

City of Syracuse

Department of Audit

Philip J. LaTessa

City Auditor

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**To: The Honorable Matthew J. Driscoll, Mayor
The Honorable Bea Gonzalez, President
The Honorable Members of the Common Council**

From: Philip J. LaTessa

Re: Report on the City Of Syracuse Living Wage Ordinance Implementation

Date: October 3, 2006

The attached report presents the results of our inquiry into the efforts of the City of Syracuse to adopt and enact Living Wage Legislation for the purposes of promoting productivity and workplace stability, increasing consumer income, decreasing poverty, invigorating the central New York community, and reduce the need for taxpayer-funded social service programs.

Based on the findings included in the attached report, we recommend that the City administration and the Living Wage Advisory Committee, which was established as a component of the legislation passed by the City, follow through on the specific requirements that were enacted by the Living Wage Ordinance approved in May 2005 instead of ignoring key requirements of the legislation.

In our research, we found that:

- The administration and the Common Council failed to oversee the staffing of the Living Wage Advisory Committee as required by ordinance
- The Living Wage Advisory Committee failed to meet as required for practically one entire year
- The City failed to produce an annual report for use by the Mayor, the Common Council and the Advisory Committee as required
- The City's informal extension of parking garage management contracts have effectively circumvented the spirit of the legislation adopted in 2005

If there are problems with the particular legislation that was adopted on May 23, 2005, the administration and the Common Council should work together to resolve these problems. Otherwise, the City has the obligation to, at a minimum, enforce what has been enacted, and potentially, if there is still a strong belief in the benefits versus the negatives (a 2002 Public Policy Institute of California report examining 36 cities with such laws-including Boston, Baltimore, Chicago, Denver and Detroit- found that slight job losses caused by the law were more than compensated by the decrease in family poverty), to work to expand the impact throughout the community in a joint effort with Onondaga County.

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Report of the Elected City Auditor

Matthew J. Driscoll, Mayor
City of Syracuse, New York

Bea Gonzalez, President Common Council
City of Syracuse, New York

Members of the Common Council
City of Syracuse, New York

Report on the City of Syracuse Living Wage Ordinance Implementation

Introduction:

Dissertations, discussions and debates centering on the ethical and economic aspects of what has been described at various times as “a worker’s Living Wage” and “a living and saving wage” date back to the beginning of the twentieth century. At the start of the twentieth century, the Social Democratic Party included the “living wage” in its platform. As recently as October 2005, Senator Ted Kennedy lobbied from the floor of the U.S. Senate for a higher federal minimum wage saying “We hear a great deal in this body about family issues, about family responsibilities, family obligations... These are men and women who are earning the minimum wage and who are trying to provide for their families on that minimum wage. They know they cannot do it. So they have one or two or even three minimum wage jobs. How much time do they have with their children? They are trying to provide for their children but have no time to spend with them.”

In spite of such impassioned speeches, momentum to increase the minimum wage has been stalled in recent years. While the federal government has floundered, many cities and counties around the country have taken action to require a “living wage” be paid to employees of government contractors. Today, more than 75 living wage campaigns are underway in cities, counties, states and college campuses across the country. Taken collectively, the efforts of mainly local grassroots organizers have been dubbed the national living wage movement.

The history of the living wage movement in Syracuse City Government dates back to 1997 when the Common Council unanimously approved Resolution #60R on December 22, 1997. The resolution was very descriptive in stating the objectives of the legislation; it outlined the responsibility of the City of Syracuse to establish an economic development policy calling for jobs that lead to economic self-sufficiency for residents, to establish as a matter of affirmative public policy conditions that moves workers and their families beyond poverty level conditions, recognizing that a strict low-bid contracting policy can contribute to the setting of poverty-level wages and no medical insurance benefits. This resolution requested that entities receiving a contract or subsidy from the City of Syracuse pay its employees a living wage. However, being a resolution, the legislation passed that day was non-binding on those contracting with the City of Syracuse, gave no specific requirements and was ultimately unenforceable.

