

**BOARD OF PORT COMMISSIONERS
CITY OF OAKLAND**

PORT ORDINANCE No. 3666

**AN ORDINANCE ESTABLISHING A LIVING
WAGE REQUIREMENT.**

WHEREAS the Board of Port Commissioners desires to establish a policy providing for payment of a prescribed minimum level of compensation to employees of Port contractors and recipients of Port subsidies; and

WHEREAS the following conditions and procedures are hereby adopted; now therefore,

BE IT ORDAINED by the Board of Port Commissioners of the City of Oakland as follows:

Statement of Purpose

1. The Board of Port Commissioners is vested with the complete and exclusive power to make decisions concerning the expenditure of Port funds, whether such funds are expended within the Port Area or outside the Port Area.

2. The Port of Oakland awards many contracts to private firms to provide services to the public and to the Port.

3. The Port of Oakland provides subsidies and grants to nonprofit organizations and governmental entities for the benefit of the public.

4. The Port of Oakland has an interest in promoting an employment environment in which nothing less than a prescribed minimum level of compensation is paid to employees of firms contracting with the Port to provide services to the Port.

5. The Port of Oakland also has an interest in promoting an employment environment in which nothing less than a minimum level of compensation is paid to the employees of nonprofit organizations receiving subsidies or grants from the Port.

6. The Port of Oakland has an interest in encouraging contractors or subsidized organizations to provide health care benefits to their employees or to provide their employees with an employer contribution toward the cost of health benefits.

Section 1. Title and Purpose

This Ordinance shall be known as the "Port of Oakland Living Wage Ordinance." The purpose of this Ordinance is to require that nothing less than the prescribed minimum level of compensation (living wage) be paid to employees of Port service contractors and recipients of Port financial assistance and their respective subcontractors.

Section 2. Definitions

"Contractor" means any person employing five (5) or more individuals that enters into a service contract with the Port in an amount equal to or greater than \$25,000.

"Covered Activities" means the activities funded by the Port service contract or the activities for which a nonprofit organization receives Port Assistance.

"Employee" means any *individual* who is employed as a service employee of a contractor or subcontractor under the authority of one or more Service Contracts and who expends any of his or her time on Covered Activities, including but not limited to clerical and support staff; *provided, however, Employee shall not include any individual who expends less than twenty five percent (25%) of his or her compensated time on Covered Activities.*

"Employer" means any person who is a Port Assistance recipient, Contractor or subcontractor.

"Nonprofit organization" means a nonprofit organization described in Section 501(c)(3) of the Internal Revenue Code which is exempt from taxation under Section 501(c)(3) of that code, or any nonprofit educational organization qualified under Section 23701(d) of the California Revenue and Taxation Code.

"Person" means any individual, proprietorship, partnership, joint venture, corporation, limited liability trust, association, or other entity that may employ individuals or enter into contracts.

"Port Assistance" means direct assistance in the form of grants or financial subsidies in an amount of \$100,000 or more in any fiscal year.

"Service Contract" means a contract by the Port for the funding of services to or for the Port, except where services are incidental to the delivery of products, equipment or commodities, and that involves an expenditure equal to or greater than \$25,000. A contract for the purchase or lease of goods, products, equipment, supplies or other property is not a "service contract" for purposes of this definition. A construction contract covered by a local, state or federal prevailing wage statute is not a "service contract".

"Subcontractor" means any person who enters into a contract with a Contractor to assist the Contractor in performing a Service Contract or with a Port Assistance recipient to assist the recipient in performing the work for which the Port Assistance is being given or to perform services on the property, which is the subject of Port Assistance.

"Trainee" means a person enrolled in a bona fide job training program recognized as such by the Port.

Section 3. Payment of Minimum Compensation to Employees

(a) Wages: Employers shall pay employees a wage of no less than the hourly rates set under the authority of this Ordinance. The initial rate for fiscal year 2001-2002 shall be \$9.13 per hour worked with health benefits, as described below, or otherwise \$10.50 per hour. Such rates shall be upwardly adjusted annually in proportion to the increase on December 31 of each year over the immediately preceding December 31 of the Consumer Price Index - U for the San Francisco - Oakland - San Jose Area. The Port shall publish a bulletin by April 1 of each year announcing the adjusted rates, which shall take effect on the following July 1. The adjusted rates for fiscal year 2001-2002 are \$9.13 per hour worked with health benefits and \$10.50 without health benefits.

