

The State of the
LIVING



WAGE

in Buffalo New York

A Report by the City of Buffalo Living Wage Commission

December 6, 2006



City of Buffalo *Living Wage Commission*

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Summary and Recommendations

Buffalo's Living Wage Ordinance has had a real but modest impact, with six employers coming into compliance and roughly 170 workers obtaining a living wage because of the Ordinance. Several employers, including the City itself, are not yet in compliance with the Ordinance, and the City still has not made the Living Wage a routine part of the way all of its departments do their contracting and contract compliance work.

The City stands at a crossroads. It has the opportunity to reach many more workers and maximize the beneficial effects of the Ordinance by taking these steps:

1. Move promptly to obtain a living wage for the emergency medical technicians of Rural/Metro Medical Services;
2. Amend the Ordinance as of January 1, 2007 to adjust the living wage rate for inflation;
3. Bring the City itself into compliance with the Ordinance by paying all City employees a living wage;
4. Improve the City's contracting and contract compliance processes and create a publicly accessible data base of all City contracts;
5. Work with the Board of Education to bring the living wage to all its employees;
6. Explore the possibility of expanding the Ordinance to cover economic development subsidies, as many living wage ordinances around the country do;
7. Advocate for living wage policies with other municipalities and authorities in western New York.

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Introduction

Since Buffalo passed its Living Wage Ordinance in 1999, the idea of a living wage has grown increasingly popular around the country. At this point, roughly 150 localities have passed living wage policies. Polls have shown that the vast majority of Americans (84%) support the living wage concept: a person who works full-time should earn enough to avoid poverty. Studies of cities with living wage laws have found that the laws work: that is, they succeed in raising wages above poverty level without a significant loss of jobs or cost to the taxpayers.¹

The need for living wage jobs is particularly urgent in cities like Buffalo, where 26.9% of households live in poverty as defined by the federal government. The poverty rate is even more alarming for African-American residents (33%) and Hispanic residents (43%). Given that the federal government's poverty definition is outdated and badly flawed, most observers would say that the real poverty rates are much higher.

When the Common Council passed the Living Wage Ordinance unanimously, it made some important legislative findings:

- “Far too many working Buffalo residents and their families live below or near the poverty line.”
- “Underpaying employees . . . fosters high turnover, absenteeism, and lackluster performance” and lowers the “quality of services rendered . . . to the city and to the public.”
- A living wage policy will have beneficial effects in terms of homeownership, property tax revenue, crime reduction, reduced use of public assistance, and improved educational outcomes.

In other words, the living wage is not just an issue of justice and equality; it is also a community economic development strategy. A recent article on the living wage in *Time* magazine makes these links clear. It compares neighborhoods in Pittsburgh and Cincinnati with high concentrations of janitors and other service workers.

In Pittsburgh, where these workers have benefited from a strong living wage movement, these neighborhoods have seen poverty decline and homeownership rise. In the comparable Cincinnati neighborhoods, where service workers are not paid living wages, poverty – with the related problems of crime, drug use, and truancy – runs rampant.²

¹ For a useful summary of the research see “The Economic Impact of Living Wage Ordinances” (2004), by Mark D. Brenner, University of Amherst – Massachusetts, at wwwx.oit.umass.edu/~peri/html/3/163.html

² “Trying to Make A Decent Living,” *Time*, June 26, 2006

Buffalo's Living Wage Ordinance

Buffalo's Ordinance applies to the City itself and to private employers with more than ten employees who make service contracts with the City in which the City pays or receives more than \$50,000. It also applies to subcontractors. The Ordinance requires employers to pay a living wage and to file quarterly reports with the Living Wage Commission.

The Ordinance set the living wage rate as follows:

	With health benefits	Without health benefits
2000	\$6.22	\$7.22
2001	\$7.15	\$8.15
2002	\$8.08	\$9.08
2003	\$8.08	\$9.08
2004	\$9.03	\$10.15

Unlike most living wage ordinances, the Buffalo Ordinance does not include an automatic cost of living adjustment. The rate has not been adjusted since 2004 and so remains fixed at \$9.03/\$10.15.

