

Double Underscore = Amended 3-1-04

ORDINANCE NO. 18308

1 AN ORDINANCE amending Title 2 of the Lincoln Municipal Code relating to
 2 Officers, Departments and Personnel by creating a new Chapter 2.81 to provide for a Living
 3 Wage of at least 110% of the federal poverty guideline for a family of four, or 100% of the federal
 4 poverty guideline if described health insurance benefits are paid by the employer, and mandating
 5 adjustments July 1 of each year hereafter.

6 BE IT ORDAINED by the City Council of the City of Lincoln, Nebraska:

7 Section 1. That Title 2 of the Lincoln Municipal Code be amended by adding a new
 8 section numbered 2.81.010 to read as follows:

9 **2.81.010 Purpose and Title.**

10 (a) This Chapter shall be known as the "Lincoln Living Wage Ordinance."

11 (b) The City of Lincoln employs many individuals and awards many contracts to private
 12 firms to provide services to the public and to City Government, and provides financial assistance
 13 for the purpose of promoting economic development and job growth. Such expenditures of public
 14 money are intended to serve a public purpose by creating good paying jobs, expanding the City's
 15 economic base, promoting economic security for all citizens, and providing public services. Such
 16 public expenditures should be spent only with deliberate purpose to promote the creation of jobs
 17 that allow citizens to support themselves and their families. Sub-poverty level wages do not serve
 18 the public purpose and place an undue burden on taxpayers and the community which must
 19 further subsidize employers who pay sub-poverty wages by providing their employees health
 20 care, housing, nutrition, energy assistance, and other government provided services.

1 (c) The City therefore has a responsibility when spending public money to set a
2 community standard that permits workers employed through such public funding to live above at
3 least the federal poverty guideline, and to move towards living wage employment. The City finds
4 that it is within its discretion to set a ~~base wage rate~~ Base Wage Rate for specified employees
5 in furtherance of a legitimate public purpose and to define the term responsible bidder for
6 purposes of the Lincoln City Charter and Nebraska law.

7 (d) It is the intent of this ordinance to legislate minimum wages and health benefits of
8 individuals that perform pursuant to a contract with the City as opposed to all employees of a
9 party who has contracted with the City.

10 Section 2. That Title 2 of the Lincoln Municipal Code be amended by adding a new
11 section numbered 2.81.020 to read as follows:

12 **2.81.020 Definitions.**

13 For the purpose of this chapter the following definitions shall apply:

14 Agency shall mean that subordinate or component entity or person of the City (such as
15 a department, office, or agency) that is responsible for solicitation of proposals or bids and
16 responsible for the administration of service contracts or financial assistance agreements.

17 City shall mean the City of Lincoln and all City agencies, departments and offices.

18 City financial assistance recipient (CFAR) shall mean any person who receives from
19 the City financial assistance in an amount of \$25,000 or more in a twelve-month period.

20 Categories of such financial assistance include, but are not limited to, grants, tax
21 credits, bond financing, rent subsidies, financial planning, the sale of land for less than its fair
22 market value, and land writedowns. City staff assistance shall not be regarded as financial
23 assistance for purposes of this article. The forgiveness of a loan shall be regarded as financial

1 assistance, and a loan provided at below market interest rate shall be regarded as financial
2 assistance to the extent of any differential between the amount of the loan and the present value
3 of the payments thereunder, discounted over the life of the loan by the applicable federal rate.

4 A tenant or leaseholder of a CFAR who occupies property that is improved or
5 developed as a result of the financial assistance awarded to the CFAR and who will employ at
6 least twenty employees for each working day in each of twenty or more calendar weeks in the
7 twelve months after occupying or using said property, shall be considered a City financial
8 assistance recipient for the purposes of this Ordinance and shall be covered for the same period
9 as the CFAR of which they are a tenant or leaseholder.

10 Contractor shall mean any person that enters into a service contract with the City in an
11 amount equal to or greater than \$25,000.

