

THE BOSTON JOBS AND LIVING WAGE REGULATIONS

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THE BOSTON JOBS AND LIVING WAGE REGULATIONS

REGULATION 1. PURPOSE:

The purpose of these Regulations is as follows:

- A. to implement and enforce Chapter 5 of the City of Boston Ordinances of 1998, as amended, also known as The Boston Jobs and Living Wage Ordinance (the Ordinance);
- B. to provide the hearing procedures for all hearings conducted pursuant to the Ordinance by the Living Wage Division of the City of Boston's Office of Jobs and Community Services (OJCS);
- C. to develop methods of administration and evaluation which include the collection of data to ensure that Covered Employees of Covered Vendors, who Contract with the City to provide services, earn an hourly wage that is sufficient for a family of four to live at or above the federal poverty level;
- D. to ensure maximization of access to jobs; and
- E. to provide procedures for gathering information and forwarding that information to the Living Wage Advisory Committee (LWAC), so that it can:
 1. review the effectiveness of the Ordinance in creating and retaining Living Wage jobs in Boston;
 2. promote access to Living Wage jobs for low and moderate income Bostonians;
 3. review the implementation and enforcement of the Ordinance; and
 4. make recommendations from time to time to the Director in connection therewith.

REGULATION 2. SCOPE:

All matters regarding the implementation and enforcement of the Ordinance, as amended, shall be processed in accordance with these Regulations.

REGULATION 3. DEFINITIONS:

When used in these Regulations or in the context of any hearing conducted or decision written pursuant to the Ordinance or these Regulations, unless the context otherwise requires, the following terms shall have the following meanings:

- A. **ASSISTANCE:**
Any grant; loan, tax incentive, bond financing, subsidy, or other form of Assistance of \$100,000 or more realized by or through the authority or approval of the City of Boston, including, but not limited to industrial development bonds, Community Development Block Grant (CDBG) loans and federal Enhanced Enterprise Community designations awarded after the effective date of this Ordinance. The forgiveness of a loan shall be regarded as financial Assistance. A loan shall be regarded as financial Assistance to the extent of any differential between the amount of the loan and the present value of the payments thereunder, discounted over the life of the loan by the applicable federal rate as used in 26 U.S.C. section 7872(f). A recipient of Assistance shall not be deemed to include leases and subleases.
- B. **AWARDING DEPARTMENT:**
The City of Boston Department awarding Assistance to a Beneficiary.
- C. **BENEFICIARY:**
Any direct recipient of at least \$100,000 of Assistance provided that the Beneficiary is a for-profit employer of at least 25 Full Time Equivalents (FTEs) or a not-for-profit employer of at least 100 FTEs.
- D. **CAREER CENTER:**
A City of Boston One-Stop career delivery system which seeks to provide a seamless system of service delivery in order to enhance access to workforce development programs' services and to improve long-term employment outcomes for individuals seeking employment assistance.
- E. **CITY:**
City of Boston
- F. **CONTRACT:**
Unless the context otherwise requires, a Service Contract as defined in Regulation 3 (CC).
- G. **CONTRACTING DEPARTMENT:**
Any City Department that awards a Service Contract.
- H. **COVERED EMPLOYEE:**
A person employed by a Covered Vendor who directly expends or would directly expend his or her time on the Service Contract with the City of Boston or on the Service Subcontract.

- I. **COVERED VENDOR:**
Any for-profit employer who employs at least 25 FTEs or any not-for-profit employer who employs at least 100 FTEs who has been awarded a Service Contract or Service Subcontract after the effective date of the Ordinance. This term does not include Beneficiary as herein defined.
- J. **DESIGNATED DEPARTMENT:**
The Office of Jobs and Community Services (OJCS) which has been designated by the Mayor, as provided in the Ordinance, to be responsible for the overall implementation, compliance and enforcement of the Ordinance. The Living Wage Division has been established within OJCS to implement and enforce the Ordinance.
- K. **DIRECTOR:**
The Director of the OJCS who is responsible for the implementation and enforcement of the Ordinance, promulgates all rules and Regulations and is the final adjudicator of all Living Wage matters which require hearings.
- L. **EXEMPTIONS:**
The provisions under which some Covered Vendors or Beneficiaries may be exempt from all or some of the provisions of the Ordinance. See Regulations 5 and 6 for further information and instructions.
- M. **FIRST SOURCE HIRING AGREEMENT:**
A signed Agreement between a Covered Vendor or a Beneficiary and a Referral Agency or one or more Boston One Stop Career Centers. See Regulation 7 for detailed information on First Source Hiring Agreements.
- N. **FORMS AND AFFIDAVITS:**
Forms or affidavits as approved by the OJCS which further the provisions of the Ordinance and these Regulations.
- O. **FULL-TIME EQUIVALENT (FTE):**
A formula to calculate the number of employee work hours which equal one full-time position. For the purposes of the Ordinance, full-time shall mean the standard number of working hours, between 35 hours and 40 hours per week, that is used by the Covered Vendor to determine full-time employment.
- P. **GENERAL LAWS:**
The General Laws of the Commonwealth of Massachusetts and any amendments thereof.
- Q. **HEARING OFFICER:**
Persons designated by the Living Wage Administrator to process cases and conduct all adjudicatory hearings before the Living Wage Division. For additional information regarding Hearing Officers see Regulation 11.
- R. **LIVING WAGE:**
The rate established by the Living Wage Division as the minimum hourly wage rate that shall be paid to a Covered Employee by a Covered Vendor pursuant to

the formula set forth in section 6 of the Ordinance and Regulation 4.

S. LIVING WAGE ADMINISTRATOR:

A professional employee of the Living Wage Division hired by the Director to oversee the implementation and enforcement of the Ordinance. The Living Wage Administrator shall staff the Living Wage Advisory Committee, shall act as Keeper of the Records, shall manage the staff of the Living Wage Division and shall be primarily responsible for drafting all Rules and Regulations. The Living Wage Administrator shall also be responsible for keeping a *Living Wage Advisory Committee File* of all relevant documents at the Office of the Living Wage Division.

T. LIVING WAGE ADVISORY COMMITTEE:

The seven-member advisory committee, hereinafter referred to as LWAC, appointed by the Mayor, established to review the effectiveness of the Ordinance in creating and retaining Living Wage jobs in Boston, to promote access to Living Wage jobs for low and moderate income Bostonians, to review the implementation and enforcement of the Ordinance, and to make recommendations in connection therewith.

U. LIVING WAGE ADVISORY COMMITTEE FILE:

A file of all relevant documents maintained by the Living Wage Administrator at the Offices of the Living Wage Division which may be accessed during regular business hours by any member of the LWAC. Any document in the LWAC File which is a public record as defined in General Laws, Chapter 4, section 7, shall be made available to the public in the manner prescribed in General Laws, Chapter 66, section 10.

V. LIVING WAGE DIVISION:

The Living Wage Division within the OJCS established to implement and enforce the Ordinance.

W. LOW AND MODERATE INCOME PERSONS:

Persons with an annual income that is less than 80 percent of the median income for the Boston Primary Standard Metropolitan Statistical Area, as published by the United States Department of Housing and Urban Development.

X. ORDINANCE:

Chapter 5 of the Ordinances of 1998, as amended, also known as *The Boston Jobs and Living Wage Ordinance*.

Y. PERSON:

One or more of the following or their agents: employees, servants, representatives, and legal representatives, individuals, corporations, partnerships, joint ventures, associations, labor organizations, educational institutions, mutual companies, joint-stock companies, trusts, unincorporated organizations, trustees, trustees in bankruptcy, receivers, fiduciaries, and all other entities recognized at law by this Commonwealth.

Z. REFERRAL AGENCY:

Any organized job registry and referral service operated by a not-for-profit organization or union provided that the not-for-profit organization has the following:

1. an established community membership base and record of conducting outreach in low and moderate income Boston communities;
2. a computerized skills bank where individuals may register for employment and training opportunities;
3. an established process whereby an employer can post job openings, and where referrals can begin within 48 hours of such posting;
4. a governing board comprised of a majority of low and moderate income Boston residents; or the majority of services provided by the entity are furnished to low and moderate income Boston residents;
5. a proven track record of non-discriminatory job placement with respect to race, color, religion, national origin, sex, sexual orientation, age, marital status, discharge from the military service or handicap unrelated to job ability; and
6. certification by the Director as meeting requirements (1) through (5) by the Living Wage Division.

AA. REGULATION:

Unless the context requires otherwise, *The Boston Jobs and Living Wage Regulations*.

BB. SECTION:

Unless otherwise specified, a section of these Regulations.

CC. SERVICE CONTRACT:

Any Contract of at least \$100,000 or more awarded to a Covered Vendor by the City for the furnishing of services to or for the City.

DD. SERVICE SUBCONTRACT:

A Subcontract of \$25,000 or more awarded to a Vendor by a Covered Vendor, provided the Subcontract is paid for by funds from the Service Contract.

EE. SERVICE SUBCONTRACTOR:

Any employer who is awarded a Service Subcontract as defined in Regulation 3 (DD) after the effective date of the Ordinance. This term does not include Beneficiary as herein defined.

FF. VENDOR:

Unless the context otherwise requires, a **COVERED VENDOR** as defined in Regulation 3 (I)

GG. VENDOR AGREEMENT:

A written **Covered Vendors Living Wage Agreement (Form LW-2)** between the City of Boston and any Covered Vendor that is executed at the time a Service Contract is signed with the City or a Service Subcontract is signed with a Covered Vendor.

