation and the interest that has accrued thereon to the covered employer; and

(vi) Declare the covered employer debarred from receiving city service contracts, city economic assistance awards, or city leases from a city-affiliated agency for a prescribed period of time. In assessing an appropriate remedy, the comptroller shall give due consideration 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, reporting, anti-retaliation or other non-wage requirements. Any civil penalty shall be paid to the comptroller for deposit in the city general revenue fund.

(b) In circumstances where a city service contractor fails to perform in accordance with any of the requirements of this section and there is a continued need for the service, a city-affiliated agency may obtain from another source the required service as specified in the original contract, or any part thereof, and may charge the non-performing city service contractor for any difference in price resulting from the alternative arrangements, may assess any administrative

charge established by the city-affiliated agency, and may, as appropriate, invoke such other sanctions as are available under the contract and applicable law.

(c) Before issuing an order, determination or any other disposition, the 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 covered employer affected thereby. The 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 covered employer shall be notified of a hearing date by the office of administrative trials and hearings and shall have the opportunity to be heard in respect to the matters complained of.

(d) In an investigation conducted under the provisions of this section, the inquiry of the comptroller shall not extend to work performed more than three years prior to the filing of the complaint, or the commencement of the investigation by the city comptroller, whichever is earlier.

(e) When, pursuant to the provisions of this section, a final disposition has been entered against a covered employer in two instances within any consecutive six year period determining that such covered employer has failed to comply with the wage, benefits, anti-retaliation, record-keeping or reporting requirements of this section, such covered employer, and any principal or officer of such covered employer who knowingly participated in such failure, shall be ineligible to submit a bid on or be awarded any city service contract, city economic assistance or city lease 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.

(f) When a final determination has been made in favor of a covered employee or other person and the person found violating this section has failed to comply with the payment or other terms of the remedial order of the 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 comptroller shall file a copy of such order containing the amount found to be due with the city clerk of the county of residence or place of business of the person found to have violated this section, or of any principal or officer thereof 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 comptroller in the same manner and with like effect as that prescribed by the state civil practice law and rules for the enforcement of a money judgment.

(g) Before any further payment is made, or claim is permitted, of any sums or benefits due under any city service contract, city economic assistance agreement or city lease covered by this section, it shall be the duty of the city-affiliated agency to require the covered employer, including each city service subcontractor, major tenant, contractor providing on-site services, or contractor providing building services in a city-leased building of the covered employer, that has been found to have violated the law, to file a written statement certifying to the amounts then due and owing from each such covered employer to or on behalf of all covered employees, other persons or the city for wages or benefits wrongly denied them, or for civil

penalties assessed, and setting forth the names of the persons owed and the amount due to or on behalf of each respectively. This statement shall be verified as true and accurate by the covered employer under penalty of perjury. If any interested person shall have previously filed a protest in writing objecting to the payment to any covered employer on the ground that payment is owing to one or more employees of the covered employer or to other persons for violations of this section, or if for any other reason it may be deemed advisable, the comptroller, a city-affiliated agency or the city department of finance may deduct from the whole amount of any payment to the covered employer sums admitted by the covered employer in the verified statement or statements to be due and owing to any covered employee or other person before making payment of the amount certified for payment, and may withhold the amount so deducted for the benefit of the employees or persons that are owed payment as shown by the verified statements and may pay directly to any person the amount shown by the statements to be due them.

(h) The comptroller or any city-affiliated agency shall be authorized to contract with non-governmental agencies to investigate possible violations of this section. Where a covered employer is found to have violated the requirements of this section, the covered employer shall be liable to the city for costs incurred in investigating and prosecuting the violation.

(2) Enforcement by Private Right of Action. (a) In addition to any other remedy provided under this section, an employee, an employee's representative, a labor union with an interest in a city service contract, city economic assistance agreement, or city lease at issue, a member of the public denied access to information required to be made public under this section,

or any other party aggrieved by a violation of this section may institute an action in a court of appropriate jurisdiction against any covered employer or other person alleged to have violated this section. For any violation of this section, including failure to pay applicable wages, provide required benefits, or comply with other requirements of this section, including protections against retaliation and discrimination, the court may award any appropriate remedy at law or equity including, but not limited to, back pay, payment for wrongly denied benefits, interest, other equitable or make-whole relief, liquidated damages in the amount of \$500 for each employee or person for each day during which the violation continued, reinstatement, injunctive relief, compensatory damages and/or punitive damages. The court shall award reasonable attorney's fees and costs to any complaining party who prevails in any such enforcement action.