12 Employee shall mean any person who is employed (1) as an employee of the City of
13 Lincoln; or (2) as an employee of a contractor or subcontractor under the authority of one or more
14 service contracts and who expends any of his or her time on the service contract; (3) as an
15 employee of a CFAR and who expends any of his or her time on the project provided such
16 financial assistance; (4) by a service contractor of a CFAR and who expends at least half of his
17 or her time on the premises of the CFAR and is directly involved with the funded project, program
18 or property which is the subject of city financial assistance; or (5) not as a principal or
19 independent contractor and expends at least half of his or her time on the contract or project that
20 qualifies for CFAR. Any person who is a managerial, supervisory or confidential employee is not
21 an employee for purposes of this definition. Any person who is a temporary, seasonal, or regular
22 permanent part-time employee working less than thirty hours per week for the City is not an
23 employee for purposes of this definition.

1 Employer shall mean any person who is a City financial assistance recipient, contractor
2 or subcontractor or of the City of Lincoln.

3 Person shall mean any individual, proprietorship, partnership, joint venture, corporation,
4 limited liability company, trust, association, or other entity that may employ individuals or enter into
5 contracts.

6 Service contract shall mean: (1) a contract let to a contractor by the City for the
7 furnishing of services, to or for the City that involves an expenditure equal to or greater than
8 twenty-five thousand dollars (\$25,000), except contracts where services are incidental to the
9 delivery of products, equipment or commodities, or (2) a lease or license under which services
10 contracts are let by the lessee or licensee. A contract for the purchase or lease of goods,
11 products, equipment, supplies or other property is not a "service contract" for the purpose of this
12 definition.

13 Subcontractor shall mean any person who enters into a contract with (1) a contractor
14 to assist the contractor in performing a service contract, or (2) a CFAR to assist the recipient in
15 performing the work for which the assistance is being given or to perform services on the property
16 which is the subject of City financial assistance. Service contractors of CFARs shall not be
17 regarded as subcontractors except to the extent provided in subsection (4) of the definition of
18 "employee" herein.

19 Trainee shall mean a person enrolled in a job training or job readiness program
20 conducted by an organization whose primary mission is to provide such services.

21 Section 3. That Title 2 of the Lincoln Municipal Code be amended by adding a new
22 section numbered 2.81.030 to read as follows:

1 **2.81.030 Payment of Minimum Compensation to Employees.**

2 (a) Base Wage Rate. Wages. Employers shall pay employees a wage to each
3 employee of no less than the hourly rates set under the authority of this Ordinance. The initial rate
4 shall be an hourly wage of at least 110% of the federal poverty guideline for a family of four for
5 the contract or other city financial assistance. The hourly wage shall be adjusted on July 1 of
6 each year subsequent to the issuance of annual updates of the federal poverty guideline by the
7 United States Department of Commerce, Bureau of the Census. Hourly wages shall be based
8 on a forty-hour work week and a fifty-two week year. Employers that provide their employees
9 basic health insurance benefits, as defined in Section 2.81.030(b), shall pay an initial hourly rate
10 of at least 100% of the federal poverty level for a family of four.

11 (b) Basic Health Insurance Benefits. Basic health insurance benefits required by this
12 Ordinance to qualify for the wage rate in Section 2.81.030(a) for employees with such benefits
13 shall be defined as the payment of at least one dollar and twenty-five cents (\$1.25) per hour
14 towards the provision of health care benefits for employees and their dependents. Proof of the
15 provision of such benefits must be submitted by the City to qualify for the wage rate in 2.81.030(a)
16 for employees with health benefits.

17 Section 4. That Title 2 of the Lincoln Municipal Code be amended by adding a new
18 section numbered 2.81.040 to read as follows:

19 **2.81.040 Duration of Requirements.**

20 ~~For CFARs, assistance given in an amount equal to or greater than twenty-five thousand~~
21 ~~dollars (\$25,000) in any twelve-month period shall require compliance with this Ordinance for the~~
22 ~~life of the project or five years in the case of assistance given to purchase real property, tangible~~

1 ~~property or construct facilities, including but not limited to materials, equipment, fixtures,~~
2 ~~merchandise, machinery or the like.~~

3 A service contractor and subcontractor shall be required to comply with this Ordinance
4 for the term of the contract.

5 Section 5. That Title 2 of the Lincoln Municipal Code be amended by adding a new
6 section numbered 2.81.050 to read as follows:

7 **2.81.050 Notifying Employees of their Potential Right to the Federal Earned**
8 **Income Credit.**

9 Employers shall inform employees making less than twelve dollars (\$12.00) per hour of
10 their possible right to the federal Earned Income Credit ("EIC") under §32 of the Internal Revenue
11 Code of 1954, 26 U.S.C. §32, and shall make available to employees forms from the federal
12 government informing them about the EIC and forms from the federal government required to
13 secure advance EIC payments. These forms shall be provided to the eligible employees in
14 English, Spanish and other languages spoken by twenty-five percent (25%) of the employees
15 within thirty days of employment under the terms of this Ordinance and as required by the Internal
16 Revenue Code.

