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2 **Ordinance #2010-07**

3 **AN ORDINANCE OF THE ALBANY CITY COUNCIL ADOPTING SECTION 2-26**
4 **ENTITLED "LIVING WAGE ORDINANCE" TO THE ALBANY MUNICIPAL CODE**

5 **WHEREAS**, the City of Albany awards contracts to private firms and other businesses to
6 provide services to the public and to City government;

7 **WHEREAS**, the City of Albany has a limited amount of taxpayer resources to expend;

8 **WHEREAS**, the use of taxpayer dollars to promote sustenance and creation of living wage
9 jobs will increase consumer income, decrease levels of poverty and reduce the need for taxpayer-
10 funded social programs in other areas;

11 **WHEREAS**, when City funds are used to contract for services, such contracts should
12 demonstrate an effort to promote an employment environment that enhances the general quality
13 of life within the community and maximizes the productive effect of the City's limited resources;

14 **WHEREAS**, the City's use of contractors that do not provide health insurance to their
15 employees can result in imposing the costs of their medical care on the county, state and federal
16 governments;

17 **WHEREAS**, employees are far likelier to be healthy if their employer provides reasonable
18 health insurance to them and their dependents; and

19 **WHEREAS**, the payment of a minimum level of compensation as required by this chapter
20 benefits these interests.

21 **NOW, THEREFORE, THE ALBANY CITY COUNCIL HEREBY ORDAINS AS**
22 **FOLLOWS:**

23 **Section 1: Section 2-26, entitled Living Wage Ordinance is hereby enacted and shall**
24 **read as follows:**

25 2-26	Living Wage Ordinance
26 Section 2-26.1	Title and Purpose
27 Section 2-26.2	Findings
28 Section 2-26.3	Definitions
Section 2-26.4	Persons and Entities Subject to the Requirements of this Chapter
Section 2-26.5	Living Wage Rate
Section 2-26.6	Waivers
Section 2-26.7	Required Contract Provisions

1	Section 2-26.8	Exemptions
2	Section 2-26.9	Retaliation and Discrimination Prohibited.
3	Section 2-26.10	Employee Complaints to the City
4	Section 2-26.11	Enforcement
5	Section 2-26.12	Administrative Guidelines, Regulations, and Procedures
6	Section 2-26.13	Effective Date

2-26.1 Title and Purpose.

The purpose of this chapter is to assure that employees of City service contractors and subcontractors, and employees and contractors of City financial assistance earn an hourly wage that is sufficient to live with dignity and to achieve economic self-sufficiency. The City contracts with many businesses and organizations to provide services to the public, and provides financial assistance to developers and businesses for the purpose of promoting economic development and job growth. Such public expenditures should also be spent to set a community economic standard that permits workers to live out of poverty. The City Council finds that the use of City funds to provide living wage jobs will decrease poverty, increase consumer income, invigorate neighborhood businesses and reduce the need for taxpayer funded social service programs.

This chapter shall be known and may be cited as the “Living Wage Ordinance.” The purpose of this chapter is to protect the public health, safety and welfare. It does this by requiring that public funds be expended in such a manner as to facilitate individual self-reliance by employees of City contractors, lessees, recipients of City financial aid and their respective subcontractors.

2-26.2 Findings.

a. The City of Albany awards contracts to private firms and other businesses to provide services to the public and to City government; and

b. The City of Albany has a limited amount of taxpayer resources to expend; and

c. The use of taxpayer dollars to promote sustenance and creation of living wage jobs will increase consumer income, decrease levels of poverty and reduce the need for taxpayer-funded social programs in other areas; and

d. When City funds are used to contract for services, such contracts should demonstrate an effort to promote an employment environment that enhances the general quality of life within the community and maximizes the productive effect of the City’s limited resources; and

e. The City’s use of contractors that do not provide health insurance to their employees can result in imposing the costs of their medical care on the county, state and federal governments; and

1 f. That employees are far likelier to be healthy if their employer provides reasonable
2 health insurance to them and their dependents; and

3 g. The payment of a minimum level of compensation as required by this chapter
4 benefits these interests.

5 **2-26.3 Definitions.**

6 The following words and phrases whenever used in this chapter shall be construed as
7 defined in this section:

8 a. “City” means the City of Albany and all City departments and agencies, including
9 but not limited to the Albany Community Reinvestment Agency and the Albany Public
10 Facilities Financing Authority.