HH. YOUTH PROGRAM:

Any city, state, or federally funded program which employs youth, as defined by city, state, or federal guidelines, during the summer, or as part of a school to work program, or in other related seasonal or part-time programs.

REGULATION 4. LIVING WAGE PAYMENTS TO EMPLOYEES:

A. GENERAL RULE

Unless an Exemption, a General Waiver or Hardship Waiver is granted pursuant to Regulation 5, Covered Vendors shall pay no less than the Living Wage to Covered Employees. The Living Wage shall be calculated on an hourly basis and shall be no less than \$8.71 from July 1, 2000 subject to adjustment each year on July 1:

1. Calculation Of The Living Wage

On or before July 1 of each year, the Living Wage Administrator shall calculate the Living Wage as follows:

- a. to the hourly rate which at forty hours of work a week for fifty weeks a year would be equal to but not less than the poverty threshold for a family of four as published by the United States Department of Health and Human Services; or
 - b. in proportion to the increase at the immediately preceding December 31 over the year earlier level of the Annual Average Consumer Price Index for All Urban Consumers (CPI-U) Boston-Lawrence-Salem, MA NH as published by the Bureau of Labor Statistics, United States Department of Labor applied to \$8.71; or
 - c. 110% of the federal or state minimum wage.
2. The Living Wage Administrator shall choose whichever of the foregoing is highest as the Living Wage.

B. LIVING WAGE HISTORY

The Living Wage for July 1, 1998 to June 30, 1999 was \$8.23.
The Living Wage for July 1, 1999 to June 30, 2000 was \$8.42.
The Living Wage for July 1, 2000 to June 30, 2001 is \$8.71.

C. ANNUAL TECHNICAL CHANGES

1. Notwithstanding any other provision of these Regulations, the Living Wage Administrator is hereby authorized to draft and the Director shall promulgate the

necessary technical changes to Regulation 4 on or before July 1 of each year without the need of a public hearing including the following:

- a. Adjust the dollar figure and date in the last line of Subsection A.
 - b. Adjust the dollar figure in the last line of Subsection A (1)(b).
 - c. Update Subsection B to include additional Living Wage History from the previous year.
 - d. Update, when necessary, information about the federal and state Earned Income Credit in order to provide Covered Vendors the information required under Regulation 5 (L)(1).
 - e. Update, when necessary, the list of One Stop Career Centers and Referral Agencies certified under Section 2 (1) (vii) of the Ordinance and listed in Regulation 7 (D).
2. Upon the promulgation of the new Living Wage amount, a notice shall be mailed or e-mailed to a member of the public who makes a request to be placed on a mailing list for LWAC meetings.

REGULATION 5. LIVING WAGE; SERVICE CONTRACT PROCEDURE:

A. NOTICE TO VENDORS: REQUIREMENTS OF THE BOSTON JOBS AND LIVING WAGE ORDINANCE (FORM LW-1)

At the time that a Contracting Department issues an Invitation for Bids or Request for Proposals for work to be performed on a Service Contract, the Contracting Department shall attach a copy of the **Notice to Vendors: Requirements of the Boston Jobs and Living Wage Ordinance (Form LW-1)**. In the case of an unadvertised Service Contract, the Contracting Department shall provide the Covered Vendor with a copy of *Form LW-1* before the date that the Service Contract is signed. The Contracting Department must ensure that *Form LW-1* has been provided to all Vendors. The *Form LW-1* shall be prepared by the Living Wage Administrator and shall describe a Covered Vendor's obligations under the Ordinance and Regulations.

B. VENDORS LIVING WAGE AFFIDAVIT (FORM LW-8)

1. At the time that a Vendor responds to an Invitation for Bids, responds to a Request for Proposal, or negotiates an unadvertised Service Contract, the Vendor should complete the **Vendors Living Wage Affidavit (Form LW-8)** and submit it to the Contracting Department. Any Vendor may request an Exemption or General Waiver, as provided in these Regulations.

2. If the Covered Vendor does not submit the *Form LW-8*, as provided in Regulation 5(B)(1), then at the time a Covered Vendor is awarded a Contract or signs an unadvertised Service Contract with the City of Boston, the Covered Vendor must complete and sign *Form LW-8* submitting it to the Contracting Department. The Contracting Department shall, within two business days, after the award of the Contract forward to the Living Wage Division and the LWAC a copy of *Form LW-8* from the Covered Vendor who was awarded the Contract. The Living Wage Administrator shall deposit the LWAC's copy in the LWAC File.

C. **COVERED VENDORS LIVING WAGE AGREEMENT (*FORM LW-2*)**

1. At the time a Covered Vendor responds to a Request for Proposal, an Invitation to Bid, or negotiates an unadvertised Service Contract with the City of Boston, the Covered Vendor is encouraged to sign a ***Covered Vendors Living Wage Agreement (Form LW-2)*** and submit it to the Contracting Department. However, in evaluating the bid, the lack of a *Form LW-2* shall not be considered in the selection of the bid if the Covered Vendor does not submit the *Form LW-2* at this stage of the proceeding. Furthermore, the Contract shall not be rejected if the Covered Vendor does not submit a completed *Form LW-2* at this stage of the proceeding.
2. If the Covered Vendor does not submit the *Form LW-2*, as provided in Regulation 5(C)(1), then at the time a Covered Vendor is awarded a Contract or signs an unadvertised Service Contract with the City of Boston, the Covered Vendor must complete and sign *Form LW-2* submitting it to the Contracting Department. If the Covered Vendor fails to complete and sign the *Form LW-2* at this stage of the proceedings, the City shall not execute the Contract until such time as the Covered Vendor completes and signs the *Form LW-2*. If the Covered Vendor fails to complete and sign the *Form LW-2* within 10 business days of the awarding of the Contract, the Contracting Department may award the Contract to the next qualified Vendor. The Covered Vendor may request and the Contracting Department may grant an extension from the 10-business day requirement.
3. The *Form LW-2* shall include the following information:
 - a. the name of the program or project under which the Service Contract or Service Subcontract is being awarded;
 - b. a local contact name, address, and telephone number of the Covered Vendor;
 - c. a written commitment by the Covered Vendor to pay all Covered Employees not less than the Living Wage, subject to adjustment each July 1, and to comply with the provisions of the Ordinance;
 - d. a workforce profile of Covered Employees paid for by the Service Contract or Service Subcontract, including the employees' job titles with

wage ranges, number of Covered Employees who are Boston residents, and the number of Covered Employees who are minorities and women;

- e. a written narrative of the Covered Vendor's past efforts and future goals to hire low and moderate income Boston residents and to train Covered Employees; the potential for advancement and raises for Covered Employees; the net increase and decrease in number of jobs or number of jobs maintained by classification that will result from the awarding of the Service Contract;
- f. a list of all Service Subcontracts that have been or will be awarded with funds from the Service Contract. In addition, any Covered Vendor shall notify the Contracting Department within three business days of signing a Service Subcontract with a Vendor.

D. SUBCONTRACTORS

1. General Rule

Any Service Subcontractor who is under a subcontract, as defined in Regulation 3 (DD), receiving funds from a Service Contract shall be required to comply with the Ordinance and these Regulations in the same manner as any Covered Vendor.

2. Notification

The Contracting Department shall provide all Covered Vendors, who will be retaining the services of any Service Subcontractor to perform certain functions of the Service Contract, with a *Service Subcontractor Packet*. The packet shall be prepared by the Living Wage Administrator who shall distribute it to City Contracting Departments. Any Covered Vendor awarded a Service Contract shall notify any Subcontractor of its obligations under the Ordinance by providing the Subcontractor on or before the date the Subcontract is executed with a *Service Subcontractor Packet* which shall include the following documents:

- a. Notice To Vendors: Requirements of The Boston Jobs And Living Wage Ordinance (*Form LW-1*);
- b. Covered Vendors Living Wage Agreement (*Form LW-2*);
- c. Covered Employee Living Wage Fact Sheet (*Form LW-4*);
- d. Vendors Living Wage Affidavit (*Form LW-8*);
- e. Covered Vendors Quarterly Report (*Form LW-9*);
- f. First Source Hiring Agreement, Covered Vendors and Subcontractors (*Form LW-10*);
- g. Notice to Covered Vendors and Beneficiaries (*Form 10A*).

3. Submission of Forms

Service Subcontractors shall submit required forms to the Living Wage Division within three (3) business days, including but not limited to those required by sections B, C, G, H, J and I of this Regulation. Service Subcontractors shall comply with the requirements of the First Source Hiring Agreements, as delineated in Regulation 7.

4. Additional Subcontractors

All Covered Vendors shall notify the Living Wage Division within three (3) business days of signing a Service Subcontract with a Vendor.

E. COVERED EMPLOYEE LIVING WAGE FACT SHEET (FORM LW-4) AND POSTER

All Covered Vendors shall provide each Covered Employee with a *Covered Employee Living Wage Fact Sheet (Form LW-4)* containing information about the Ordinance. In addition, all Covered Vendors shall hang a poster containing information about the Ordinance in a conspicuous location visible to all employees. The fact sheet and poster shall be provided to Covered Vendors by the Living Wage Administrator and shall include:

1. notice of the Living Wage amount;
2. a summary of the provisions of this Ordinance;
3. a description of the enforcement provisions of the Ordinance; and
4. the name, address, and telephone number of the Living Wage Administrator to whom complaints of noncompliance with the Ordinance should be directed.