The Ordinance does not apply to professional contracts, such as architectural and legal contracts, and it does not apply to employees who are covered by state prevailing wage laws. Most of the City's service contracts fall under prevailing wage laws, so the number of private employees affected by the Ordinance is quite small.

Enforcement and monitoring of the Ordinance is entrusted to the Living Wage Commission, which includes one appointee of the Mayor, one appointee of the Common Council, and seven appointees designated by community groups such as the Network of Religious Communities and the Buffalo Niagara Partnership.

Employees have the right to file grievances with the LWC, as well as to file lawsuits against employers who violate the Ordinance. Penalties can include suspension or termination of contracts with the City and awards of back wages.

Community Partners

The LWC Commissioners serve as volunteers, and the LWC receives no funding from the City. Significant support has come from:

- Cornell University ILR School, which not only provides the Commission Chair, Lou Jean Fleron, but also provides office space, support staff, and a wealth of other services;
- University at Buffalo Law School, which has provided law student externs, supervised by Professor Sara Faherty, to serve as staff for the LWC;
- Coalition for Economic Justice, led first by Maria Whyte and now by Allison Duwe, which provided volunteer staff for the LWC through spring 2006 and which remains a vital community partner dedicated to the Living Wage Ordinance.
- Volunteer lawyers Steve Halpern and Sean Ryan, who brought the lawsuit leading to the creation of the LWC. Mr. Halpern has served as ongoing counsel to the LWC and has dedicated an enormous amount of time and talent to furthering its work;
- The Margaret L. Wendt Foundation, which awarded a grant to the LWC allowing it to hire a part-time compliance coordinator for one year. The LWC hired Sam Magavern, an attorney with experience in local government and public policy, to serve from February 2006 to February 2007.

Implementation and Enforcement of the Ordinance

The original Ordinance, passed in 1999, took effect in 2000. However, the City did little to implement the Ordinance until citizen groups sued the City in 2002 to demand implementation. The settlement of that lawsuit resulted in the amendment of the Ordinance and the creation of the LWC, which began meeting in November 2003.

In 2004, the LWC developed forms and processes to implement the Ordinance and began bringing employers into compliance. Since that time, the LWC has worked with six employers who have chosen to come into compliance voluntarily: Allied Waste (formerly BFI), Central Parking, Buffalo Civic Auto Ramps, All Pro Parking (formerly Pro Park), Mercantile Adjustment and Phoenix Frontier.

As a result of these actions, roughly 170 employees have received wage increases. Another 40 or so workers were found to be covered by the Ordinance and already receiving a Living Wage.

In 2006, with the vital assistance of its grant from the Margaret L. Wendt Foundation, the LWC has taken many steps forward:

- Creating a hearing process and holding its first compliance hearing regarding an employer alleged to have violated the Ordinance.
- Developing a grievance form that employees can use to complain to the LWC that the Ordinance has been violated. So far, eleven employees from two employers have used the grievance form to file grievances.
- Creating data rules regarding freedom of information and confidentiality.
- Revising the employee rights poster, quarterly report form, and application for contract form used by employers to make them clearer and easier for employers to use.
- Posting the ordinance, the forms, and frequently asked questions on the City's website (www.ci.buffalo.ny.us/Home/Leadership/Living_Wage_Commission).
- Reviewing 110 new contracts for Living Wage compliance issues.
- Obtaining from the Comptroller a list of 289 leases and other agreements made by the City in this and previous years and reviewing them for compliance issues.
- Preparing explanatory materials for city departments, employers, and the public on the Living Wage Ordinance.
- Reaching out to subcontractors covered by the Ordinance to ensure compliance.
- Monitoring compliance by currently covered employers.
- Bringing two new employers into compliance with the Ordinance, and working to bring an additional four employers into compliance.
- Researching legal issues, including the scope of the Ordinance, the subpoena power of the LWC, and the due process rights of employers and employees.
- Meeting with City departments to review the Ordinance and compliance issues.