17 Section 6. That Title 2 of the Lincoln Municipal Code be amended by adding a new
18 section numbered 2.81.060 to read as follows:

19 **2.81.060 Contract Review Process and City Reporting and Record Keeping.**

20 (a) The Finance Department shall promulgate rules and regulations subject to review
21 and adoption by the City Council for the preparation of bid specifications, contracts and
22 preparations for contract negotiations subject to this Ordinance.

1 **(b) The Finance Department shall submit periodic reports to the City Council which**
2 **shall include the following information:**

3 **(1) A listing and the status of all requests for proposals, service contracts and**
4 **lease agreements executed and financial assistance awarded, to which this Ordinance applies**
5 **including the term, dollar amount and the service performed or assistance provided:**

6 **(2) A description of every instance where an exemption or waiver was granted**
7 **by action of the City Council.**

8 **(c) The Finance Department shall develop an administrative procedure and appeal**
9 **process subject to review and adoption by the City Council for determining compliance with this**
10 **Ordinance.**

11 **(1) Such an appeal process shall be available to every bidder, proposer or**
12 **applicant who has been deemed noncompliant with this Ordinance, or who disputes the**
13 **determination of applicability of this Ordinance to its business operation which will be involved in**
14 **the proposed contract. A contract or other documents regarding the financial assistance shall**
15 **not be executed until there is resolution of the relevant appeal.**

16 **(2) Appeals shall be filed with the Finance Department within twenty-one**
17 **calendar days of the date of the notice of the City's written determination of noncompliance and**
18 **reasons therefor, or written determination of the applicability of this Ordinance.**

19 **(3) The Finance Department shall maintain records pertaining to all complaints,**
20 **hearings, determinations and findings, and shall submit a regular report on compliance with this**
21 **Ordinance no less than annually to the City Council. Special reports and recommendations on**
22 **significant issues of interest to the Council will be submitted as deemed appropriate.**

1 Section 7. That Title 2 of the Lincoln Municipal Code be amended by adding a new
2 section numbered 2.81.070 to read as follows:

3 **2.81.070 Noncompliance Review and Appeal.**

4 Contractors and subcontractors and GFARs who fail to submit documents, declarations
5 or information required to demonstrate compliance with this Ordinance shall be deemed
6 nonresponsive and subject to disqualification.

7 Section 8. That Title 2 of the Lincoln Municipal Code be amended by adding a new
8 section numbered 2.81.080 to read as follows:

9 **2.81.080 Waivers.**

10 (a) A contractor, or GFAR who contends it is unable to pay all or part of the hourly
11 wage rate required by Section 2.81.030 must provide a detailed explanation in writing to the
12 Finance Department which may recommend a waiver to the City Council. The explanation must
13 set forth the reasons for its inability to comply with the provisions of this Ordinance, including a
14 complete cost accounting for the proposed work to be performed with the contract or financial
15 assistance sought, including wages and benefits to be paid all employees, as well as an
16 itemization of the wage and benefits paid to the five highest paid individuals employed by the
17 contractor or GFAR. The contractor or GFAR must also demonstrate that the waiver will further
18 the interests of the City in creating training positions which will enable employees to advance into
19 permanent living wage jobs or better and will not be used to replace or displace existing positions
20 or employees or to lower the wages of current employees.

21 (b) The City Council will grant a waiver only upon finding and determining that the
22 contractor or GFAR has demonstrated economic hardship and that a waiver will further the
23 interests of the City in providing training positions which will enable employees to advance into

1 permanent jobs that pay self-sufficient living wages or better. However, no waiver will be granted
2 if the effect of the waiver is to replace or displace existing positions or employees or to lower the
3 wages of current employees.