F. EXEMPTION FOR CONSTRUCTION CONTRACTS SUBJECT TO THE STATE PREVAILING WAGE LAW

Any Construction Contract which is subject to the State Prevailing Wage Law shall be exempt from all provisions of the Ordinance. The Contracting Department shall forward a copy of a signed **Statement of Compliance** (Division of Occupational Safety, *Form MWR-2*) to the Living Wage Administrator. The signed *Form MWR-2* shall be sufficient proof that the Construction Contract is subject to the State Prevailing Wage Law.

G. VENDOR REQUEST FOR EXEMPTION FROM BOSTON JOBS AND LIVING WAGE ORDINANCE

1. Except as provided in subsection F of this Regulation, any Vendor may request an Exemption from the provisions of the Ordinance by completing **Part 4 of the VENDORS LIVING WAGE AFFIDAVIT (FORM LW-8)** entitled: **EXEMPTION FROM BOSTON JOBS AND LIVING WAGE ORDINANCE** for any of the following reasons:

- a. Contracts awarded to youth programs, provided that the Contract is for stipends to youth in the program; or
 - b. Contracts awarded to work-study or cooperative educational programs, provided that the Contract is for stipends to students in the programs; or
 - c. Contracts awarded to Vendors who provide services to the City and are awarded to Vendors who provide trainees a stipend or wage as part of a job training program and provide the trainees with additional services, which may include but are not limited to room and board, case management, and job readiness services, and provided further that the trainees do not replace current City funded positions.
2. A Vendor requesting an Exemption shall submit *Form LW-8* to the Contracting Department, which within two business days shall forward a copy to the Living Wage Administrator and the LWAC. The Living Wage Administrator shall provide a copy of the Exemption request to each member of the LWAC. Also, the Living Wage Administrator shall deposit a copy of the Exemption request in the LWAC File.
 3. The Living Wage Administrator shall review the Vendor's request for Exemption and issue a ruling without a hearing if the statement and supporting documentation indicate that an Exemption is warranted. The Living Wage Administrator shall provide a copy of the ruling to each member of the LWAC. The Living Wage Administrator shall also deposit a copy of the ruling in the LWAC File. Any aggrieved party may request a hearing on such ruling. If the information is insufficient to make a ruling, the Living Wage Administrator may request further information or schedule a hearing. Any such hearing shall be conducted pursuant to Regulation 8.
 4. Payment Of Living Wage During Exemption Process:
 - a. The Living Wage Administrator shall make every effort possible to decide the request for Exemption prior to the award of the Contract. However, in the event it is necessary, in the public interest, for the Contracting Department to award the Contract prior to the Exemption ruling, the Vendor shall be responsible to pay all Covered Employees the Living Wage retroactive to the date the Contract goes into effect, if the request for Exemption is denied. Such payments shall be made within 21 days after the ruling denying the Exemption. The Living Wage shall be paid pending any appeals of the decision of the Living Wage Administrator or Director.
 - b. Any court appeal shall not delay the Covered Vendor's obligation to pay the Living Wage retroactively.

H. **VENDOR REQUEST FOR GENERAL WAIVER FROM THE ORDINANCE**

1. Any Vendor may request a General Waiver from the provisions of the Ordinance by completing *Part 5 of the VENDORS LIVING WAGE*

AFFIDAVIT (FORM LW-8) entitled: **GENERAL WAIVER REASON(S)** where application of the Ordinance to a Service Contract or Service Subcontract violates a specific state or federal statutory, regulatory or constitutional provision or provisions. The Vendor shall include with the *Form LW-8* the following:

- a. the Vendor shall state the specific state or federal statutory, regulatory or constitutional provision or provisions, which makes compliance with the Ordinance unlawful;
 - b. the Vendor shall attach a copy of the conflicting statutory, regulatory or constitutional provisions that makes compliance with the Ordinance unlawful;
 - c. the Vendor shall give a full statement describing in detail the reasons the specific state or federal statutory, regulatory or constitutional provision or provisions makes compliance with the Ordinance unlawful.
2. A Vendor requesting a General Waiver shall submit *Form LW-8* to the Contracting Department, which, within two business days, shall forward a copy to the Living Wage Administrator. The Living Wage Administrator shall provide a copy of the General Waiver request to each member of the LWAC. Also, the Living Wage Administrator shall deposit a copy of the request in the LWAC File.
 3. The Living Wage Administrator shall review the Vendor's request for General Waiver and issue a ruling without a hearing if the statement and supporting documentation indicate that a General Waiver is warranted. The Living Wage Administrator shall provide a copy of the General Waiver ruling to each member of the LWAC. The Living Wage Administrator shall also deposit a copy of the ruling in the LWAC File. If the information is insufficient to make a ruling, the Living Wage Administrator may request further information or schedule a hearing. Any such hearing shall be conducted pursuant to Regulation 8.
 4. Payment Of Living Wage During General Waiver Process:
 - a. The Living Wage Administrator shall make every effort possible to decide the Request for General Waiver prior to the award of the Contract. However, in the event it is necessary, in the public interest, for the Contracting Department to award the Contract prior to the General Waiver Ruling, the Vendor shall be responsible to pay all Covered Employees the Living Wage retroactive to the date the Contract went into effect, if the request for General Waiver is denied. Such payments shall be made within 21 days after the ruling denying the General Waiver. The Living Wage shall be paid pending any appeals of the decision of the Living Wage Administrator or Director.

- b. Any court appeal shall not delay the Covered Vendor's obligation to pay the Living Wage retroactively.

I. **HARDSHIP WAIVERS FROM THE ORDINANCE**

All Contracts

1. **General Rule:** The City shall award the Service Contract to the lowest responsive and responsible bidder paying the Living Wage, provided that the bid does not exceed the funds available. If all bids from responsive and responsible bidders paying the Living Wage exceed the funds available for the Contract, the Contracting Department shall reject the bids. If all bids have been rejected or if no responses are received to an Invitation for Bids or Request for Proposals, the Contracting Department may request the Director to grant a Hardship Waiver. A Hardship Waiver shall not be granted after contract execution.
2. **Referral Of Matter By Contracting Agency:** A Hardship Waiver may be granted prior to issuing or reissuing an Invitation for Bids or Request for Proposals. The Director upon the request of the Contracting Department may grant a Hardship Waiver. The Contracting Department may apply for a Hardship Waiver where payment of the Living Wage by a Covered Vendor will (i) substantially curtail the service provided by the Covered Vendor; or (ii) have an adverse financial impact on the City.
3. The Contracting Department shall submit a **CONTRACTING DEPARTMENT LIVING WAGE HARDSHIP WAIVER APPLICATION (Form LW-6)** to the Living Wage Administrator. Copies of the Application shall also be forwarded to each member of the LWAC. The Living Wage Administrator shall also place a copy of the Application in the LWAC file.
4. Content of **CONTRACTING DEPARTMENT LIVING WAGE HARDSHIP WAIVER APPLICATION (Form LW-6)**: The completed *Form LW-6* shall contain the following information:
 - a. the nature of the Contract or employment relationship to which this Ordinance applies;
 - b. a detailed explanation of why payment of the Living Wage will substantially curtail the services provided by a Covered Vendor;
 - c. a detailed explanation of why payment of the Living Wage will have an adverse financial impact on the City;
 - d. a statement of proposed wages below the Living Wage and the impact on Covered Employees if the Living Wage is waived.
5. **Criteria:** In determining whether to grant or deny a Hardship Waiver, the Director shall weigh any and all of the following:

- a. the city services that will be substantially curtailed if the Hardship Waiver is rejected;
 - b. the adverse financial impact on the city;
 - c. the hardship imposed on Covered Employees if the Living Wage is waived;
 - d. circumstances demonstrating undue economic hardship to the Covered Vendor.
6. The Living Wage Administrator shall schedule and conduct a public hearing and make a recommendation to the Director for a final determination of the issues. In making a recommendation, the Living Wage Administrator shall consider the matters raised on the *Form LW-6*, as well as the oral and written evidence presented at the hearing. All Hardship Waiver hearings shall be conducted pursuant to Regulation 8.
7. Copies of the Decision shall be forwarded to each member of the LWAC. The Living Wage Administrator shall also place a copy of the Decision in the LWAC file.

J. COVERED VENDORS QUARTERLY REPORT (*FORM LW-9*)

1. At the time the Service Contract is executed, the Contracting Department shall provide each Covered Vendor with a copy of the Covered Vendors Quarterly Report (*Form LW-9*). Covered Vendors shall be responsible for providing copies of this form to all of their Subcontractors.
2. Covered Vendors and Subcontractors shall file the *Form LW-9* with the Living Wage Division on the dates provided on the form. The *Form LW-9* shall include information regarding the employment activities of the Covered Vendor and Subcontractors including:
 - a. the job positions charged to the Contracts, the wage ranges of those positions;
 - b. the total number of Boston residents, women and minorities who are charged to the Service Contract or Subcontract;
 - c. all Subcontracts that have been or will be charged to the Service Contract or Service Subcontract, including the name and address of the Subcontractor and the amount of the Subcontract; and
 - d. any other information the Director deems relevant in accordance with section 7(d) of the Ordinance. The Living Wage Administrator shall provide to each member of the LWAC any changes to *Form LW-9*.
3. Beginning with the second quarter of calendar year 2000, and each quarter thereafter, the Living Wage Division shall submit a summary of said reports to the

City Council and LWAC within 30 working days following each quarter's end.