(b) Health Benefits: Health benefits required by this Ordinance shall consist of the payment of at least \$1.25 per hour worked toward the provision of health care benefits for employees and/or their dependents. Employees who decline health benefits shall not qualify for the higher wage rate established in (a) above.

(c) Compensated Days Off: Employees shall be entitled to at least twelve (12) compensated days off for sick leave, vacation or personal necessity upon reasonable request. Employees who work part time shall be entitled to accrue compensated days off in increments proportional to that accrued by full-time employees. Employees shall be eligible to use accrued days off after the first 6 months of satisfactory employment or consistent with employer policy, whichever is sooner. Paid holidays, consistent with established employer policy, may be counted toward provision of the required 12 compensated days off.

Section 4. Exemptions

The Requirements of this Ordinance to pay minimum compensation shall not be applicable to the following employees:

(a) Employees of Port tenants, subtenants, licensees, concessionaires, franchisees, permittees or grantees of rights of entry.

(b) Employees of subtenants or licensees of the City of Oakland occupying Port property pursuant to an agreement which is covered by the City of Oakland's Living Wage Ordinance.

(c) An employee participating in a bona fide temporary job training program in which a significant component of the employees' compensation consists of acquiring specialized knowledge, abilities or skills in a recognized trade.

(d) An employee who is under 21 years of age, employed by a governmental agency or nonprofit organization for after school or summer employment, or as a trainee for a period of not longer than 90 days.

(e) An employee working for the employer less than 20 hours per week for a period not longer than 6 months.

(f) An employee working for an employer who employs 5 or fewer employees.

(g) Employees of employers who have obtained a waiver from the Port of the applicability of this Ordinance as provided herein.

(h) When the Board of Port Commissioners finds and determines that waiver of the applicability of the requirements of this Ordinance to a particular service contract is in the best interest of the Port.

(i) Volunteers who are not compensated for their work other than for incidental expenses or stipends.

(j) Employees of contractors on Port public works projects subject to the requirements of Division 2, Part 7, of the California Labor Code, or subject to the provisions of a comparable federal, state or local prevailing wage requirement.

Section 5. Waiver

A service contractor or Port assistance recipient may apply to the Executive Director or his assignee for a waiver of the applicability of the requirements of this Ordinance to a particular service contract or award of Port assistance. Such application for waiver shall set forth with specificity the reasons why the service contractor or Port assistance recipient is unable to comply with the requirements of this Ordinance. Any application for waiver must be made and acted upon prior to execution of a service contract or award of Port assistance.

Section 6. Emergency; Suspension

(a) Emergency: The Executive Director may suspend the applicability of this Ordinance in whole or in part for a maximum of thirty (30) days upon finding of an emergency.

(b) Suspension: The Board of Port Commissioners reserves the right to suspend the applicability of this Ordinance by adoption

of a Resolution setting forth the basis for suspension and the duration of the suspension.

Section 7. Retaliation and Discrimination Prohibited

(a) No employer shall retaliate or discriminate against an employee in his or her terms and conditions of employment by reason of the *individual's* status as an employee protected by the requirements of this Ordinance.

(b) No employer shall retaliate or discriminate against an *individual* in his or her terms and conditions of employment by reason of the *individual* reporting a violation of this Ordinance or for prosecuting an action for enforcement of this Ordinance.

Section 8. Employee Complaints to Port

(a) An employee who alleges violation of any provision of the requirements of this Ordinance may report such acts to the Port. The Executive Director may establish a procedure for receiving and investigating such complaints and take appropriate enforcement action.

(b) Any complaints received shall be treated as confidential matters, to the extent permitted by law. Any complaints received and all investigation documents related thereto shall be deemed exempt from disclosure pursuant to California Government Code, Sections 6254 and 6255.

Section 9. Employees' Private Right of Action to Enforce this Ordinance; Damages, Back Pay, Reinstatement, Reasonable Attorneys Fees and Costs

(a) An employee claiming violation of this Ordinance may bring an action in the Municipal Court or Superior Court of the State of California, as appropriate, against an employer and obtain the following remedies:

(1) Back pay for each day during which the employer failed to pay the compensation required by this Ordinance.

(2) Reinstatement, compensatory damages and punitive damages.

(3) Reasonable attorney's fees and costs.

(b) Notwithstanding any provision of this Ordinance or any other ordinance to the contrary, no criminal penalties shall attach for any violation of this article.

(c) No remedy set forth in this Ordinance 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 Ordinance shall not be construed to limit an employee's right to bring a common law cause of action for wrongful termination.

(d) Nothing in this Ordinance authorizes any person to bring an action against the Port and nothing in this Ordinance authorizes a right of action against the Port for the Port's failure to take action hereunder.