4 (c) Waivers from the Ordinance are disfavored, and will be granted only where the
5 balance of competing interests weighs clearly in favor of granting the waiver. If waivers are to be
6 granted, partial waivers are favored over blanket waivers. Moreover, any waiver shall be granted
7 for no more than one year. At the end of the year the contractor or CFAR may reapply for a new
8 waiver which may be granted subject to the same criteria for granting the initial waiver.

9 (d) The City Council reserves the right to waive the requirements of this Ordinance
10 upon a finding and determination of the City Council that waiver is in the best interests of the City,
11 e.g. when the City has declared an emergency due to natural disasters and needs immediate
12 services.

13 Section 9. That Title 2 of the Lincoln Municipal Code be amended by adding a new
14 section numbered 2.81.090 to read as follows:

15 **2.81.090 Exemptions.**

16 (a) An employer shall be exempted from application of this article if (1) it employs
17 fewer than ten employees for each working day in each of twenty or more calendar weeks in the
18 current or preceding calendar year; or (2) it obtains a waiver as provided herein, or (3) it is an
19 intermediary, such as a community development corporation or community bank, which serves
20 solely as a pass-through agency for the granting of assistance to the intended employer.

21 (b) A trainee shall be exempted for the period of training in a job readiness or job
22 training program whose primary purpose is to provide such services and for which the financial
23 assistance is intended to support.

1 (c) An employee shall be exempted when he or she is under twenty-one years of age
2 and employed by the City of Lincoln for after school or summer employment, or as a trainee for
3 a period not longer than ninety days.

4 (d) Projects, employment, goods or services pursuant to tax increment financing.

5 (e) Any interlocal, ~~bid,~~ or joint contract involving the City.

6 (f) Any service contract which primarily benefits or involves physically or mentally
7 disabled individuals or senior citizens (over 65 years of age).

8 Section 10. That Title 2 of the Lincoln Municipal Code be amended by adding a
9 new section numbered 2.81.100 to read as follows:

10 **2.81.100 RFP, Contract and Financial Assistance Agreement Language.**

11 All requests for proposals, City contracts and financial assistance agreements subject to
12 this Ordinance shall contain the following two paragraphs or substantially equivalent language:

13 (a) This contract ~~or financial assistance~~ is subject to the Living Wage Ordinance of
14 the Lincoln Municipal Code. The Ordinance requires that, unless specific exemptions apply or a
15 waiver is granted, all employers (as defined) under service contracts ~~and recipients of City~~
16 financial assistance (as defined), shall provide payment of a minimum living wage to employees.
17 Such rate shall be adjusted annually pursuant to the terms of the Lincoln Living Wage Ordinance
18 of the Lincoln Municipal Code.

19 (b) Under the provisions of the Lincoln Living Wage Ordinance, the City shall have the
20 authority, under appropriate circumstances, to terminate this contract ~~or financial assistance~~
21 agreement and to seek other remedies as set forth therein, for violations of the Ordinance.

22 Section 11. That Title 2 of the Lincoln Municipal Code be amended by adding a
23 new section numbered 2.81.110 to read as follows:

1 **2.81.110 Obligations of Contractors and Financial Assistance Recipients.**

2 (a) All proposed contractors and CFARs subject to the provisions of this Ordinance
3 shall submit a completed Declaration of Compliance form, signed by an authorized
4 representative, along with each proposal. The completed Declaration of Compliance form
5 certifying compliance with this article shall be made a part of the executed contract.

6 (b) Contractors and CFARs shall require their subcontractors and tenants/
7 leaseholders to comply with the provisions of this Ordinance. Language indicating the
8 subcontractor's or tenants/leaseholders agreement to comply shall be included in the contract
9 between the contractor and subcontractor or any agreement between a CFAR and
10 tenants/leaseholders.

11 (c) Contractors and subcontractors and CFARs shall maintain payrolls for all
12 employees and basic records relating thereto and shall preserve them for a period for three years
13 after termination of their contracts or city financial assistance.

14 (d) Contractors and subcontractors and CFARs shall give written notification to each
15 current and new employee, at time of hire, or his or her rights to receive the benefits under the
16 provisions of this Ordinance. The notification shall be provided in English, Spanish and other
17 languages spoken by twenty-five percent (25%) of the employees, and shall be posted
18 prominently in communal areas at the work site. The City shall provide basic notices for this
19 purpose, which must include the following:

20 (1) Minimum compensation – The initial living wage rates of \$ _____ per hour
21 with health benefits or \$ _____ per hour without health benefits will be adjusted annually to
22 correspond to adjustments, if any. The living wage shall be upwardly adjusted each year no later

1 than July 1 in proportion to the increase in the federal poverty guideline calculated by the United
2 States Department of Commerce applicable to the City of Lincoln.