4. The Living Wage Division shall be responsible for the monitoring and enforcement of the Quarterly Report requirements of these Regulations and the Ordinance.

K. MAINTENANCE AND EXAMINATION OF PAYROLL RECORDS

1. Each Covered Vendor shall maintain payrolls for all Covered Employees and basic records relating thereto for a period of three years. The records shall contain the name and address of each employee, the job title and classification, the number of hours worked each day, the gross wages, deductions made, actual wages paid, a copy of the social security returns, and evidence of payment thereof, a record of fringe benefit payments including contributions to approved plans, funds or programs and/or additional cash payments, and such other data as may be required by the Contracting Department from time to time.
2. Each Covered Vendor shall permit the Living Wage Administrator or persons designated by the Living Wage Administrator to observe work being performed upon the work site, to interview employees and to examine the books and records relating to the payrolls being investigated.

L. EARNED INCOME CREDIT NOTIFICATION

1. Covered Vendors shall inform their employees earning less than twelve dollars (\$12.00) per hour or \$30,000 per year, or such other amount as determined by the Living Wage Administrator, of their possible eligibility for the state and/or federal Earned Income Credit ("EIC").
2. All Covered Vendors are required to obtain and keep on hand and provide to their employees who request them, the appropriate Internal Revenue Service forms (Federal Form W5), information, and instructions in order to provide their Covered Employees with assistance in obtaining the Earned Income Credit on either a monthly or annual basis.

M. FIRST SOURCE HIRING AGREEMENT, COVERED VENDORS AND SUBCONTRACTORS (FORM LW-10)

All Covered Vendors shall comply with the First Source Hiring Agreement provisions of Regulation 7.

REGULATION 6. BENEFICIARY PROCEDURES:

A. IN GENERAL

At the time a Beneficiary responds to a Request for Proposal, or Request for Qualifications, or applies for Assistance with the City of Boston, the Awarding Department must provide the Beneficiary with a *Beneficiary Packet* including the

following forms:

1. Notice To Beneficiaries: Requirements of The Boston Jobs and Living Wage Ordinance (*Form B-2*);
2. Beneficiary Affidavit, (*Form B-1*);
3. First Source Hiring Agreement, Beneficiaries (*Form B-3*); and
4. Notice to Covered Vendors and Beneficiaries (*Form 10A*).

B. NOTICE TO BENEFICIARIES: REQUIREMENTS OF THE BOSTON JOBS AND LIVING WAGE ORDINANCE (*FORM B-2*)

The ***NOTICE TO BENEFICIARIES: Requirements of the Boston Jobs and Living Wage Ordinance (Form B-2)*** shall be prepared by the Living Wage Administrator and shall describe a Beneficiary's obligations under the Ordinance and Regulations.

C. BENEFICIARY AFFIDAVIT (*FORM B-1*)

1. Any Beneficiary proceeding with a Request for Proposal, Request for Qualification, or other various applications for \$100,000 or more, should complete the **BENEFICIARY AFFIDAVIT (*Form B-1*)** and submit it to the Awarding Department. Any Beneficiary may request an Exemption or General Waiver as provided in Regulation 6.
2. If the Beneficiary does not submit the *Form B-1*, as provided in Regulation 6(C) (1), then at the time a Beneficiary is awarded Assistance, the Beneficiary must complete and sign *Form B-1* submitting it to the Awarding Department. The Awarding Department shall, within two business days after awarding the Assistance, forward to the Living Wage Administrator and the LWAC a copy of the *Form B-1* from the Beneficiary who was awarded the Assistance. The Living Wage Administrator shall deposit the LWAC copy in the LWAC File.

D. BENEFICIARY REQUEST FOR EXEMPTION FROM THE ORDINANCE

1. Any Beneficiary may request an Exemption from the provisions of the Boston Jobs and Living Wage Ordinance by completing **PART 4 OF THE BENEFICIARY AFFIDAVIT, (*Form B-1*)** entitled: **EXEMPTION FROM FIRST SOURCE HIRING AGREEMENT PROVISIONS OF THE BOSTON JOBS AND LIVING WAGE ORDINANCE** for any of the following reasons:
 - a. Assistance awarded to youth programs, provided that the Assistance is for stipends to youth in the program; or
 - b. Assistance awarded to work-study or cooperative educational programs, provided that the Assistance is for stipends to students in the programs; or
 - c. Assistance awarded to Beneficiaries who provide services to the City and are awarded to Beneficiaries who provide trainees a stipend or wage as part of a job training program and provides the trainees with additional services, which

may include but are not limited to room and board, case management, and job readiness services, and provided further that the trainees do not replace current City funded positions.

2. *Form B-1* shall be submitted to the Awarding Department, which, within two business days, shall forward a copy to the Living Wage Administrator. The Living Wage Administrator shall send a copy of the Exemption request to each member of the LWAC. Also, the Living Wage Administrator shall deposit the LWAC's copy in the LWAC File.
3. The Living Wage Administrator shall review the Beneficiary's Request For Exemption and issue a ruling without a hearing if the statement and supporting documentation indicate that an Exemption is warranted. A copy of any such ruling shall be sent to each member of the LWAC. The Living Wage Administrator shall deposit a copy in the LWAC File.
4. Any aggrieved party may request a hearing on such ruling. If the information is insufficient to make a ruling, the Living Wage Administrator may request further information or schedule a hearing. Any such hearing shall be conducted pursuant to Regulation 8. The hearing notice shall be provided to all members of the LWAC. Additionally, the hearing notice shall be placed in the LWAC file.
5. In the event a ruling is not made prior to the award of Assistance, the Beneficiary shall comply with the *First Source Hiring* provisions of Regulation 7 until a ruling is made granting the Exemption.
6. After the ruling is made and provided to the parties, the ruling shall be provided to all members of the LWAC. Additionally, the ruling shall be placed in the LWAC file.

E. BENEFICIARY REQUEST FOR GENERAL WAIVER FROM THE ORDINANCE

1. Any Beneficiary may request a General Waiver from the provisions of the Ordinance by completing *Part 5 of the BENEFICIARY AFFIDAVIT (Form B-1)* entitled: **GENERAL WAIVER REASON(S)** where application of the Ordinance to a particular form of Assistance, violates a specific state or federal statutory, regulatory or constitutional provision or provisions. The Beneficiary shall include with the *Form B-1* the following:
 - a. the specific state or federal statutory, regulatory or constitutional provision or provisions, which makes compliance with the Ordinance unlawful;
 - b. attach a copy of the conflicting statutory, regulatory or constitutional provisions that makes compliance with the Ordinance unlawful; and
 - c. a full statement describing, in detail, the reasons the specific state or federal statutory, regulatory or constitutional provision or provisions makes compliance with the Ordinance unlawful.

2. *Form B-1* shall be submitted to the Awarding Department, which shall forward a copy to the Living Wage Division within two business days. The Living Wage Administrator shall send a copy of the General Waiver request to each member of the LWAC. Also, the Living Wage Administrator shall deposit a copy of the request in the LWAC File.
3. The Living Wage Administrator shall review the Beneficiary's Request for General Waiver and issue a ruling without a hearing if the statement and supporting documentation indicate that a General Waiver is warranted. If the information is insufficient to make a ruling, the Living Wage Administrator may request further information or schedule a hearing. Any such hearing shall be conducted pursuant to Regulation 8. The Living Wage Administrator shall send a copy of the General Waiver ruling to each member of the LWAC. Also, the Living Wage Administrator shall deposit a copy of the ruling in the LWAC File.
4. In the event a ruling is not made prior to the award of Assistance, the Beneficiary shall comply with the *First Source Hiring* provisions of Regulation 7 until a ruling is made granting the General Waiver.

F. FIRST SOURCE HIRING AGREEMENT BENEFICIARIES (*FORM B-3*)

All Beneficiaries shall comply with the First Source Hiring Agreement provisions of Regulation 7.

G. LIVING WAGE PROVISIONS

Beneficiaries are *not* required to comply with the Living Wage Provisions of the Ordinance or these Regulations.

H. EARNED INCOME CREDIT NOTIFICATION

1. Beneficiaries shall inform their employees earning less than twelve dollars (\$12.00) per hour or \$30,000 per year, or such other amount as determined by the Living Wage Administrator, of their possible eligibility for the state and/or federal Earned Income Credit ("EIC").
2. Beneficiaries are required to obtain and keep on hand and provide to their employees who request them, the appropriate Internal Revenue Service forms (*Federal Form W5*), information, and instructions in order to provide their Covered Employees with assistance in obtaining the Earned Income Credit on either a monthly or annual basis.

REGULATION 7. FIRST SOURCE HIRING AGREEMENT (*Form B-3: Beneficiaries or Form LW-10: Covered Vendors and Subcontractors*):

Within five (5) business days after a contract is executed, the Covered Vendor or Beneficiary shall deliver a completed and signed First Source Hiring Agreement to one or more Referral Agencies or Boston One-Stop Career Centers (See list as provided in

Regulation 7(D) or on *Form 10A*: Notice to Covered Vendors and Beneficiaries).

