

C-28-06
Finance
adopted

SUBSTITUTE ORDINANCE

WHEREAS, The City of Chicago is a home rule unit of government pursuant to Article VII, Section 6(a) of the Illinois Constitution; and

WHEREAS, the City has the authority to adopt ordinances and to promulgate rules and regulations pertaining to its government and affairs in order to protect the health, safety and welfare of its citizens; and

WHEREAS, the City declares that it is the policy of the City to promote wages and benefits that allow working families in our community to meet basic needs; and

WHEREAS, the City finds that many large retailers pay very low wages and do not provide their workers with adequate benefits, and that many employees of large retailers, even full-time employees, qualify for a variety of public benefits such as Medicaid and food stamps; and

WHEREAS, responsible retailers that pay living wages and provide employee benefits, such as health care, face growing pressure to cut back when their competitors are permitted to pay poverty-level wages and no benefits; and

WHEREAS, taxpayers are likely to see increased public costs when businesses that provide health benefits either drop those benefits or are replaced by businesses that do not, because more working families will be forced to obtain necessary care from public health clinics, public hospitals, emergency rooms, and publicly funded programs such as Medicaid; and

WHEREAS, an increase in the percentage of low-wage jobs without benefits threatens the health and welfare of all Chicagoans because low-income working families without benefits have poor access to the health care system, lack preventive health care services, and are one step away from crushing financial debt should they fall sick; and

WHEREAS, large retailers are among our nation's largest companies and can afford to provide better wages and pay a fair share of their employees' health care costs while still operating profitably; and

WHEREAS, the City has determined that in order to safeguard the economic well-being of the public, and to reduce the burden on the taxpayers and protect the public safety net, it must ensure that large retailers pay their workers a living wage and encourage them to provide important benefits;

WHEREAS, the City finds that large, vacant lots endanger the public health, safety and welfare of City residents by encouraging crime and urban decay, and that the benefits of competition in the marketplace are lost when private parties impose recorded negative use restrictions upon real property in the city which prohibit or have the economic or practical effect of prohibiting the commercial use of such real property; now, therefore

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF CHICAGO,

SECTION 1. The above recitals are expressly incorporated herein and made a part of this ordinance as though fully set forth therein.

SECTION 2. The Municipal Code of the City of Chicago is hereby amended by creating a new Chapter 4-404, entitled "Large Retailers," and inserting the underscored language as follows:

4-404-010 Definitions.

For the purposes of this Ordinance, the following definitions shall apply unless the context clearly indicates or requires a different meaning:

- a. "City" means the City of Chicago.
- b. "Agency" means the City departments or agencies designated by the City to administer this Ordinance.
- c. "Company" means any natural person, corporation, partnership, limited liability company, joint venture, sole proprietorship, association, trust or any other entity, and shall include all of the members of a "controlled group of corporations," as defined in Section 1563(a) of the United States Internal Revenue Code, except that "more than 50 percent" shall be substituted for "at least 80 percent" each place it appears in Section 1563(a)(1) of the United States Internal Revenue Code and the determination shall be made without regard to Sections 1563(a)(4) and 1563(e)(3)(C) of the United States Internal Revenue Code.
- d. "Large retailer" means any company that operates a retail store located within the geographic boundaries of the City where:
 1. The company's gross revenues total \$1 billion or more on an annual basis; and
 2. The indoor square footage of the retail store equals 90,000 square feet or more, including any space within a retail store that is leased to an independently owned and operated company. For the purposes of this definition, the indoor square footage of adjacent stores shall be aggregated if the stores share a controlling ownership interest, a warehouse, a distribution facility, or management; provided that the square footage of stores that share only property management shall not be aggregated.
- e. "Premises of a large retailer" means all retail store buildings or portions of buildings within the City that are occupied by a large retailer, including any space within a large retail store that is leased to an independently owned and operated company. This definition does not include sidewalks, or indoor pedestrian areas that are external to a large retailer's store.