11 b. “City financial aid recipients” means all persons or entities that receive from the
12 City direct assistance in the form of grants, loans, or loan guarantees, in-kind services, waivers
13 of City fees, real property or other valuable consideration in the amount of more than \$100,000
14 within the City’s fiscal year (July 1st through June 30th). This term shall not include those who
enjoy an economic benefit as an incidental effect of City policies, regulations or ordinances.

15 c. “Contractor” means any person or entity that enters into a service contract as
16 hereafter defined with the City in an amount equal to or greater than \$25,000 within the City’s
fiscal year. (Contractor includes subcontractors whose employees are engaged in City funded
services.)

17 d. “Employee” means any individual employed by an employer who performs at
18 least 25 percent of the work arising from a service contract, City financial aid, or City lease. No
work may be reassigned in order to evade coverage under this chapter.

19 e. “Health Benefits” means an employer’s monetary contribution toward the cost of
20 health and medical care insurance for covered employees and their dependents. Health benefits
21 may include the following types of insurance: medical health, including mental health, dental
22 and vision care. The hourly cost of providing health benefits shall be credited as compensation
23 along with wages under this chapter. Retirement benefits, accidental death and dismemberment
insurance, life insurance, disability insurance and other benefits that do not provide medical or
health-related coverage shall not be credited as compensation.

24 f. “Nonprofit” shall mean a nonprofit organization described in Section 501(c) of
25 the Internal Revenue Code of 1954 which is exempt from taxation under Section 501(c) of that
code, or any nonprofit educational organization qualified under Section 23701(d) of the
Revenue and Taxation Code.

26 g. “Person” means any individual, proprietorship, partnership, joint venture,
27 corporation, limited liability company, trust, association, or other entity that may employ
28 individuals or enter into contracts.

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2 h. "Service contract" means a contract given a contractor by the City for \$25,000 or
3 more for the furnishing of services to or for the City, except those contracts where services are
4 incidental to the delivery of products, equipment or commodities. Service contracts include but
5 are not limited to security guard services, janitorial services, waste management, landscaping,
6 parking attendant services, and towing. "Service contract" does not include: (1) a contract
7 between the City and another governmental entity or public utility; (2) a contract wherein
8 prevailing wage as defined by Division 2, Part 7, of the California Labor Code applies so long as
9 prevailing wage is greater than the living wage requirement; and (3) a contract subject to federal
10 or state laws or regulations that would preclude application of the living wage requirement
11 otherwise applicable pursuant to this chapter.

9 **2-26.4 Persons and Entities Subject to the Requirements of this Chapter.**

10 The persons and entities described below shall comply with the minimum compensation
11 standards established by this chapter if they employ more than ten employees:
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13 a. For-profit service contractors which have at least 10 employees working a
14 minimum of 20 hours per week and receive contract(s) from the City for \$25,000 or more within
15 the City's fiscal year. Compliance shall be required during the term of the contract for all
16 employees who perform at least 25 percent of the work arising from the service contract.

17 b. Nonprofit service contractors which have at least 10 employees working a
18 minimum of 20 hours per week and receive contracts from the City of \$100,000 or more within
19 the City's fiscal year. Compliance shall be required during the term of the contract for all
20 employees who perform at least 25 percent of the work arising from the service contract.

21 c. Lessees of public property, licensees, concessionaires and franchisees which
22 employ 25 or more employees and have \$350,000 or more in annual gross receipts. Compliance
23 shall be required during the lease term for any employees who spend 25 percent or more of their
24 compensated time on the leased property or engage in work directly related to the license,
25 concession or franchise.

26 d. City financial aid recipients that receive more than \$100,000 in loans or other
27 cash and/or non-cash assistance within the City's fiscal year. Compliance shall be required for a
28 duration of one year for each \$100,000 of assistance, up to a maximum duration of five years,
following receipt of the aid for all employees who spend 25 percent or more of their
compensated time engaged in work directly related to the purposes for which the City provided
the aid.

e. Subcontractors and sublessees of any of the entities or persons described in
subparagraphs (a) through (d) above.