3 (2) Health benefits – Proof of the provision of such benefits shall be submitted
4 to the City not later than 30 days after execution of the contract or receipt of city financial
5 assistance to qualify for the wage rate in Section 2.81.030. Health benefits shall be provided to
6 part-time employees as well as full-time employees.

7 (3) Federal Earned Income Credit (EIC) – Forms to inform employees of their
8 possible right to EIC and forms to secure advance EIC payments from the federal government
9 shall be provided to the eligible employees in English, Spanish and other languages spoken by
10 twenty-five percent (25%) of the employees within thirty days of employment under the subject
11 agreement.

12 (4) Notice that the employers are required to file a Declaration of Compliance
13 form as part of the contract with the City and that the City will make said declarations available
14 for public inspection and copying during its regular business hours.

15 (e) Contractors and subcontractors and GFARs shall permit access to work sites and
16 relevant payroll records for authorized City representatives for the purpose of monitoring
17 compliance with this Ordinance, investigating employee complaints of non-compliance and
18 evaluating the operation and effects of this Ordinance, including the production for inspection of
19 payroll records for any or all of its employees for the term of the contract ~~or city financial~~
20 assistance, or for five years, whichever period of compliance is applicable.

21 Section 12. That Title 2 of the Lincoln Municipal Code be amended by adding a
22 new section numbered 2.81.120 to read as follows:

23 **2.81.120 Retaliation and Discrimination Barred.**

1 Contractors and subcontractors and CFARs shall not discharge, reduce the compensation
2 of or otherwise discriminate against any employee for making a complaint to the City, participating
3 in any of its proceedings, using any civil remedies to enforce his or her rights, or otherwise
4 asserting his or her rights under this Ordinance.

5 Section 13. That Title 2 of the Lincoln Municipal Code be amended by adding a
6 new section numbered 2.81.130 to read as follows:

7 **2.81.130 Monitoring, Investigation and Compliance.**

8 The provisions of this Ordinance will augment the City's normal and customary procedure
9 for administering its contracts and financial assistance. The City shall administer the requirements
10 of this Ordinance as follows:

11 (a) The Finance Department shall develop rules and regulations to review contract
12 documents and financial assistance agreements to insure that relevant language and information
13 are included in City agreements and other relevant documents.

14 (b) The Finance Department, subject to the review and approval of the City Council,
15 shall develop rules and regulations for the monitoring of the operations of the contractors and
16 subcontractors and financial assistance recipients to insure compliance including the review,
17 investigation and resolution of specific concerns or complaints about the employment practices
18 of a contractor or subcontractor or CFAR relative to this Ordinance. In such cases, the City will
19 attempt to resolve the problem within thirty days.

20 (c) Where a violation of any provision of this Ordinance has been determined, the
21 contractor or subcontractor or CFAR will be given a written notice by the City per the rules and
22 regulations. Should the violation continue and/or no resolution is imminent, the City shall pursue

1 all available legal remedies, including but not limited to any or all of the following penalties and
2 relief:

3 (1) Suspension and/or termination of the contract or subcontract or financial
4 assistance agreement for cause;

5 (2) Restitution of any or all of the contract or financial assistance awarded by
6 the City;

7 (3) Deem the contractor or subcontractor, or CFAR ineligible for future City
8 contracts and/or financial assistance until all penalties and restitution have been paid in full;

9 (4) A fine in the sum of \$500 for each week for each employee found not to
10 have been paid in accordance with this Ordinance;

11 (5) Wage restitution for each affected employee.

12 Section 14. That Title 2 of the Lincoln Municipal Code be amended by adding a
13 new section numbered 2.81.140 to read as follows:

14 **2.81.140 Employee Complaint Process.**

15 An employee who alleges violation of any provision of this Ordinance may report such acts
16 to the City and, at the employee's discretion, exhaust available employer internal remedies. The
17 complaint to the City shall be handled as follows:

18 (a) The employee shall submit to the City a completed complaint form and copies of
19 all documents supporting the allegation. The City shall provide the complaint forms in English and
20 Spanish.