- Working with Cornell University ILR, UB Law School, and the Coalition for Economic Justice to plan a national “Living Wage and Beyond” conference for September 27, 2007.

Current Living Wage Issues Facing the City

Rural/Metro Medical Services

Rural/Metro Medical Services signed a contract with the City as of March 1, 2005 to be the exclusive provider of ambulance services for the City’s 911 system. After reviewing the contract, the LWC wrote to Rural/Metro on September 19, 2005 asking it to come into compliance with the Ordinance. After attempts to achieve voluntary compliance failed, the LWC held a public hearing on May 10 and May 11, 2006 and made findings and recommendations calling on Rural/Metro to re-negotiate its contract with the City and come into compliance. Since that time, the LWC has been engaged in settlement negotiations with Rural/Metro and the City attempting to resolve the case.

Cost of Living Adjustment (COLA)

Most living wage ordinances include an automatic cost of living adjustment each year, pegged to the annual inflation rate. A COLA provision is necessary to prevent the living wage rate from suffering the same fate as the federal minimum wage and failing to fulfill its goal of keeping working families out of poverty. Buffalo’s Ordinance lacks a COLA, and its living wage rate has not been adjusted since January 1, 2004, with the result that the rate has been eroded by three years of inflation.

Without an automatic COLA provision, employees and employers are left to wonder when and how much the rate will be adjusted. In conversations with the LWC, covered employers have not complained about possible rate increases, but they have complained about the uncertainty created by the lack of a predictable mechanism.

On July 12, 2006, the LWC passed a resolution recommending a COLA amendment to the Ordinance. The LWC’s proposal would adjust the rate as of January 1, 2007 to reflect the inflation that took place in 2004 and 2005. It would make future adjustments automatic, so that, for example, on January 1, 2008, the rate would be adjusted based on 2006 inflation. By sticking with the calendar year, and providing a one-year lag time between the inflation and the adjustment, the LWC proposal makes the COLA as simple and predictable as possible for employers.

Meetings with Common Councilmembers showed widespread support for the COLA. Councilmember Fontana has introduced an amendment which would adjust the rate as of January 1, 2007 to \$9.59 with health benefits and \$10.77

without: roughly a 50 cent increase. He has indicated his intent to follow up with a separate amendment adding the automatic COLA.

Even with the COLA, Buffalo's living wage rate would be lower than that of comparable cities such as Rochester, Syracuse, and Albany. The 2006 rate in Albany, for example, is \$10.25 with health benefits, and \$11.91 without.

Currently, the Corporation Counsel is reviewing the proposed ordinance amendment for its legality, particularly regarding its impact on the Buffalo Fiscal Stability Authority wage freeze. The LWC has offered its opinion that the amendment would not violate the wage freeze because

- (i) under state law, the wage freeze only applies to wage increases made pursuant to collective bargaining agreements or analogous contracts;
- (ii) even if the wage freeze applied, it would simply suspend the wage increases due to city employees until the freeze was lifted; it would not invalidate the ordinance amendment or prevent its application to private employers.

City Workers

In May 2006, the LWC learned that there are a large number of city workers who make less than the living wage rate (the Living Wage Ordinance applies to the City as well as to private employers). Some of these are described as seasonal employees, others as interns. The LWC flagged this issue for the Mayor and his administration and asked the City to come into compliance.

Finance Commissioner Estrich has advised the Common Council that the seasonal employees active on the payroll include:

- 159 Crossing Guards
- 286 Various Interns
- 63 Laborer II
- 4 Clerk
- 5 Senior 1st Class Stationery Engineers (will increase to approximately 60 during the heating season)
- 2 Senior Citizen Aide
- 3 Bridge Operating Engineer.

Although Commissioner Estrich's memorandum gives salary levels only for the Crossing Guards (\$7.09 - \$8.25 per hour with health care benefits), it is the LWC's understanding that the Interns and Laborers also make less than a living wage.