A. CONTENT OF FIRST SOURCE HIRING AGREEMENT

Any Covered Vendor or Beneficiary (hereinafter referred to as "the employer" for the purposes of this Regulation) shall sign a First Source Hiring Agreement (***Form B-3: Beneficiaries of Assistance*** or a ***Form LW-10: Covered Vendors and Subcontractors***) with one or more Referral Agencies or one or more Boston One Stop Career Centers. ***A Notice to Covered Vendors and Beneficiaries (Form LW10A)*** shall be attached to all First Source Hiring Agreements to provide the Vendors and Beneficiaries with a list of Referral Agencies and Career Centers. The First Source Hiring Agreement shall include the following provisions:

1. Prior to announcing or advertising an employment position for work which shall be performed as a result of a Service Contract, Service Subcontract or Assistance created either as a result of a vacancy of an existing position or of a new employment position, the employer shall notify the Referral Agency and/or Career Center about the position, including a general description and the employer's minimum requirements for qualified applicants for such position. The notification shall also contain the words: **BOSTON JOBS AND LIVING WAGE ORDINANCE POSTING**, prominently displayed at the top of the first page of the notification.
2. The employer shall not make such public announcement or advertisement for a period of five (5) business days after notification to the Referral Agency and/or Career Center of the availability of such position. Such five (5) day period is hereinafter referred to as the "Advance Notice Period."
3. The Referral Agency and/or Career Center shall maintain a database of job opportunities subject to this Ordinance and shall provide information on such job opportunities to all Boston residents who receive services from the Career Center or Referral Agency;
4. The Advance Notice Period shall be waived if the Referral Agency and/or Career Center has no qualified candidates to refer to the Covered Vendor or Beneficiary;
5. Each Referral Agency and/or Career Center shall institute a tracking system and record which applicants were interviewed, which applicants were not interviewed, and which applicants were hired for the positions;
6. The First Source Hiring Agreement does not require the employer to comply with these procedures if it fills the job vacancy or newly-created position by transfer or promotion from existing staff or from a file of qualified applicants previously referred to the employer by the Referral Agency and/or Career Center; and
7. The First Source Hiring Agreement shall not require the employer to hire any applicant referred under the terms of this Agreement.

B. TERM OF COMPLIANCE FOR BENEFICIARIES

Beneficiaries who receive Assistance in the amount of one million dollars (\$1,000,000) or more in any twelve-month period shall be required to comply with the Ordinance for five years from the date such Assistance reaches the one million (\$1,000,000) threshold. Beneficiaries receiving less than one million dollars but at least one hundred thousand dollars (\$100,000) of Assistance in any twelve-month period shall be required to comply with the Ordinance for one year from the date such Assistance reaches this threshold

C. COMPLIANCE

The Living Wage Division, on its own initiative or as a result of a complaint, may investigate any allegation of non-compliance with this Regulation. Any investigatory hearings held for this purpose shall be conducted in accordance with Regulation 8. The Director may impose remedies or penalties in accordance with Regulation 14 for violations of the Ordinance or these Regulations.

D. LIST OF REFERRAL AGENCIES AND CAREER CENTERS AND THEIR DUTIES AND OBLIGATIONS:

1. The following is a list of One-Stop Career Centers and Referral Agencies. This list may be updated as further Referral Agencies or Career Centers are certified as provided for in section 2(l)(vi) of the Ordinance.

ONE STOP CAREER CENTERS:

BOSTON CAREER LINK
281 Huntington Avenue
Boston, MA 02116
TEL: (617) 536-1888

THE WORKPLACE
99 Chauncy Street
Boston, MA 02111
TEL: (617) 737-0093

JOBNET
210 South Street
Boston, MA 02111
TEL: (617) 338-0809

SOUTH BOSTON RESOURCE CENTER
(Workplace satellite office)
489 East Broadway
South Boston, MA 02127
TEL: (617) 635-0771

REFERRAL AGENCY:

ACORN
1453 Dorchester Avenue
Dorchester, MA 02122
TEL: (617) 436-7100

2. An authorized member of a Referral Agency or Career Center shall sign a First Source Hiring Agreement presented to it by any Covered Vendor or Beneficiary within the first business day after receipt of the Agreement. The signed First Source Hiring Agreement shall be provided to the Living Wage Administrator within two (2) business days of its completion.
3. The Referral Agency or Career Center shall post any **BOSTON JOBS AND LIVING WAVE ORDINANCE JOB OPPORTUNITY NOTICE** within the first

business day after receipt of the Notification from the Covered Vendor or Beneficiary in a prominent location for a period of at least five (5) business days (*Advance Notice Period*). The Referral Agency or Career Center shall provide information on such job opportunities to all Boston residents who receive services. The Referral Agency or Career Center may refer qualified candidates to the Covered Vendor or Beneficiary. The Referral Agency or Career Center shall maintain a database of such job opportunities.

4. The Referral Agency or Career Center may make public announcements or advertisements of the job position at any time. Any posting, public announcement, or advertisement shall clearly state that only Boston residents may be referred for such job opportunities during the Advance Notice Period.
5. The Advance Notice Period shall be waived if the Referral Agency or Career Center has no qualified candidates to refer to the Covered Vendor or Beneficiary.
6. The Referral Agency or Career Center shall institute a tracking system and record the job postings referred by Covered Vendors and Beneficiaries, the number of applicants referred to jobs during the advance notice period, which applicants were interviewed, which applicants were not interviewed, and which applicants were hired for the positions or any other information deemed relevant by the Living Wage Administrator. The Referral Agency or Career Center shall forward this information to the Living Wage Administrator, monthly, in a manner prescribed by the Living Wage Administrator.

E. MONITORING OF FIRST SOURCE HIRING AGREEMENTS

1. The Living Wage Division shall retain a copy of all First Source Hiring Agreements.
2. At least annually, at a regularly scheduled meeting, the LWAC may request the Living Wage Administrator to prepare reports of information provided by the Referral Agencies or Career Centers.
3. In response to any such request for reports or upon his/her own initiative, the Director in his/her discretion shall instruct the Living Wage Administrator as to when reports should be prepared and to the content therein.

REGULATION 8. ADJUDICATORY HEARINGS:

All adjudicatory hearings, conducted by the Living Wage Division, shall be public hearings conducted in accordance with the following provisions:

A. CONSOLIDATION OF PROCEEDINGS

The Living Wage Administrator, on his/her own initiative or by written request of any party, may, in his/her discretion, consolidate into a single proceeding any matters which are relevant to each other.

B. NOTICE; ISSUES AND EVIDENCE

1. Exemption or General Waiver Hearings:

- a. The Covered Vendor shall be sent notice of a hearing scheduled pursuant to a Covered Vendor's request for an Exemption or General Waiver at least 14 days prior to the hearing. The notice shall include the name of the Hearing Officer, the hearing date, time and place of the hearing. Hearing Notices shall be mailed by first-class mail by the Living Wage Division. The Covered Vendor shall be presented with the issues on the hearing notice in order to afford him/her reasonable opportunity to present evidence and argument at the hearing. The Living Wage Administrator shall provide notice of the hearing to each LWAC member and additionally, shall place a copy of the hearing notice in the LWAC file.
- b. The Living Wage Division shall enclose with the Covered Vendor's Hearing Notice, a Covered Employee Hearing Notice. The notice shall include the name of the Hearing Officer, the hearing date, time and place of the hearing and information how the Covered Employee can participate in the hearing. The Covered Vendor shall be required to post the Covered Employee Hearing Notice in a conspicuous location visible to all employees. Any Covered Employee may participate in the hearing as a party by notifying the Living Wage Division either orally or in writing of his/her desire to participate at least 24 hours before the hearing. The Living Wage Administrator may waive this 24-hour notice requirement where the public interest is best served.

2. Compliance Hearings

The Covered Employee and the Covered Vendor shall be sent notice of a hearing scheduled pursuant to the Covered Employees Compliance Complaint filed under Regulation 13 at least seven (7) days prior to the hearing. The notice shall include the name of the Hearing Officer, the hearing date, time and place. Hearing Notices shall be mailed by first-class mail by the Living Wage Division. Parties shall be presented with the issues on the hearing notice in order to afford them reasonable opportunity to present evidence and argument at the hearing. The Living Wage Administrator shall provide notice of the hearing to each LWAC member and additionally, shall place a copy of the hearing notice in the LWAC file.

3. Notice to General Public

In order to provide the general public with notice of a hearing under this Regulation, notice of all hearings shall be posted in the Office of the City Clerk at least seven (7) days prior to the hearing. Any persons other than the Covered Vendor, Covered Employees or Contracting Department who wish to participate as parties to the hearing, shall notify the Living Wage Administrator in writing at least 24 hours prior to the hearing of their desire to participate along with a statement of their interest in the matter. The Living

Wage Administrator may waive this 24-hour notice requirement where the public interest is best served. Any such requests shall be considered at or before the hearing by the Living Wage Administrator and shall be determined as a part of the record.

C. HEARING CONTINUANCES

Upon good cause shown, the Hearing Officer may continue a hearing if all parties consent in writing to such continuance. The Hearing Officer may decline to continue a hearing where the request is made less than 24 hours prior to the hearing or where a continuance has been previously granted in the same case. In the absence of written consent, only the Living Wage Administrator shall determine if a continuance shall be granted for good cause shown which shall be stated, in writing, in the official record.