- f. "Subcontractor" means any company that performs services, including but not limited to janitorial or security services, on the premises of a large retailer, or that holds a sublease or contract authorizing that party to occupy, use, or control the premises of a large retailer, but does not include an independently owned and operated company that leases less than 50% of the premises of a large retailer.
- g. "Large retail employer" means any large retailer or subcontractor.
- h. "Employee" means any person who in a particular week performs at least 10 hours of work on the premises of a large retailer for any large retail employer. This definition includes persons performing work on a full-time, part-time, temporary, or seasonal basis, including independent contractors, contracted workers, contingent workers, and persons made available to work through the services of a temporary services, staffing or employment agency or similar entity.
- i. "Benefits" means payments made by a large retail employer for any bona fide fringe benefits, paid directly to an employee or to a third party on behalf of an employee or dependents of an employee, such as benefits related to health care, retirement security, disability, training and education, or paid leave, but excluding any payments that are tips or gratuities, deducted from an employee's wages or otherwise reimbursed by an employee, or required by any other local, state, or federal law. Also excluded from this definition is the value of any benefit for which an employee is eligible but for which no payment is actually made by a large retailer to the employee or to any other party on the employee's behalf because the employee either does not actually utilize or does not elect to receive the benefit for any reason.

4-404-020 Living Wage and Benefits Rates.

- a. Hourly Compensation Package. All large retail employers shall provide employees an hourly compensation package with a total value of no less than the sum of the living wage rate and the benefits rate for each hour that the employee works on the premises of a large retailer. The wage component of any hourly compensation package shall be no less than the living wage rate. The balance of the hourly compensation package may be provided in wages, benefits, or any combination of the two, so long as the total hourly value of the wages and any benefits provided an employee are no less than the total required hourly compensation package for each hour worked. A large retail employer may use any reasonable methodology, consistent with any regulations issued by the Agency, for determining the value of any benefits paid for and may, at its election, use each quarter, month or pay period as the relevant period for calculating the prorated hourly value of any benefits paid for by the employer on behalf of the employee and/or his or her dependents.
- b. Beginning on July 1, 2007, the living wage rate shall be an hourly rate of \$ 9.25. The living wage rate shall be increased to \$ 9.50 on July 1, 2008, \$ 9.75 on July 1, 2009 and \$ 10.00 on July 1, 2010. On July 1 of successive years, the living wage rate shall be increased by the increase in the cost of living.

- c. **Benefits Rate.** Beginning on July 1, 2007, the benefits rate shall be \$1.50 per hour. The benefits rate shall be increased to \$ 2.00 on July 1, 2008, \$ 2.50 on July 1, 2009 and \$ 3.00 on July 1, 2010. On July 1 of successive years, the benefits rate shall be increased by the increase in the cost of living. Large retail employers may pay employees who have been employed for less than 90 days, and part-time employees who have been employed for less than 180 days, a reduced hourly compensation package equal to the living wage rate alone, provided that the wage component of the package is no less than the living wage rate. Only employees who are employed less than 30 hours each week may be deemed part-time employees.
- d. The increase in the cost of living shall be measured by the percentage increase as of September of the immediately preceding year over the level as of September of the previous year of the Consumer Price Index for All Items, Urban Wage Earners and Clerical Workers, Chicago Consolidated Metropolitan Statistical Area, or its successor index as published by the U.S. Department of Labor or its successor agency. The amount of the increase in both the living wage rate and the benefits rate shall be rounded to the nearest multiple of five cents. The Agency shall announce by January 1 of each year the adjusted living wage rate and benefits rate, which shall take effect the following July 1.

4-404-030 Notice, Posting and Payroll Records.

- a. By January 1 of each year, the Agency shall publish and make available to large retail employers (1) a bulletin announcing the adjusted living wage rate and benefits rate for the upcoming year; and (2) a notice, in English and Spanish, informing employees of the current living wage rate and benefits rate and of their rights under this Ordinance, which all large retail employers shall post in a conspicuous place at any workplace or job site where an employee works.
- b. Large retail employers shall allow the Agency access to payroll and benefits records to monitor compliance with the requirements of this Ordinance. Large retail employers shall permit an employee or an employee's designated representative to inspect the large retail employer's payroll and benefits pertaining to that employee. Where a large retail employer does not maintain or retain adequate records documenting wages or benefits paid, or does not allow the Agency reasonable access to such records, there shall be a rebuttable presumption that the large retail employer has not paid the requisite hourly compensation package. This presumption may be overcome if the large retail employer proves by clear and convincing evidence that the large retail employer has paid the requisite hourly compensation package.