In the spring of 2002, the Common Council started debating the living wage issue again with the intention of ensuring that the action taken by the legislative branch of City government would be enforceable. The action brought before the Common Council was an ordinance to amend the Revised General Ordinances of the City of Syracuse, as amended, to add a new Chapter 49 entitled “A Living Wage Law for the City of Syracuse”. In debating the proposed living wage legislation, concerns were expressed about legalities, particularly potential conflicts with the City Charter.

Supporters of the living wage ordinance saw the discussions taking place in an environment where, nationally, wages for the bottom 10% of wage earners fell by 3.9% between 1979 and 1999. Locally, the statistics compiled for 2000 showed that out of the 59,568 households in the City of Syracuse, 21.7% of the families fell below the poverty level. Of this segment, 64.1% were female householder families with related children under five years of age. This means that 8,286 families (13.9%) out of 59,568 were below the poverty level and containing under-five year old children. In comparison, Buffalo (population of 292,648 versus Syracuse’s population of 147,306) had 122,720 total households with 23% of the families below the poverty level. Out of this segment, 35% were female householder families with related children under five, or a total of 9,879 families (8%) below the poverty line with under-five children. In spite of these types of statistics entering the debate, much of the discussion centered on the financial impact to various segments of the community if the living wage legislation was passed.

Because he felt there were a number of questions left unanswered related to the proposed living wage legislation, the Mayor decided to appoint a 12 member Commission to thoroughly study the issue. He stated that he believed a majority of the councilors would want to have all the information available before making a decision. As it turned out, the Council chose to not hold off on its taking action and proceeded at the May 20, 2002 regular meeting to vote on the ordinance in front of the Council. By a vote of three in favor to six opposed, the ordinance to amend the Revised General Ordinances failed to be approved.

During the same period, discussions took place at the county level regarding the Living Wage movement. It was generally regarded that any action taken by the City of

Syracuse would be extremely limited unless other governmental entities (i.e. the county, New York State) also took similar positions and required a broader spectrum of participation. At that time, the Living Wage issue was considered by county legislators but not pursued.

In spite of the Council's rejection of the City legislation in the spring of 2002, the Commission continued to work on a first draft report over the next three years. Members anticipated having their first draft done either in the summer or early fall of 2005, with the major reason for the lengthy period until completion being that the Commission wanted to fully investigate the true impact of the Syracuse Common Council legislating a living wage ordinance.

On April 18, 2005, the Common Council held a public hearing on the proposed living wage ordinance. After approximately one month, the legislation, a revision of the 2002 ordinance, now entitled an ordinance to amend the Revised General Ordinances of the City of Syracuse, as amended, to add a new Chapter 50 entitled "City of Syracuse Living Wage Ordinance" was brought to a vote on May 23, 2005.

A synopsis of the requirements/provisions of the adopted Living Wage Ordinance (Ordinance #25-2005) is as follows:

PURPOSE (Section 50-1):

The purpose of the legislation is to ensure that employees of contractors and subcontractors with the City of Syracuse earn an hourly wage that will enable such employees and their families to live above the federal poverty level and reduce or eliminate their reliance on taxpayer-funded social services.

DEFINITIONS (Section 50-2):

Included in the definitions are:

"Contractor" – A contractor means any person or entity that enters into a service contract with the City, or the Syracuse City School District for the limited purpose of City awarded service contracts only, except other City agencies.

"Employer" – An employer means a contractor or subcontractor that provides a service to the City under a service contract or to the Syracuse City School District under a City awarded service contract in the amount of Twenty Thousand Dollars (\$20,000) or more. This definition shall not govern any service contract where the City retains a contractor pursuant to the terms of a service contract awarded by the federal government, the State of New York, the County of Onondaga, or any other municipal corporation as permitted under applicable federal, state or local law or under an intermunicipal agreement between the City and another municipal corporation as authorized by the General Municipal Law of the State of New York or contracts between City agencies.