D. CONDUCTING THE HEARING

1. At the hearing, the Hearing Officer shall:
 - a. Record the proceedings in narrative form, making notes of the oral evidence presented and incorporated by reference and attaching all documentary evidence and exhibits presented. The Hearing Officer shall make a sound recording of the hearing. Any party may take a stenographic or other record of the proceedings, at his/her own cost, provided that in the event of an appeal by any party a certified copy of the transcript of any such record shall be made available to the Living Wage Division without cost for the purposes of preparing the record on appeal;
 - b. Swear in all witnesses; and
 - c. Make rulings on all evidentiary matters including the admission or exclusion of any documentary or testimonial evidence. The Hearing Officer may reserve a review of the evidentiary matter until such time as the Director decides the case.
2. Issues at the hearing shall be limited to those issues stated on the hearing notice. Relevant documents shall include those documents submitted to the Hearing Officer at the hearing and prior to the hearing, any Living Wage Division investigation reports, and inspection reports of other city, state or federal agencies.
3. The Hearing Officer shall maintain all documents submitted prior to the hearing. Any party may view such documents at a time convenient for the Hearing Officer at the Office of the Living Wage Division.
4. Evidence and argument may be received on other issues at the hearing where no party objects. The Hearing Officer may accept such evidence and argument over the objection of any party if the issues are relevant to the hearing and if the objecting party had sufficient notice under the circumstances to afford the party reasonable opportunity to prepare and present evidence and argument on the issue or is given such opportunity at a later time.

5. Rules of privilege recognized by law shall be observed and no evidence shall be admitted or given effect unless it is the kind of evidence on which reasonable persons are accustomed to rely in the conduct of serious affairs. Any evidence that is unduly repetitious may be excluded.
6. Every party shall have the right to call and examine witnesses, to introduce exhibits, to cross-examine witnesses who testify, and to submit rebuttal evidence. Documentary evidence may be received in evidence in the form of copies or excerpts or by incorporation by reference.
7. Notice may be taken of any fact which may be judicially noticed or which is a technical fact within the specialized knowledge of the Living Wage Division. Parties shall be notified of the material so noticed and shall be afforded an opportunity to contest the facts so noticed.
8. Where necessary, the Hearing Officer may order the production of additional documentation after the hearing, or a party may, on its own motion and with the approval of the Hearing Officer, submit additional evidence after the hearing. The Hearing Officer may accept such documentation over the objection of any party if the documentation is relevant to the proceeding and if the opposing party is given sufficient time after receipt of the documentation to review and comment on it. The Hearing Officer may in his/her discretion schedule an additional hearing within seven (7) days of receipt of the documentation in order to give all parties an opportunity to comment on the new evidence. Such additional evidence shall be made part of the record.
9. The Hearing Officer may grant the parties a maximum of two weeks to file written briefs or memorandum of law at the conclusion of the hearing.
10. Upon receipt of all documentation, the conclusion of all hearings and the receipt of any memoranda of law or briefs, the record of the proceeding shall be deemed closed.
11. All evidence presented at the hearing shall be considered in making a decision and shall be made part of the record of the hearing.

E. DECISIONS

1. Within 21 days of the closing of the record of the hearing, the Hearing Officer shall make a written recommendation to the Director on the issues of the hearing.
2. Within 10 days of receipt of the recommendation, the Director shall make a decision on all issues of the hearing. In the alternative, the Director may remand the matter back to the Hearing Officer to gather additional information or evidence and, if necessary, to hold an additional hearing. Any such additional hearing shall be conducted under the provisions of this Regulation.
3. All recommendations and decisions shall be kept as part of the record of the proceeding. The public shall have access to such documents after the Director makes a decision.

The Living Wage Administrator shall place a copy of each decision in the LWAC file. In addition, the Living Wage Administrator shall provide copies of the latest decisions to each member of the LWAC.

F. RECORD OF THE PROCEEDINGS:

1. The official record of the proceedings shall include but not be limited to the following:
 - a. applications;
 - b. affidavits;
 - c. notices;
 - d. all relevant information supplied by any party at the hearing or prior to the hearing;
 - e. Living Wage Division investigation reports;
 - f. inspection or investigation reports of other state, federal or local agencies;
 - g. records of notices sent to the parties;
 - h. documentary evidence and exhibits;
 - i. the sound recording and any other stenographic or other recording, if any;
 - j. the Hearing Officer's recommendation; including all findings of fact and law;
 - k. the decision of the Director;
 - l. any statement of reasons for the decision;
 - m. records of notices of the decision sent to the parties and filed with the LWAC; and
 - n. materials relevant to a proceeding where reconsideration was granted pursuant to Regulation 8(H).
2. Upon appeal, any party may obtain a certified copy of the record from the Hearing Officer by paying the reasonable cost of duplicating such record. Upon request, the Hearing Officer shall prepare such certified copy within a reasonable time.
3. Upon appeal, if any party makes a stenographic transcript of the hearing, such party, upon request, shall make available a certified copy of such transcript to the opposing party within a reasonable time and at a reasonable cost.

G. PARTIES AND REPRESENTATION

1. The following persons may be a party or represent a party at a hearing conducted pursuant to this Regulation. Such representation shall not be considered a substitution for the actual appearance of any party who is required to attend a hearing to give testimony and evidence:
 - a. the Covered Vendor;
 - b. a Beneficiary;
 - c. a Covered Employee who is employed by the Covered Vendor;

- d. an operating manager of the Covered Vendor or Beneficiary who is familiar with the Contract, Subcontract or Assistance which is the subject matter of the hearing;
 - e. an authorized representative of the Contracting or Awarding Department who is familiar with the contract or Assistance which is the subject matter of the hearing;
 - f. an attorney who is a member in good standing of the Bar of the Commonwealth of Massachusetts; or any law student or qualified paralegal who is under the direct supervision of such an attorney;
 - g. a member of a trade association who is appearing on behalf of the Covered Vendor;
 - h. a member of a labor union who is appearing on behalf of a Covered Employee.
2. Any person representing a party at a hearing shall file a Living Wage Division Appearance (*Form LW-11*) with the Living Wage Administrator or Hearing Officer.

H. RECONSIDERATION OF DECISIONS:

1. Request For Reconsideration

Within twenty (20) calendar days after receipt of a decision by the Director, any aggrieved party may submit a written Request for Reconsideration to the Living Wage Administrator. The Living Wage Administrator may grant an extension of time for submitting a Request for Reconsideration for good cause. Such Request shall set forth in detail the grounds for reconsideration including one or more of the following:

- a. That compelling evidence exists which was not previously available and which may result in the modification or reversal of the Director's decision;
- b. That compelling legal reasons exist which were not previously available and which may result in the modification or reversal of the Director's decision;
- c. That the aggrieved party has substantial evidence that evidence upon which the Director relied in making its decision was obtained through fraud, perjury, misrepresentation, harassment or intimidation; or
- d. That the aggrieved party failed to appear at the hearing for good cause including but not limited to any of the following reasons:
 - i. compelling evidence that the aggrieved party did not receive sufficient notice of the hearing as prescribed in this Regulation;

- ii. an unforeseen emergency which prevented the aggrieved party from attending the hearing or notifying the Living Wage Division in advance of such party's anticipated absence from the proceedings; or
- iii. a procedural irregularity occurred during the course of the proceedings before the Living Wage Division which substantially prejudiced the aggrieved party.

2. Reconsideration Procedure

a. Administrative Processing of Request

Upon receipt of a Request for Reconsideration, the Living Wage Division shall docket and time-stamp the Request. A Request, which is illegible, incomplete, without necessary or supporting documentation or otherwise improperly filed, shall be dismissed without prejudice and the aggrieved party shall be notified of such dismissal and the reasons therefor. The aggrieved party may refile the Request, within seven (7) days, properly completed. The Request for Reconsideration shall be provided to all the members of the LWAC and additionally, shall be placed in the LWAC file.

b. Granting or Denying Request

- i. Upon acceptance of the Request, the Living Wage Administrator shall review the Request on its face to determine whether reconsideration should be granted. If the Living Wage Administrator finds that the aggrieved party has presented sufficient grounds for reconsideration, the Living Wage Administrator shall order a new hearing.
- ii. If the Living Wage Administrator finds that the aggrieved party has presented insufficient grounds for reconsideration, the Living Wage Administrator may dismiss the Request without a hearing. No court appeal may be taken from such dismissal.
- iii. The decision to grant or deny shall be provided to all members of the LWAC and additionally, shall be placed in the LWAC file.

c. Notice of Hearing

Upon the scheduling of a reconsideration hearing, the Living Wage Administrator shall notify all parties in interest of the time, date and place of such hearing. The Living Wage Administrator shall also send to the opposing party a copy of the Request. Such notice shall include a statement of the issues to be heard at the hearing. The Living Wage Administrator shall provide notice of the hearing to each LWAC member and additionally, shall place a copy of the hearing notice in the LWAC file.

d. Appearance at Hearing

- i. The party requesting reconsideration shall have the burden of proof that the decision should be modified. Such aggrieved party shall be

required to personally attend the hearing to give testimony in satisfying his/her burden of proof.