21 (b) The City shall notify the agency and the employer of the complaint and seek
22 resolution within twenty-one days from receipt of the complaint form. If resolution is not
23 accomplished, the City shall initiate an investigation and seek legal remedies, if appropriate.

1 (c) An employee claiming retaliation (such as, termination, reduction in wages or
2 benefits or adverse changes in working conditions) for alleging non-compliance with this
3 Ordinance may report the alleged retaliation in the same manner as the initial complaint.

4 (d) The complainant's or witness' identity will not be divulged to the employer without
5 the individual employee's written consent.

6 Section 15. That Title 2 of the Lincoln Municipal Code be amended by adding a
7 new section numbered 2.81.150 to read as follows:

8 **2.81.150 Superseding by Collective Bargaining Agreement.**

9 All of the provisions of this Ordinance, or any part hereof, may be waived in a bona fide
10 collective bargaining agreement, but only if the waiver is explicitly set forth in such agreement in
11 clear and unambiguous terms.

12 Section 16. That Title 2 of the Lincoln Municipal Code be amended by adding a
13 new section numbered 2.81.160 to read as follows:

14 **2.81.160 Expenditures Covered by this Article.**

15 This Ordinance shall apply to expenditures entirely within the City's control, and to other
16 funds, such as federal or state grant funds, where the application of this Ordinance is consonant
17 with the laws authorizing the City to expend such other funds.

18 Section 17. That Title 2 of the Lincoln Municipal Code be amended by adding a
19 new section numbered 2.81.170 to read as follows:

20 **2.81.170 Implementing Regulations.**

21 All implementing rules, regulations, and procedures promulgated by the Finance
22 Department shall be presented to the City Council for approval within sixty (60) days of adoption
23 of this Ordinance.

1 Section 18. That Title 2 of the Lincoln Municipal Code be amended by adding a
2 new section numbered 2.81.180 to read as follows:

3 **2.81.180 Applicability of Ordinance.**

4 With respect to contracts and City financial assistance, the provisions of this Ordinance
5 shall apply to (a) a contract entered into and financial assistance provided after the effective date
6 of this Ordinance; and (b) a contract amendment consummated after the effective date of this
7 Ordinance which itself meets the financial threshold requirement of this Ordinance. and (c)
8 supplemental financial assistance provided for after the effective date of this Ordinance which
9 itself meets the requirements of this Ordinance. Contracts let through a bid process begun by
10 the City prior to the effective date of this Ordinance are exempt.

Go to Page 17

1 Section 19. That Title 2 of the Lincoln Municipal Code be amended by adding
2 a new section numbered 2.81.190 to read as follows:

3 **2.81.190 Severability.**

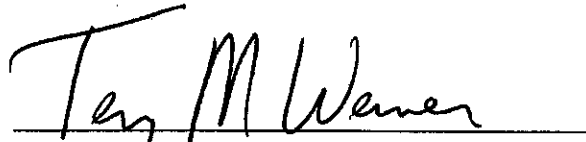
4 In the event that any provision of this Ordinance shall be held invalid or unenforceable
5 by any court of competent jurisdiction, such holding shall not invalidate or render unenforce-
6 able any other provisions hereof.

7 Section 20. That Sections 1 through 19 hereof be codified in the Lincoln
8 Municipal Code as Chapter 2.81, Lincoln Living Wage Ordinance.

9 Section 21. That the operative date of this ordinance shall be sixty days after
10 its passage.

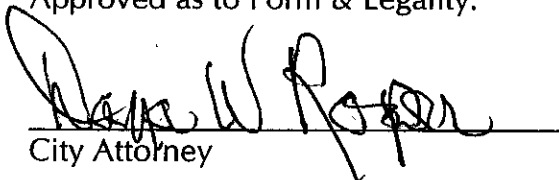
11 Section 22. That this ordinance shall take effect and be in force from and after
12 its passage and publication according to law.

Introduced by:



AYES: Cook, McRoy, Newman, Werner;
NAYS: Camp, Friendt, Svoboda.

Approved as to Form & Legality:


City Attorney

Approved this ___ day of _____, 2004:

Mayor

PASSED
MAR 01 2004
BY CITY COUNCIL