“Health Benefits” – Health benefits means health care benefits provided by an employer for its employees and their dependents at employer cost or through an employer contribution, provided that such cost or contribution shall be no less than sixty-four percent(64%) of the cost of the employees health insurance premium or expenses. Coverage shall include, at a minimum, comprehensive medical benefits.

“Service Contract” – Service Contract means a contract that involves an expenditure by or through the City or Syracuse City School District of at least \$20,000 in a fiscal year awarded by the City to a contractor for the furnishing of services to or for the City or Syracuse City School District, excluding the purchase or leasing of goods or other property.

“Subcontractor” - Subcontractor means any person or entity, other than a contractor or employee, which enters into a contract to supply services to a City contractor, or to a Syracuse City School District contractor under City awarded service contracts, and which performs services that are required under the service contract.

LIVING WAGE (Section 50-3):

“Wages” – An employer shall pay an hourly wage to each of its employees of \$10.08/hr per hour if the employer provides health benefits as defined in the ordinance, or \$11.91/hr per hour if the employer does not provide health benefits. These rates are subject to annual adjustment as further described (See Rate Adjustment below).

A contractor shall be obligated to pay an hourly living wage to employees paid under any service contract that is executed, extended or renewed on or subsequent to the effective date of this ordinance.

“Health Benefits” – An employer who pays the lower living wage rate of \$10.08/hr per hour shall provide health benefits as defined in the ordinance to each of its employees and their dependents. If the employer is providing employee health benefits less than those specified in the definition in Section 50-2, such employer shall be required to pay the living wage rate of \$11.91/hr per hour unless the employee health benefits are increased to meet such definition.

“Rate Adjustment” – The wage rates shall be adjusted annually effective the date of this ordinance. The percentage used to calculate the adjustment of the wage rates shall be the percentage change in the Consumer Price Index for All Urban Consumers (Northeast Urban) All Items for the immediately preceding calendar year (January through December) from the end of the next previous calendar year (i.e., April 1, 2006 adjustment will be based on the percentage increase, if any, of the CPI Annual 2005 versus the CPI Annual 2004.) In no event shall the wage rates be adjusted downward; in the event the CPI change is either negative or there is no change, the annual wage rates for the previous year shall remain in effect.

OBLIGATIONS OF EMPLOYERS (Section 50-7):

- An employer shall comply with the living wage and other requirements of this chapter.
- An employer shall permit access by the City to work sites and payroll records to investigate and monitor compliance with this chapter on prior notice to employer by City during normal business hours.
- An employer shall maintain payroll records with the name, job title, hourly wage rate and benefits paid to each employee and shall submit a certified payroll on a quarterly basis to an appropriate agency or department designated by the City. The documents may be redacted or edited to protect confidential and proprietary information. The designated City agency or department shall make this documentation available to the Mayor, Common Council and members of the Living Wage Advisory Committee upon request.

COMPLIANCE FOR CONTRACTORS & SUBCONTRACTORS (Section 50-8):

The City shall develop rules and regulations to receive and investigate complaints and procedures to determine compliance. The City is affirmatively obligated to do on-site visits and/or to review payroll records to monitor compliance in order to ensure compliance.

Upon a determination of non-compliance, the City shall provide the employer with written notice of such non-compliance. The notice shall include a demand for compliance within thirty (30) days, a warning that the service contract may be suspended or terminated after such date for non-compliance, and a statement that compliance must be demonstrated by submission of payroll records to the City that establish proof of restitution made to affected workers.

An employer may request a hearing within thirty (30) days after receipt of a notice of non-compliance. The City shall conduct a hearing within thirty (30) days subject to the provisions of the ordinance as they pertain to enforcement. An employer shall have the right to appeal a determination of non-compliance in an Article 78 proceeding in New York State Supreme Court.