- ii. Other parties to the initial proceeding should attend the hearing but shall not be required to do so. The Living Wage Administrator may order the opposing party to attend where circumstances make such attendance necessary. Failure of the opposing party to appear at the hearing may affect the opposing party's rights before the Living Wage Division and before a Court during any further or related proceedings.
- iii. Legal Counsel at a reconsideration hearing may represent any party. However, such representation shall not be in substitution of a party's required personal appearance at such hearing.

e. Hearings

- i. All reconsideration hearings shall be conducted in accordance with the provisions of Regulation 8.
- ii. Where reconsideration has been granted and the Director's original decision has been appealed to Court as provided in Regulation 15, the Director may intervene, if necessary, in the court proceedings and request that the court dismiss, remand or stay the proceedings pending reconsideration by the Director.

REGULATION 9. LIVING WAGE ADVISORY COMMITTEE:

A. PURPOSE

The purpose of the Living Wage Advisory Committee (LWAC) shall be to review the effectiveness of the Ordinance in creating and retaining Living Wage jobs in Boston, to promote access to Living Wage jobs for low and moderate income Bostonians, to review the implementation and enforcement of the Ordinance, and to make recommendations from time to time in connection therewith. The LWAC may request, from time to time, that the Living Wage Division compile information and provide it to the LWAC in order to effectuate these purposes.

B. COMPOSITION AND TERM

1. The LWAC shall be comprised of seven (7) members who shall be appointed by the Mayor:
 - a. One member of the Committee shall be a labor union member, appointed by the Mayor from a list of three (3) nominees recommended by the Massachusetts AFL-CIO;
 - b. One member of the Committee shall be a member of the Association of Community Organizations for Reform Now (ACORN), appointed by the Mayor from a list of three nominees recommended by ACORN;

- c. One member of the Committee shall be a member of a community-based organization operating solely within the City of Boston;
 - d. One member of the Committee shall be a member of the Greater Boston Chamber of Commerce, appointed by the Mayor from a list of three nominees recommended by the Chamber; and
 - e. One member of the Committee shall be a member of the Boston Chamber of Neighborhood Commerce, appointed by the Mayor from a list of three nominees recommended by the Neighborhood Chamber.
2. Each member of the LWAC shall serve a three-year term.

C. MEETINGS

1. The LWAC shall meet at least once every three (3) months. The LWAC may meet more frequently at the discretion of the Chairperson, upon recommendation by the Director to the Chairperson or at the request of four or more members of the LWAC. All meetings of the LWAC shall be open to the public as provided in General Laws, Chapter 30A, section 11A ½. In order to conduct business, a simple majority of the total membership of the LWAC must be present at a meeting.
2. Meetings shall be held at a time and place convenient for the public to attend.
3. To provide the general public with notice of a meeting of the LWAC, a notice shall be posted in the office of the Living Wage Division and the office of the City Clerk at least seven (7) days prior to the meeting. This notice shall include the meeting date, time, place, and a general description of the topic(s) to be addressed at the meeting. The Living Wage Administrator shall be responsible for properly notifying members of the LWAC at least fourteen (14) days prior to any meeting. The notice shall be mailed or e-mailed to any member of the public who makes a request to be placed on a mailing list for LWAC meetings. The Living Wage Administrator shall annually review and update the mailing list in a manner she/he deems fit.
4. At least two (2) working days prior to a meeting, the Living Wage Administrator shall prepare a draft agenda for such meeting. Said draft agenda shall be available at least two (2) working days prior to the meeting. The finalized agenda shall be distributed at the meeting to the members of the Committee and the members of the public who attend the meeting. Any member may place an item on the agenda by notifying the Living Wage Administrator at least three (3) working days prior to the meeting. Members of the public may request that an item be placed on the agenda at least three (3) working days prior to the meeting by calling or writing to the Living Wage Administrator. The Living Wage Administrator shall decide whether to include the item. Members of the Committee may raise any other business at the end of the meeting. The Chairperson shall decide whether such additional Committee items shall be discussed at the current meeting or tabled until the next scheduled meeting.

5. Members of the public shall be invited to participate in the discussions of the Committee in a manner deemed appropriate by the Chairperson of the Committee. The Chairperson may, in his/her discretion, limit each participant's remarks to a time period of not less than five (5) minutes.
6. Any member of the public who wishes to make a presentation to the Committee, which will take more than five (5) minutes, is required to notify the Committee at least seventy-two (72) hours prior to the meeting by calling or writing to the Living Wage Administrator. The request should include the topic to be discussed and the approximate amount of time needed for the presentation. The Chairperson at the meeting, or the Living Wage Administrator, prior to the meeting, may limit the presentation to no less than ten (10) minutes.
7. Written comments and suggestions from the public prior to the meeting or one week after the meeting will be gratefully received and carefully considered. Any such written comments will be included as part of the record of the Committee.
8. Except for the promulgation of Regulations as provided in Regulation 10(C)(3), a simple majority of the members of the LWAC present at a meeting shall be necessary to carry any vote on any motion.

D. CONFLICT OF INTEREST

No member of the LWAC shall participate in any proceeding concerning a Beneficiary, Covered Vendor, Covered Subcontractor, Covered Employee, or Applicant for Exemption, General Waiver, or Hardship Waiver, if the member or any member of his or her immediate family has a direct or indirect financial interest in said person, in the award of a Service Contract, Service Subcontract, or Assistance to said person, or in the granting of relief to said person.

REGULATION 10. ADOPTION, AMENDMENT OR REPEAL REGULATIONS:

The Director shall draft Regulations for the purposes of implementation and enforcement of the Ordinance.

A. PUBLIC HEARING PROCEDURE

All hearings regarding Regulations adopted, amended or repealed, shall be conducted in accordance with the provisions of General Laws, Chapter 30A, section 2 as follows:

1. At least twenty-one (21) days prior to the date of a public hearing regarding Regulations adopted, amended or repealed, the Living Wage Division shall give notice of such hearing by:

- a. publishing notice of such hearing in such manner as is specified by any law, or, if no manner is specified, then in such newspapers, and, where appropriate, in such trade, industry or professional publications as the agency may select;
 - b. notifying any person to whom specific notice must be given, such notice to be given by delivering, e-mailing or mailing a copy of the notice to the last known address of the person required to be notified;
 - c. notifying any person or group who is on the LWAC mailing list as provided in Regulation 9 (C)(3) that an Emergency Regulation has been promulgated along with a brief statement of its content;
 - d. notifying all members of the LWAC; and
 - e. filing a copy of such notice with the City Clerk and the Secretary of the Commonwealth of Massachusetts.
2. The notice shall state that the hearing is being held pursuant to the Ordinances.
 3. The notice shall give the time and place of the public hearing, shall either state the express terms or describe the substance of the proposed Regulation, and shall include any additional matter required by any law.
 4. The public hearing shall comply with any requirements imposed by law, but shall not be subject to the provisions of General Laws, Chapter 30A governing adjudicatory proceedings.

B. EMERGENCY REGULATIONS

1. If the Director finds that immediate adoption, amendment or repeal of a Regulation is necessary for the preservation of the public health, safety or general welfare, and that observance of the requirements of notice and a public hearing would be contrary to the public interest, the Director may dispense with such requirements and adopt, amend or repeal the Regulation as an Emergency Regulation. Within five (5) business days after the Director promulgates an Emergency Regulation, the Living Wage Administrator shall:
 - a. send copies of the Emergency Regulation to each member of the LWAC and place a copy in the LWAC file;
 - b. send to interested members of the public, who are on the LWAC mailing list as provided in Regulation 9 (C)(3), notification that an Emergency Regulation has been promulgated along with a brief statement of its content.
2. The agency's finding and a brief statement of the reasons for its finding shall be incorporated in the Emergency Regulation as filed with the City Clerk.

3. An Emergency Regulation shall not remain in effect for longer than three months unless during that time the Living Wage Division gives notice and holds a public hearing as required in this Regulation and files notice of compliance with the City Clerk and the Secretary of the Commonwealth of Massachusetts.

C. PROMULGATING REGULATIONS

1. The Director and/or Living Wage Administrator shall conduct all public hearings regarding the adoption, amendment or repeal of Regulations pursuant to this Regulation. Members of the LWAC may attend and assist in the conduct of all public hearings.
2. After the public hearing regarding the adoption, amendment or repeal of any rule or Regulation pursuant to this Regulation, the Living Wage Administrator shall draft any proposed Regulation or amendment. The Living Wage Administrator shall present the draft Regulation or amendment to the Director for his/her review. The Director shall instruct the Living Wage Administrator to make changes, if any. Once the draft Regulation is in a form deemed correct and appropriate by the Director, the Living Wage Administrator shall provide members of the LWAC with copies.
3. The LWAC, at its next scheduled meeting or at a special meeting, as provided in Regulation 9(C)(1), shall discuss the proposals and may suggest changes it deems appropriate. After the discussion, the LWAC shall vote to recommend to the Director any changes to the Regulations or amendments. A simple majority of the total membership of the LWAC shall be necessary to carry any vote.
4. If the Director does not agree with any or all of the changes suggested by the LWAC, the Director shall meet with the LWAC to discuss the Regulation or amendment. After meeting with the LWAC, the Director shall, within his/her discretion, approve the final draft of the Regulation or amendment. The Living Wage Administrator shall be responsible for drafting all Regulations, amendments and/or changes thereto.
5. Once the Director approves a Regulation or amendment, the Regulation or amendment shall be filed immediately with the City Clerk and Secretary of the Commonwealth of Massachusetts, and it shall go into effect immediately unless otherwise indicated on the face of the Regulation.