4-404-040 Discrimination Prohibited.

- a. No large retail employer shall discriminate against any person in job placement or hiring or other term or condition of employment because of the person's race, color, sex, gender identity, age, religion, disability, national origin, ancestry, sexual orientation, marital status, parental status, military discharge status, source of income, or by reason of the person's having been previously convicted of a criminal offense, or by reason of a finding of lack of "good moral character" when such finding is based upon the fact that

the person has previously been convicted of a criminal offense, unless (1) there is a direct relationship between the criminal offense and the specific employment sought, and (2) the granting of the employment would involve an unreasonable risk to property or to the safety or welfare of specific individuals or the general public.

- b. In making a determination regarding the employment of a person previously convicted of a criminal offense, large retail employers shall consider the following factors:
 1. The public interest in encouraging the employment of persons previously convicted of a criminal offense;
 2. The specific duties and responsibilities necessarily related to the employment sought;
 3. The age of the person at the time of and the time which has elapsed since the occurrence of the criminal offense;
 4. The seriousness of the offense;
 5. Any information produced by the person, or produced on his or her behalf, in regard to his or her rehabilitation, good conduct, or community ready socialization, which may include but is not limited to, sworn testimony, reference letters, self-improvement courses, educational or vocational attainment, and counseling.
- c. At the request of any person previously convicted of a criminal offense who has been denied an employment position or other term or condition of employment, a large retail employer shall provide, within thirty days of a request, a written statement setting forth the reasons for such denial.

4-404-050 Reuse of Vacated Premises of a Large Retailer.

Any private agreement that purports to impose recorded negative use restrictions, for a term of one year or more, upon real property in the City so as to prohibit or have an economic or practical effect of prohibiting the use of such real property for retail store purposes after a large retailer has terminated its operations at the site, when such uses would otherwise be legally permitted, shall be void and unenforceable, and shall be subject to the City's remedial and enforcement powers under Section 17-16-0508, Section 17-16-0509, Section 17-16-0511 (with each day such negative use covenant remains of record or otherwise effective constituting a separate and distinct offense) and Section 17-16-0512 of this Municipal Code.

The foregoing prohibition shall not apply to a large retailer which terminates operations at a site for purposes of relocating such operations into a comparable or larger store located within the city and within one-half mile of the site where operations have been terminated, provided such relocation and the commencement of operations at the new site occurs within two years and the negative use restriction imposed does not have a term in excess of three years. The Zoning Administrator shall have discretion to extend the one-half mile limit set forth in the preceding sentence by one-half mile (i.e., to one mile) and to extend the two year commencement of operations period by one year (i.e., to three years) upon written request of a large retailer and such requesting party's presentation of evidence establishing extenuating circumstances that establish good cause for such extensions. The requesting party shall also provide notice and a copy of such written evidence to the alderman or aldermen of the ward(s) in which the closed store and the new store are located at the same time such submission is made to the Zoning Administrator.

4-404-060 Implementation and Enforcement.

- a. The Agency is authorized to interpret, implement and enforce this Ordinance, including issuing regulations and administrative findings of violations and instituting legal actions to enforce administrative findings. The Agency shall establish appropriate civil penalties payable to the City for violations of the requirements and standards prescribed by this Ordinance or any implementing regulations. Civil penalties shall be retained by the Agency and used to finance activities to enforce this Ordinance. Any regulations, guidelines or rules promulgated by the Agency shall have the force and effect of law and may be relied on by employers, employees and other parties to determine their rights and responsibilities under this Ordinance.
- b. For the purpose of enforcing this Ordinance, the Agency or other law enforcement officer shall have the authority to enter and inspect the records and place of business or employment of any large retail employer and to interview employees away from the place of business or employment of any large retail employer, and no large retail employer or other person shall hinder any such investigation.
- c. No large retail employer or other person shall discharge or take any other adverse action against any person in retaliation for asserting any claim or right under this Ordinance, for

assisting any other person in doing so, or for informing any person about their rights. Taking adverse action against a person within ninety days of a person's engaging in the foregoing activities shall raise a presumption that such action was retaliation, which may be rebutted by clear and convincing evidence that such action was taken for other permissible reasons.