LIVING WAGE ADVISORY COMMITTEE (Section 50-9):

Within 90 days of the enactment of this ordinance, the City shall create and convene a Living Wage Advisory Committee. The purpose and function of this committee shall be (1) to review the activities of the City and its agencies that are responsible for implementing and enforcing the Living Wage Ordinance; (2) to advise the Common Council and the Mayor about the implementation and enforcement of this law; and (3) recommend administrative changes, including, but not limited to, reviewing relevant records to ensure compliance with the Living Wage Ordinance. This committee shall meet quarterly, and may hold additional meetings if deemed necessary. Committee meetings shall be open to the public and at an accessible location.

This committee shall be composed of nine (9) people including four (4) individuals appointed by the Common Council, two (2) individuals appointed by the Mayor, two (2) individuals recommended by the Greater Syracuse Labor Council, and one (1)

individual recommended by the CNY Labor Religion Coalition to the Common Council. Of the individuals appointed by the Common Council, two (2) shall be from the business community. Of the individuals recommended by the Greater Syracuse Labor Council, one (1) shall be a worker affected by the Living Wage Ordinance. The individuals recommended for appointment by the Greater Syracuse Labor Council and the CNY Labor Religion Coalition shall be subject to confirmation by the Common Council. Committee members shall serve a term of two (2) consecutive years but may not serve more than two (2) consecutive terms.

ENFORCEMENT (Section 50-10):

- An employee who believes that an employer has violated any provision of this chapter may file a written complaint with the City within six (6) months of such violation. The City shall have an affirmative duty to enable any individual to lodge a complaint, regardless of any language or communication barrier.
- The City shall develop rules and regulations to receive and investigate complaints and procedures to pursue the City's obligations as outlined in the Enforcement Section of the law.
- Within thirty (30) days of receiving a written complaint, the City shall provide such employer with a notice of the allegations contained in the complaint. Within thirty (30) days thereafter, the employer shall submit a response in writing to the City. If the employer denies the complaint or fails to respond, the City shall conduct an investigation. Within sixty (60) days of the initiation of an investigation, the City will issue a written determination as to whether probable cause exists to support the complaint.
- Within thirty (30) days of a finding of cause to support the complaint, the City shall issue a hearing notice to the employer. No less than thirty (30) days after the issuance of the hearing notice, the City shall conduct a hearing in which the City shall have subpoena powers, and the parties shall have the right to present evidence and to be represented by counsel. The City may delay or extend such hearing by no more than thirty (30) additional days at the request of an employer or based on a determination by the City that it needs more time to prepare for a hearing.
- Within thirty (30) days of the conclusion of the hearing, the City shall issue its written findings and a written decision. The City may delay the date by which it will issue its written findings and decision by no more than two (2) increments of thirty (30) days each if the City determines that it needs more time to review the evidence related to a complaint.
- In lieu of seeking redress through a complaint to the City under the Living Wage Law, an employee may elect to bring an independent civil action against an employer in a court of competent jurisdiction.
- The court may award damages, costs and attorney fees to the prevailing party, and may direct any other remedy at law or equity, including but not limited to injunctive relief, reinstatement, back wages and punitive damages.
- The City shall not disclose the identity of an employee to an employer except where necessary to investigate, pursue or defend a complaint.

REPORTS TO MAYOR, COMMON COUNCIL & LIVING WAGE ADVISORY COMMITTEE (Section 50-11):

An appropriate agency or department designated by the City shall provide, on a date one year subsequent to the effective date of this Ordinance and on that date in each subsequent year, an annual report to the Mayor and Common Council and the Living Wage Advisory Committee regarding compliance by employers with this chapter; actions taken by the City for non-compliance; complaints filed for violations and the dispositions; and a list of all service contracts awarded for a one year period since the effective date or its anniversary in each subsequent year.