REGULATION 11. HEARING OFFICERS:

A. DESIGNATION OF HEARING OFFICERS

1. The Living Wage Administrator or his/her designee shall act as Hearing Officer and shall process all cases and conduct all adjudicatory hearings before the Living Wage Division.

2. Upon the docketing of a case, the Living Wage Administrator shall assign a case to him/herself or a Designee in a manner as determined by the Living Wage Administrator.
3. Upon acceptance of the case, the Hearing Officer shall review the file and may request any additional information from any person or party.

B. DISQUALIFICATION OF HEARING OFFICERS:

At no time shall a Hearing Officer take part in a hearing concerning a Beneficiary, Covered Vendor, Covered Employee, or an Application for General Waiver or Hardship Waiver or Exemption, if the Hearing Officer or any member of his or her immediate family has a direct or indirect personal or financial interest in the outcome or a personal bias. Any party may request that the Director disqualify the Hearing Officer by filing a written request with the Director at least three (3) days prior to the hearing. Any such request shall be considered at or before the hearing by the Director and shall be determined as a part of the official record.

REGULATION 12. SUBPOENA POWER:

If necessary for the enforcement of the Ordinance or these Regulations, the Living Wage Division may issue subpoenas, compel the attendance and testimony of witnesses and production of books, papers, records and documents relating to payroll records necessary for hearing, investigations, and proceedings. The Living Wage Division may apply to a court of competent jurisdiction to enforce these provisions.

REGULATION 13. COMPLAINTS AND INVESTIGATIONS:

A. LIVING WAGE COMPLAINT (FORM LW-3)

1. Any person or employee who believes that he or she is a Covered Employee or a person who is an applicant for a position to be filled by a Covered Employee and believes that his or her employer is not complying with requirements of the Ordinance or Regulations applicable to the employee, may file a **LIVING WAGE COMPLAINT (FORM LW-3)** with the Living Wage Administrator.
2. Complaints by Covered Employees of alleged violations may be made at any time.
3. Written or oral statements, made by an employee, shall be treated as confidential and shall not be disclosed to the Covered Vendor without the written consent of the employee. An employee may waive this right of confidentiality to allow the Living Wage Administrator to investigate the complaint as thoroughly as possible.
4. In addition to complaints filed under Regulation 13(A)(1), any other person may file a *LIVING WAGE COMPLAINT (FORM LW-3)* with the Living Wage Administrator, who shall provide a copy of the complaint to each Covered Vendor against whom the complaint is made within five (5) business days of receipt of

the complaint.

B. NON-COMPLIANCE

1. The Living Wage Administrator shall investigate all complaints of non-compliance. Investigations may include routine reviews, spot checks, and investigations pursuant to complaints. The Living Wage Administrator shall have the responsibility to examine promptly all payrolls for compliance upon receiving a complaint, in furtherance of any investigation.
2. If the Living Wage Administrator finds evidence that a Covered Vendor is not in compliance or has violated any of the provisions of the Ordinance or these Regulations, he/she shall make a recommendation to the Director for remedial measures to be taken. The Director shall order such remedial measures as required to ensure compliance herewith including, but not limited to: ordering back-pay to Covered Employees for non-compliance with Regulation 4 and such additional penalties or remedies as set forth in Regulation 14.
3. If the Covered Vendor does not comply with the order of the Director within ten (10) business days, the Director shall review the facts of the finding and may proceed with a formal hearing and investigation. The Living Wage Administrator shall conduct any such hearing pursuant to Regulation 8.
4. If the Living Wage Administrator holds a hearing, he/she shall make recommendations to the Director based upon the evidence in the record. Based upon the Living Wage Administrator's recommendation, the Director shall make findings on the matter. Such findings may include a finding that the covered vendor is not in violation or it may include remedies and penalties as provided in Regulation 14. The Living Wage Administrator shall send notice of the Director's findings to members of the LWAC.
5. If the Director, based upon the recommendation of the Living Wage Administrator, finds that there is insufficient cause to proceed with any further investigation including a hearing, the Director shall so notify the LWAC and provide a statement of the reasons for the decision.
6. Upon receipt of the Director's findings of non-compliance, the Chairman of the LWAC shall schedule a special meeting of the LWAC, as provided in Regulation 9(C)(1). At the special meeting, the Director or Living Wage Administrator shall discuss the matter with members of the LWAC.
7. After reviewing any findings of non-compliance with the Director and/or Living Wage Administrator, the LWAC shall determine the need for an additional public hearing. If a hearing is deemed necessary, it shall be scheduled and conducted by the LWAC, in conjunction with the Living Wage Administrator, within twenty (20) business days of the Director's notification to the LWAC of a Covered Vendor's non-compliance. The LWAC shall file a notice of the hearing seven (7) working days before such hearing with the City Clerk, the Covered Vendor, and the complaining party or parties. All hearings under this section shall be conducted in accordance with the provisions of Regulation 8.

8. At the conclusion of all hearings and investigations, the Director shall issue a decision including any orders, remedies or penalties as provided in Regulation 14. All parties and the LWAC shall be notified of the Director's decision as provided in Regulation 8.

C. DISCRIMINATION OR RETALIATION AGAINST COVERED EMPLOYEES BARRED

1. If a Covered Vendor discharges, reduces the compensation of, or discriminates against any Covered Employee or any other person for making a complaint to the Living Wage Division, or otherwise asserting his or her rights under the Ordinance or Regulations, participating in any of its proceedings, or using any civil remedies to enforce his or her rights under the Ordinance or Regulations, the Covered Vendor shall be considered in violation of the Ordinance.
2. Any person may file a Living Wage Complaint (*Form LW-3*) alleging retaliation or discrimination by a Covered Vendor against an employee.
3. The Living Wage Administrator shall investigate allegations of retaliation or discrimination and shall, if found to be true, after notice and a hearing, make a recommendation to the Director to order appropriate relief to the employee or person and penalties for the Covered Vendor as provided in Regulation 14 including but not limited to the suspension of the Service Contract or ordering the Service Contractor to suspend the Service Subcontract. The Director shall make appropriate orders after reviewing the Living Wage Administrator's recommendation.
4. All hearings held to investigate allegations of discrimination or retaliation shall be adjudicatory hearings and conducted in accordance with the provisions of Regulation 8.

D. INVESTIGATIONS INITIATED BY THE LIVING WAGE DIVISION

1. Where information is brought to its attention, the Living Wage Division, on its own initiative, may investigate possible violations of the Ordinance.
2. If the investigation reveals possible violations of the Ordinance, the Director shall review the facts and may proceed with a formal hearing. Any such hearing shall be conducted pursuant to Regulation 8.
3. At the conclusion of all hearings and investigations, the Director shall issue a decision including any orders, remedies, or penalties as provided in Regulation 14. All affected persons, including the LWAC, shall be notified of the Director's decision as provided in Regulation 8.

REGULATION 14. PENALTIES AND REMEDIES:

A. In the event that the Director determines, after notice and hearing, that any Covered Vendor has failed to pay the Living Wage rate or has otherwise violated the provisions of this Ordinance, the Director may order any or all of the following penalties and relief:

1. fines in the amount of \$300 for each Covered Employee for each day that the Covered Vendor is in violation of the Ordinance;
2. the filing of a complaint with the pertinent state or federal agency;
3. wage restitution for each affected employee;
4. suspension of ongoing Service Contracts and Service Subcontract payments;
5. ineligibility for future Service Contracts or Service Subcontracts with the City for three (3) years or until all penalties and restitution have been paid in full; and/or
6. any other action deemed appropriate and within the discretion and authority of the City.

B. REMEDIES HEREIN NON-EXCLUSIVE

No remedy set forth in these Regulations is intended to be exclusive or a prerequisite for asserting a claim for relief to enforce the rights granted under the Ordinance in a court of law. The Ordinance shall not be construed to limit an employee's right to bring a common law cause of action for wrongful termination.

REGULATION 15. JUDICIAL REVIEW:

Except as provided in Regulation 8 (H)(2)(b)(ii), any decision of the Living Wage Division, under the Ordinance or any Regulation may be appealed in the manner prescribed under General Laws Chapter 249, section 4.

REGULATION 16. STATUTORY CONSTRUCTION:

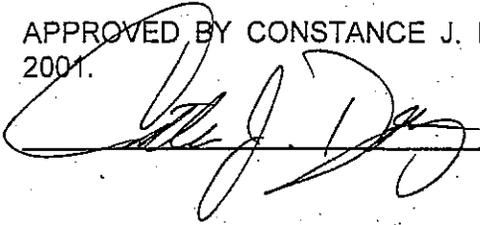
The provisions of these Regulations are severable, and if any court of competent jurisdiction shall hold any provisions unconstitutional or otherwise invalid, the decision of such court shall not affect or impair any of the remaining provisions.

REGULATION 17. EFFECTIVE DATE:

These Regulations shall take effect on January 23, 2001 2001.

APPROVED BY THE LIVING WAGE ADVISORY COMMITTEE, THIS 22nd DAY OF JANUARY 2001.

APPROVED BY CONSTANCE J. DOTY, DIRECTOR THIS 23rd DAY OF JANUARY 2001.

A handwritten signature in black ink, appearing to read "C. J. Doty", is written over a horizontal line. The signature is stylized and cursive.