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2 **2-26.5 Living Wage Rate.**

3 All persons and entities subject to this chapter shall pay covered employees a wage of no
4 less than the living wage set forth in this chapter:

5 a. Living Wage means no less than \$11.93 per hour including wages and health
6 benefits paid by the employer and \$13.54 per hour with no health benefits. If employer
7 contributions for health benefits are not paid on an hourly basis, the employer must demonstrate
8 to the City the hourly value of such benefits in order to receive credit for such payments to
covered employees.

9 b. Additional Compensation Permissible. Nothing in this chapter shall be construed
10 to limit an employer's discretion to provide greater wages to its employees.

11 c. The initial rates set forth in subsection (a) of this section shall adjust annually on
12 July 1st, to reflect the 12 month average in the Consumer Price Index for all urban consumers in
the San Francisco-Oakland-San Jose Metropolitan Statistical Areas for the preceding year from
13 May through April, not to exceed 3 percent in any one year.

14 d. If the prevailing wage for services occupations is posted by the State Department
of Industrial Relations (or any successor agency) and exceeds the compensation required by the
15 living wage, then the contractor is required to pay its employees the posted prevailing wage.

16 **2-26.6 Waivers.**

17 Following a review and recommendation by the City Manager, the City Council may
18 approve waivers with or without conditions to any of the requirements and regulations set forth
in this ordinance, or in any implementing policies, upon the following findings:

19 a. The services to be provided are available from a single source and that source has
20 significant barriers to meeting the requirements of the ordinance; or

21 b. A waiver is necessary to provide emergency services essential to mitigate or
22 prevent possible threats to public safety or public health for a limited period of time; or

23 c. All bidders for the service to be provided have significant barriers to meeting the
requirements of the ordinance; or

24 d. Any other circumstances that the City Council finds to be in the public interest.

25 e. All of the provisions of this chapter, or any part hereof, may be waived by a bona
26 fide collective bargaining agreement, but only if the waiver is explicitly set forth in such
agreement in clear and unambiguous terms.
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1 This notification shall be in the form provided by the City and translated by the employer
2 to other languages spoken by a significant number of employees and shall also be posted
3 prominently in areas at the worksite where it will be seen by all employees.

4 **2-26.7 Required Contract Provisions.**

5 Every City contract, lease, license, concession agreement, franchise agreement or
6 agreement for financial aid with an employer shall require compliance with the requirements of
7 this chapter. Such contract provisions shall address the employer's duty to promptly provide to
8 the City documents and information verifying compliance with the requirements of this chapter,
9 and sanctions for noncompliance. Such contract provisions shall also require the employer to
10 notify each of its affected employees with regards to wages that are required to be paid pursuant
11 to this chapter.

11 **2-26.8 Exemptions.**

12 The requirements of this chapter shall not be applicable to the following employees:

13 a. Employees of another government agency, including without limitation, cities,
14 counties, state agencies, and public utilities.

15 b. An employee participating in a temporary job training program approved by the
16 City in which a significant component of the employee's training consists of acquiring
17 specialized knowledge, abilities, skills or job readiness (e.g., the importance of proper work
18 attire, punctuality and workplace demeanor).

19 c. An employee who is in an internship or other job training program for which the
20 employee is also receiving academic credit.

21 d. An employee who is under 18 years of age.

22 e. An employee of the City of Albany who is employed for a limited term to a
23 regular or non-regular position including casual, seasonal and emergency appointments with no
24 guarantee of continued employment beyond the initial hire season.

25 f. Volunteers.

26 g. Owners of a business who are also employees of the business and their immediate
27 family members (spouse, domestic partner, parent, siblings and children).

28 h. Employees who are standing by or on-call according to the criteria established by
the Fair Labor Standards Act, 29 U.S.C. section 201. This exemption shall apply only during the
time when the employee is actually standing by or on-call.

1 i. Employees of contractors and subcontractors subject to the requirements of
2 Division 2, Part 7, of the California Labor Code, for payment of prevailing wage when prevailing
3 wage requires compensation greater than that required by this chapter.

4 j. An employee for whom application of the requirements of this chapter is
5 prohibited by state or federal law.

6 k. An employee subject to a bona fide collective bargaining agreement where the
7 waiver of the provisions of this chapter are set forth in clear and unambiguous terms in such an
8 agreement.