(e) Nothing in this Ordinance shall require the Port to take any action authorized herein, and nothing in Ordinance shall be interpreted as requiring the Port to take or refrain from taking any action.

Section 10. Monitoring, Investigation and Compliance

(a) The Executive Director is authorized to develop and implement procedures to carry out the purposes of this Ordinance, and is authorized to promulgate regulations to insure the implementation of this Ordinance, including but not limited to regulations for resolution of employee complaints and regulations for monitoring the operations and compliance of employers, which may include establishing requirements for employers submission to the Port of employment records and requirements for uncompensated days off.

(b) Penalties imposed on employers who violate this Ordinance shall include but not be limited to any or all of the following:

(1) Suspension and/or termination of the service contract, subcontract or Port Assistance.

(2) Repayment of any or all sums paid by the Port.

(3) Deeming the employer ineligible for future Port contracts or Port Assistance.

(4) Payment of a fine payable to the Port of \$500 for each week for each employee found by the Port not to have been paid in accordance with this Ordinance;

(5) Payment of wages to affected employees in accordance with this Ordinance, including wage restitution.

Section 11. Obligations of Employers

(a) Employers shall inform all employees earning less than \$12 per hour of their possible right to the earned income credit.

(b) Employers shall file a declaration of compliance with their obligations under this Ordinance under penalty of perjury and as consideration for receipt of payment from the Port, in substantially the form of the Certificate of Compliance set forth in Section 17, as it may be modified from time to time by regulations adopted hereunder.

Section 12. Collective Bargaining Agreement

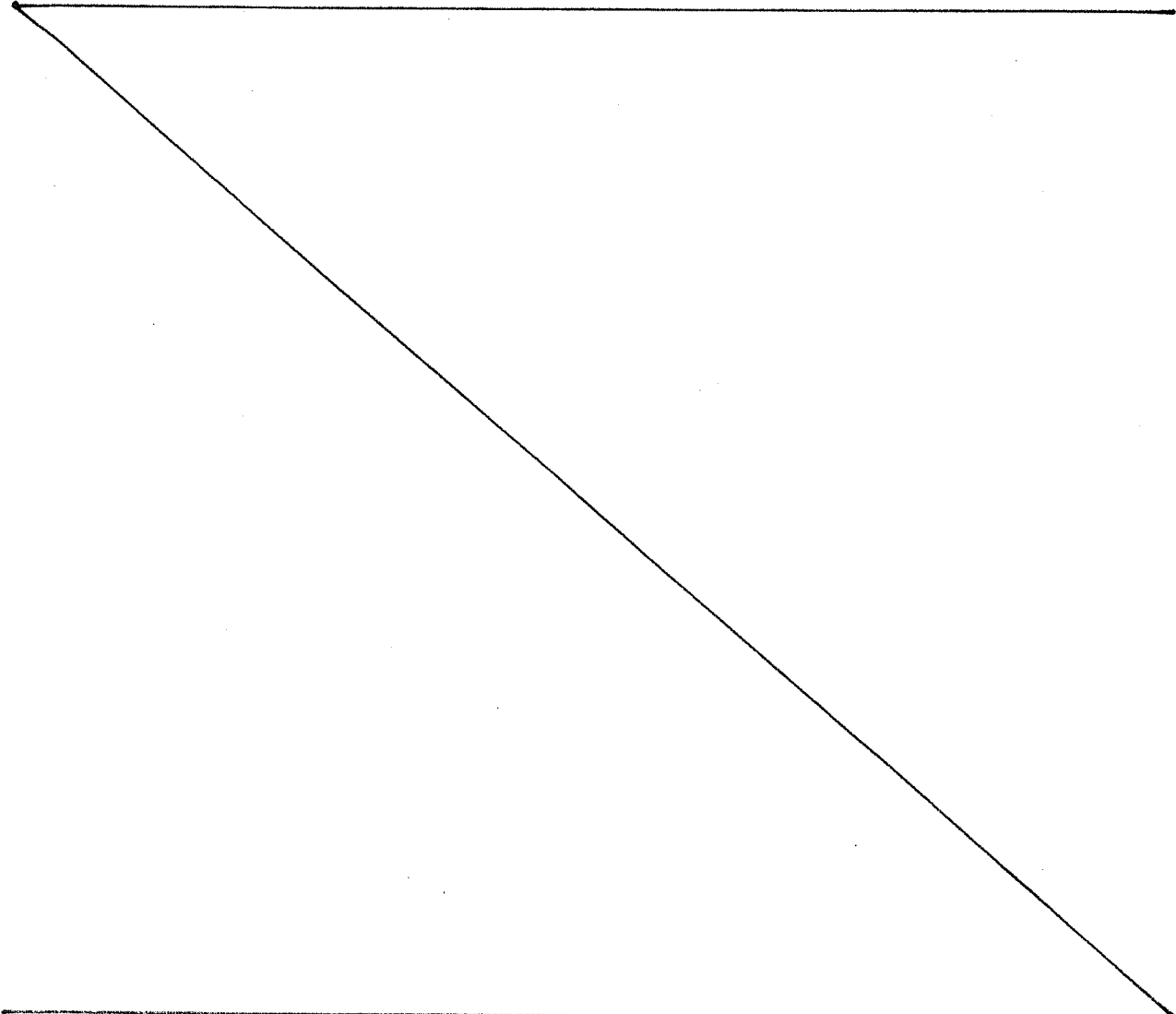
The provisions of this Ordinance, or any part hereof, may be waived by a bona fide collective bargaining agreement, but only if the waiver is explicitly set forth in such agreement.