The LWC has given its opinion that, for the reasons given above in discussing the COLA, coming into compliance with the Living Wage Ordinance would not violate the BFSA wage freeze. In addition, the LWC has noted that all City employees were entitled to the current living wage rate of \$9.03/\$10.15 as of January 1, 2004 – before the wage freeze took effect in April 2004.

City Contracting and Compliance Processes

From the first, the LWC has wrestled with the challenge of integrating the Ordinance into the City's bidding, contracting, and contract compliance processes, and of making the relevant information easily accessible to the LWC and to the public at large. Some of the obstacles have been:

- There is no central, easy-to-use data base of City contracts.
- For the most part, the various City departments handle their own bidding and contracting processes. All City departments received Living Wage training in 2004 or 2005, but this training did not lead to consistent implementation of the Ordinance. A number of departments, including Police, Fire, and Strategic Planning, have not responded to LWC contacts in 2006.
- The office of contract compliance was not staffed for several years, and so processes integrating contract compliance into the bidding and contracting procedures were lost and have to be re-invented.

The Scope of the Living Wage Ordinance

The effectiveness of Buffalo's Ordinance has been hindered not only by problems of implementation and compliance, but also by the narrow scope of the Ordinance itself. Except, perhaps, when they contract with the City, the Ordinance does not apply to:

- The Buffalo Board of Education. In his 2003-2005 audit of the Board of Education, the City Comptroller noted that there were 1,374 Board of Education employees making less than a living wage, of whom over 98% were Buffalo residents. Food service workers, for example, earn as little as \$8.25 per hour with no health benefits. The Comptroller recommended that the Board of Education adopt a Living Wage policy consistent with the City's. The City provides roughly \$70 million to the schools each year. As a major funder, the City can play a leadership role in helping the Board of Education to create and implement a living wage policy.
- Independent authorities such as the Buffalo Sewer Authority, Buffalo Water Authority, the Buffalo Municipal Housing Authority, and the Niagara Frontier Transportation Authority.

- Industrial Development Authorities. Reform legislation which would have added a living wage component to IDA subsidies was introduced but did not become law in the state legislature last year.
- Development subsidies offered by the City itself or by independent agencies such as the Buffalo Economic Renaissance Corporation (BERC). (The Ordinance may apply, at least in part, to the Buffalo Urban Renewal Agency, because the state law on urban renewal agencies states that “provisions of state and local law applicable to the letting of public works and purchase contracts by the municipality for which an agency is established shall apply to the same degree and extent to such agency.” NY CLS Gen. Mun. § 554-a.)
- Erie County, and other municipalities such as Amherst and Cheektowaga.

The Future of the Living Wage in Western New York

So far, Buffalo’s Living Wage Ordinance has had a real but modest impact, resulting in raises for approximately 170 employees of businesses that contract with the City of Buffalo. Full implementation of the Ordinance could dramatically increase that number. If the City itself and the private employers with whom the LWC is currently working come into full compliance, the result could be wage increases for approximately 800 more workers. In other words, we currently have the opportunity to make the Ordinance roughly five times more effective.

Even if the Ordinance reaches 1,000 workers, however, its impact will remain relatively small. To become a truly effective economic development and anti-poverty tool, the Living Wage policy would need to be expanded in one or more directions: to reach, for example, the schools, development subsidies, other municipalities, and independent authorities. The City has an important role to play in expanding its living wage policy: both by increasing its own Ordinance’s scope and also by advocating with other local governments and authorities, particularly those, such as the School Board, that it directly funds.

The City also has basic work to do in improving its contracting process so that the Living Wage Ordinance is always included in the appropriate bids and contracts, the City’s contract compliance staff are involved in the contracting process from the beginning, and City staff, the LWC, and the public all have easy access to information about how contracts are being awarded and how contract compliance is being ensured. Contracting is a huge part of the way that the City does business, but it has not yet received the priority, the scrutiny, and the reform that it requires in order to function more fairly, efficiently, and transparently.