9 **2-26.9 Retaliation and Discrimination Prohibited.**

10 a. It shall be unlawful to retaliate or discriminate against any person on account of
11 having claimed a violation of this chapter.

12 b. Each entity which is to replace a prior entity, subject to the requirements of this
13 chapter shall offer employment to the employees of the prior entity. Such employees may not be
14 terminated by the new entity during the first 90 days except for just cause. The new entity may
15 operate at lower staffing levels than its predecessor but in such event shall place its predecessor's
16 employees on a preferential reinstatement list based on seniority. For purposes of this Section,
17 an entity "replaces" another if it (1) assumes all or part of the lease, contract, subcontract or City
18 aid of a prior employer, and (2) offers employment which employees of the prior entity can
19 perform. Nothing herein shall be construed to require that supervisory, managerial or
20 confidential employees retained by the new contractor be kept in a supervisory, managerial or
21 confidential position.

18 **2-26.10 Employee Complaints to the City.**

19 a. An employee who alleges violation of any provision of the requirements of this
20 chapter may report such acts to the City. The City Manager may establish a procedure for
21 receiving and investigating such complaints and take appropriate enforcement action.

22 b. Any complaints received shall be treated as confidential matters to the extent
23 permitted by law. Any complaints received and all investigation documents related thereto shall
24 be deemed exempt from disclosure pursuant to California Government Code Sections 6254 and
25 6255.

24 **2-26-11 Enforcement.**

25 a. A person claiming violation of this chapter may bring an action in the Superior
26 Court of the State of California against an employer and obtain the following remedies:

27 1. Back pay for each day during which the employer failed to pay the
28 compensation required by this chapter.

1 2. Reinstatement and compensatory damages.

2 3. For a willful violation of this chapter, a court may award as a penalty up to
3 treble the amount of monies to be paid as damages.

4 4. Reasonable attorney's fees and costs.

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6 b. Notwithstanding any provision of this chapter or any other ordinances to the
7 contrary, no criminal penalties shall attach for any violation of this chapter.

8 c. No remedy set forth in this chapter is intended to be exclusive or a prerequisite for
9 asserting a claim for relief to enforce any rights hereunder in a court of law.

10 d. No liability of City. Claims or lawsuits against the City arising under this chapter
11 are not authorized, nor shall the remedies provided in subsection (a) be awarded against the City.
12 The City shall not be liable to any person or entity because of the City's failure to notify an
13 employer of the applicability of this chapter, the City's failure to investigate or enforce violations
14 of this chapter, or based upon another employer's failure to comply with this chapter.

15 e. The City may terminate a service contract, financial assistance, or lease or facility
16 agreement and pursue any other legal remedies available to the City, including debarment, for
17 non-compliance with this chapter.

18 **2-26-12 Administrative Guidelines, Regulations and Procedures.**

19 The City Manager, or his/her designee, shall have the authority to implement this
20 ordinance and may promulgate administrative guidelines, regulations, and procedures consistent
21 with the purpose and intent of this ordinance.

22 **2-26-13 Effective Date.**

23 This chapter shall apply to every City contract, lease, license, concession agreement,
24 franchise agreement or agreement for financial aid with an employer entered into or amended on
25 or after January 1, 2011.

26 **Section 3: CEQA Determination**

27 The City Council finds pursuant to Title 14 of the California Administrative Code
28 §15601(b)(3) and §15378(a), that this Ordinance is exempt from the requirements of the
 California Environmental Quality Act (CEQA) in that it is not a project which has the potential
 for causing a significant effect on the environment. This action is further exempt from the
 definition project in §15378(b)(3) in that it concerns general policy and procedure making.

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Section 4: Publication

This ordinance shall be published in a newspaper of general circulation in the City of Albany, which said newspaper is designated for that purpose, or it shall be posted in three locations.

Section 5: Severability

If any section, subsection, sentence, clause, or phrase of this ordinance is for any reason held to be invalid, such decision shall not affect the validity of the remaining portions of the ordinance, and each section, subsection, sentence, clause, or phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clause or phrases be declared invalid.

Section 6: Effective Date

This ordinance shall become effective 30 days on or after its final passage and adoption.

Date:

Mayor Joanne Wile