EFFECTIVE DATE (Section 50-12):

This ordinance shall take effect on hundred twenty (120) days after its enactment, however, service contracts executed, extended or renewed prior to the effective date of this ordinance shall not be governed by the terms of this ordinance except as provided in Section 50-3 (a) of this Ordinance.

In determining which specific contracts the Living Wage Law would impact, it has been generally recognized that the City and its dependent school district have three service contract areas that are most immediately identifiable as regulated by the ordinance. The three are: 1.) City's parking meter collection services contract- this contract was recently advertised for bids and in doing so, the City's Purchase Division included in the bid specifications a copy of the text of the entire ordinance; 2.) the Syracuse City School District's service contract for bus transportation services, which would affect both bus drivers and bus monitors or attendants- the transportation contracts come up for renewing or rebidding in 2007; and lastly 3.) the management contracts for the City's parking garages and lots. It has been noted previously in the Department of Audit's review of parking garage operations (Dated July 24, 2006), the City's parking lots have all been allowed to go to month-to-month extensions since the contracts expired on December 31, 1999.

The City's Corporation Counsel has taken the position that the City has properly interpreted the specific provisions contained in the ordinance to conclude that there is no requirement for the parking garage contracts to comply with the living wage requirements until they are formally bid and that the City is on firm legal ground in determining that these contracts are currently exempt from the Living Wage Ordinance.

While the effective date for the Living Wage Ordinance was September 22, 2005, it was stated in the ordinance that the Living Wage Advisory Committee was to be created and convened within ninety days of the enactment of the law, or in August of 2005. It was not until the Common Council's regularly scheduled meeting of January 23, 2006 that action was taken to confirm the four Common Council appointees, the two appointees representing the Greater Syracuse Labor Council, and the single appointee representing the Labor Religious Coalition. These appointments were further amended on March 13th when the Common Council corrected the name of one

of its appointees in the legislation, and substituted a new individual for the original selection of an appointee representing the Labor Religious Coalition.

The first, and only Living Wage Advisory Committee meeting that has been held as of this date, took place on August 29, 2006, in the Common Council Chambers in City Hall and lasted for twenty five minutes. Five of the nine committee members attended the meeting.

The next meeting of the committee is scheduled to be held in December on a yet-to-be-determined date.

Objectives:

The primary purpose of our research and this report was to investigate the extent of compliance on the part of the City of Syracuse in meeting the requirements of the Living Wage Ordinance passed by the Common Council nearly seventeen months ago. The second objective is to make recommendations, if warranted, for improving the implementation of the Living Wage Ordinance provisions so that City government is recognized, by both its words and its actions, as being dedicated to the philosophy articulated by the authors of this legislation - that there is a real commitment in Syracuse City government to assist those living below the federal government's poverty level, in the process promoting workplace stability, decreasing poverty, and thereby reducing or eliminating reliance on tax-payer funded social services.

Methodology and Scope:

The Department of Audit researched the development of the Living Wage Movement both nationally and locally. We reviewed various documents and pieces of legislation, talked to individuals who functioned as staff and support to the Syracuse Common Council during the several incarnations of the Living Wage Law. We reviewed the City's compliance with the ordinance, in particular, how the City has implemented the new law thus far in the identified service contract areas. The review and report would also serve to ensure that timely and proper implementation take place relative to those contracts approaching renewal or rebidding status.

Findings and Recommendations:

Findings:

Finding #1: The City Administration And The Common Council Failed To Oversee The Staffing Of The Living Wage Advisory Committee As Required By Section 50-9 Of The Ordinance

Finding: Section 50-9 stipulates that within ninety (90) days of the enactment of this law, the City shall create and convene a Living Wage Advisory Committee. This mandated that the first meeting of the Advisory Committee should have been created

and convened by August 21, 2005. As noted above, the Common Council approved the appointees of the Greater Syracuse Labor Council and the Labor Religious Coalition in January, 2006 and the first meeting of the committee was convened on August 29th.