- d. Any person or organization may file an administrative complaint with the Agency charging that a large retail employer has violated this Ordinance as to any employee or other person. The Agency shall promptly investigate administrative complaints and may interview and review records regarding any or all employees at the large retail employer's worksite in order to determine whether a pattern of violations has occurred and to protect the identity of any employee identified in the complaint. The name of any employee identified in a complaint shall be kept confidential as long as possible, and may be disclosed only with the employee's consent. Where prompt compliance is not forthcoming, the Agency shall take any appropriate enforcement action to secure compliance, including initiating a civil action and/or instructing City agencies or departments to revoke or suspend any registration certificates, permits or licenses held or requested by the large retail employer or person until such time as the violation is remedied.
- e. An action for equitable and monetary relief may also be brought against a large retail employer by an employee or person acting on behalf of an employee or on behalf of all similarly situated employees in any court of competent jurisdiction for any violation of this Ordinance or any law or regulation implementing it. Such action may be commenced no later than three years after the violation or of when the violation ceased if it was of a continuing nature, or within one year after final disposition by the Agency of a complaint for the same violation, whichever is later. Such action may encompass all violations that occurred as part of a continuing course of employer conduct regardless of their date. Any investigation of a large retail employer by the Agency or other law enforcement officer shall not bar a person from bringing such action, and there shall be no exhaustion requirement, no procedural, pleading or burden of proof requirements beyond those that apply generally to civil suits in order to maintain such action and no liability for costs or attorney's fees on an employee.
- f. Any large retail employer who fails to pay the total hourly compensation required under this Ordinance shall be required to pay the employee the balance of the compensation owed, including interest thereon, and an additional amount equal to twice the underpaid compensation. Any large retail employer who retaliates against an employee or other person in violation of this Ordinance shall be required to pay the employee an amount set by the Agency or a court sufficient to compensate the employee and deter future violations, but not less than two hundred fifty (\$ 250.00) dollars for each day that the violation continued or until legal judgment is final. The Agency and the courts shall have the authority to order payment of such unpaid compensation, other amounts, and civil penalties and to order any other appropriate legal or equitable relief for violations of this Ordinance. A prevailing plaintiff shall be entitled to reasonable attorney's fees and costs of suit.

- g. The City and any agency or department thereof may consider violations of this Ordinance in determining whether employers may receive or renew public contracts, financial assistance, or licenses.
- h. The Agency shall make information regarding all large retail employers' compliance with this Ordinance publicly available. This information shall be updated every six months for the first two years of a large retail employer's operation in the City, and every year thereafter.

4-404-070 Employees covered by Collective Bargaining Agreements.

The provisions of this Ordinance may not be waived, except that the wages and benefits for employees covered by a bona fide collective bargaining agreement in force on this Ordinance's effective date may be the wages and benefits provided for in that collective bargaining agreement during the remaining term of that agreement.

4-404-080 Miscellaneous.

- a. This Ordinance shall be liberally construed in favor of its purposes. All ordinances, regulations, resolutions, motions or orders in conflict with this ordinance are hereby repealed to the extent of such conflict; however, this Ordinance shall not be construed to preempt or otherwise limit the applicability of any such law that provides for payment of higher or supplemental wages or benefits.
- b. If any part of this Ordinance, or the application of the Ordinance to any person or circumstance, is held invalid, the remainder of this Ordinance, including the application of such part to other persons or circumstances, shall not be affected by such a holding and shall continue in full force and effect. To this end, the parts of this law are severable.

SECTION 3. This ordinance shall take effect 120 days after passage and publication.