Section 13. Effective Date

This Ordinance shall apply to service contracts and awards of Port assistance entered into after the effective date of this Ordinance. In the event that a contract is amended after the effective date and such amendment results in expenditure of Port funds in an amount otherwise covered by this Ordinance, the terms of this Ordinance shall apply to wages payable to employees from and after the effective date of such amendment.

Section 14. Review

The Executive Director shall periodically report to the Board on the effects and implementation of this Ordinance.



Section 15. Regulations

The Executive Director is hereby authorized to adopt and promulgate regulations, consistent with this Ordinance, as shall be necessary or convenient to implement this Ordinance.

Section 16. Severability

In the event any provision of this Ordinance is held invalid or unenforceable by any court of competent jurisdiction, such holding will not invalidate or render unenforceable any other provisions hereof.

Section 17. Form of Certificate of Compliance with Port of Oakland Living Wage Ordinance

(a) The undersigned (hereafter "Contractor") submits this certificate under penalty of perjury and as a condition of payment of its invoice(s) for services provided under the _____ agreement between the Port and Contractor.

(b) Contractor hereby certifies that all Employees of Contractor engaged in Covered Activities (both as defined in Port Ordinance No. _____ (hereafter the "Port's Living Wage Ordinance") shall be compensated in compliance with the requirements of the Port's Living Wage Ordinance.

(c) Contractor acknowledges that the Port is relying on Contractor's certification of compliance with the Port's Living Wage Ordinance as a condition of payment of Contractor's invoice(s).

(d) Contractor hereby certifies that claims, records and statements relating to Contractor's compliance with the Port's Living Wage Ordinance are true and accurate, that such claims, records and statements are made with the knowledge that the Port will rely on such claims, records and statements, and that such claims, records and statements are submitted to the Port for the express benefit of Contractor's Employees engaged in Covered Activities.

(e) All terms used herein and not defined shall have the meaning ascribed to such terms in the Port's Living Wage Ordinance.

In Board of Port Commissioners, Oakland, California, October 2, 2001. Passed to print for one day by the following vote: Ayes: Commissioners Ayers-Johnson, Kiang, Protopappas, Scates, Uribe and President Tagami - 6. Noes: None. Absent: Commissioner Kramer - 1.

Christopher C. Marshall
Secretary of the Board

Adopted at a regular

meeting held October 16, 2001

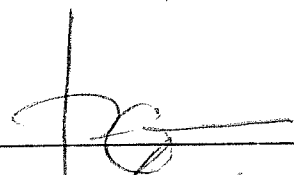
By the following Vote:

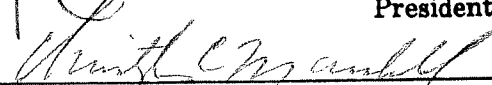
Ayes: Commissioners Ayers-Johnson, Kiang, Protopappas, Scates, Uribe and President Tagami - 6

Noes: None

Abstained: Commissioner Kramer - 1

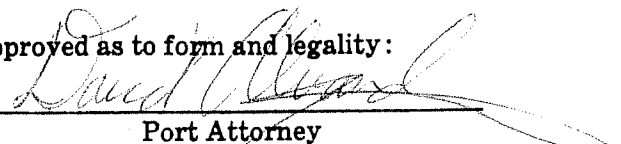
Absent: None



President.
Attest 

Secretary.

Approved as to form and legality:



Port Attorney