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

(c) Such action must be commenced within three years of the date of the alleged violation, or within three years of the final disposition of any administrative complaint or action

concerning the alleged violation or, if such a disposition is reviewed in a proceeding pursuant to article 78 of the state civil practice law and rules, within three years of the termination of such review proceedings. No procedure or remedy set forth in this section is intended to be exclusive or a prerequisite for asserting a claim for relief to enforce any rights hereunder in a court of law. This section shall not be construed to limit an employee's right to bring a common law cause of action for wrongful termination.

f. Other provisions. (1) Except where expressly provided otherwise in this section, the requirements of this section shall apply to city service contracts, city economic assistance agreements or city leases entered into, renewed, or extended after the enactment of this section, and shall not apply to any existing city service contract, city economic assistance agreement or city lease entered into prior to that date. Where a city service contract or city lease is renewed or extended, or where an agreement to award supplemental city economic assistance is entered into, after the enactment date of this section, such measures shall be deemed new city service contracts, city leases or city economic assistance awards and shall trigger coverage under this section if the terms of the renewed or extended city service contract or city lease, or supplemental city economic assistance award, otherwise meet the requirements for coverage under this section. However, city service contractors and city service subcontractors that provide day care services or head start services shall be subject to the requirements of this section only upon the award of new city service contracts, rather than upon renewal of city service contracts that are in effect as of the enactment date of this section. However, city service contractors and city service subcontractors that provide homecare services shall be subject to the requirements of

this section immediately upon the enactment of this section. The wage, benefits and other requirements of this section shall apply to all covered employees working under current city service contracts and subcontracts for the provision of homecare services, regardless of the scheduled renewal dates of the city service contracts and subcontracts.

(2) Members of the public shall have a right of access to documents or information that is designated as public under this section. Such public documents or information must be made available to the public on a timely basis for inspection and copying. The custodians of such documents or information may charge a reasonable fee, not to exceed twenty-five cents per page, for copying.

(3) The city shall work collaboratively with covered employers to inform covered employees about their rights under this section, and to facilitate participation by covered employees in existing tax credit and public benefits programs for which they may be eligible. The comptroller, in collaboration with the public advocate, shall prepare and, together with the relevant city-affiliated agencies, make available to city service contractors, city economic assistance recipients, city lessors, and large business improvement districts materials regarding the earned income tax credit and other public benefits for which low-income working people may qualify. These materials shall, as the comptroller deems appropriate, explain eligibility for these benefits, provide any necessary application forms, and provide tax preparation information for low-income consumers. The benefits programs covered should include the federal earned income tax credit and child tax credit, the new york state earned income tax credit, food stamps, free or subsidized childcare and housing programs, and free or subsidized healthcare programs, including the new york state medicaid program, family health plus program, and child health

plus program. Such materials shall be prepared and made available in english, spanish and any other language spoken by a significant number of covered employees. City service contractors, city economic assistance recipients, city lessors, and large business improvement districts shall make these materials available to any city service subcontractors, major tenants, on-site contractors or contractors providing building services in a city-leased building. Covered employers shall provide copies of such materials to all potentially eligible covered employees in english, spanish and other languages spoken by a significant number of their covered employees within 30 days of employment, and each year during tax preparation season shall provide to all potentially eligible covered employees materials prepared by the comptroller relating to tax preparation and benefits for low-income consumers.

(4) At present the city can afford to extend a living wage to the employees of only a few designated categories of city service contractors. However, the city is concerned that poverty-level wages paid by many of the city's other service contractors are perpetuating poverty in New York and causing serious staff recruitment and retention problems, compromising the quality of the services received by the city and its residents. In order to enable the city to assess the scope of this problem, city-affiliated agencies shall begin gathering information about the degree to which other city service contractors pay poverty wages and whether such pay levels adversely affect the delivery of city-contracted services. City-affiliated agencies shall begin requiring city service contractors to supplement the information currently required to be submitted pursuant to section 116.2 with the additional information specified in clause iii of subparagraph a of paragraph 2 of subdivision c of this section. This information shall be

compiled by the city-affiliated agency and included in the computerized database jointly maintained by the mayor and the comptroller pursuant to section 6-116.2.

(5) In order to assess the impact of this section on all stakeholders — including employers, employees, the city and its residents — as well as on the city’s programs, budget, and economy, the comptroller shall commission an external academic study to track, document and evaluate the wage and benefits increases provided for under this section as they take effect. Accurate assessment will require the collaboration of all stakeholders, and city service contracts, city economic assistance agreements, and city leases shall include terms providing for the recipients’ cooperation in this evaluation.

(6) Nothing in this section shall be construed as prohibiting or conflicting with any other obligation or law, including any collective bargaining agreement, that mandates the provision of higher or superior wages, benefits, or protections to covered employees. No requirement or provision of this section shall be construed as applying to any person or circumstance where such coverage would be preempted by federal or state law. However, in such circumstances, only those specific applications or provisions of this section for which coverage would be preempted shall be construed as not applying.

(7) In the event that any requirement or provision of this section, or its application to any person or circumstance, should be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other requirements or provisions of this section, or the application of the requirement or provision held invalid to any other person or circumstance.

§ 3. This section shall take effect 30 days after enactment.