Finding #2: The Living Wage Advisory Committee Failed To Meet Requirement of the Living Wage Ordinance To Hold Quarterly Meetings (Section 50-9)

Finding: By ordinance, the Living Wage Advisory Committee is mandated to meet at least quarterly, and may hold additional meetings if deemed necessary. By there being neither a single meeting during the period from the effective date for the creation of the committee (August 2005) until the following August, nor there being a meeting scheduled during the period from January (when the Common Council's appointments were formalized) through the end of August when the first and only meeting was held, the committee has not met its legal obligation. This failure has been explained as being the result of scheduling difficulties in getting the majority of the membership to agree to specific times and dates for meeting; however, there are a number of other boards and agencies affiliated with the City (Syracuse Industrial Development Agency, Landmark Preservation Board, etc.) that meet on far more rigorous schedules and are able to get a quorum of their board together to conduct business.

Recommendation: The committee members needs to seriously review their commitment to this particular effort, and once that has been reaffirmed, the committee as a whole needs to take steps to ensure compliance with all the requirements and expectations placed on this body to fully serve the interests of the community dependent on the successful implementation of the Living Wage Ordinance.

Finding #3: The City Failed To Meet Requirement of the Living Wage Ordinance To Produce For The Mayor, The Common Council And The Advisory Committee The Annual Report (Section 50-11)

Finding: An appropriate agency or department designated by the City is expected to provide, on a date one year subsequent to the effective date of the Ordinance an annual report to the Mayor and Common Council and the Living Wage Advisory Committee. Among the purposes of this report is to show the details on the efforts of the City in pursuing compliance and actions taken by the City for non-compliance. The City has not submitted a report as mandated. This adds to the impression that the City is not committed to any genuine enforcement of Ordinance #25 from 2005 and further supports the suspicions articulated to the City Auditor that elected officials have used the Living Wage Movement as a political means to an end, but are not committed to it in any real terms, going so far as to not even attempting to give the appearance of going through the motions of enforcement.

Recommendation: The City needs to show a greater level of compliance to the Living Wage requirements; whether City officials personally support the ordinance, or

think it has been reduced to something less than what it should have been, or are of the opinion that only a county government-led commitment will yield the desired results, it must be recognized that the current ordinance is what was approved and it is the responsibility of City government to comply with and enforce what has been enacted.

Finding #4: The City Took No Initiative In Rebidding Expired (Dec. 31, 1999) City Parking Garage Contracts So As To Promote Payment of Living Wage Rates In One Of The Largest Areas Of Impact Controlled By The City (Section 50-3)

Finding: The City has allowed the expired parking garage contracts to be extended on a month-to-month basis and circumvented the implementation of the Living Wage rates for a significant number of employees of the parking management firms under contract with the City. The City Auditor anticipates that there will be legal challenges made to this decision which may or may not end up going in the City's favor. In any event, the current situation will lead to the City's Law Department spending unnecessary time defending an unfortunate decision by City management. When the paying of living wage rates is a pass-through expense, as it is in this situation for garage managers, and the City's decision makers have shown no interest in conforming to the spirit of the Living Wage legislation, the City provides one more illustration of its lack of support of a law that has been enacted, reflecting the worse type of selective enforcement.

Recommendation: The City should immediately start the process of soliciting management proposals for its expired garage and parking lot contracts. In July, when the Audit Department released its audit of parking garage operations, management stated that a new Parking Facilities Coordinator would be in place shortly to start the process of soliciting proposals. We have been informed that the position has been filled, effective October 4, 2006. The City must move forward in a timely manner in getting the RFP process started to show that there is a new commitment to adhere to the principles of the Living Wage Ordinance.

Recommendations:

Recommendation #1: The City And The School District Need To Be Prepared To Start The Solicitation Process For Transportation Services In The Spring Of 2007

To show good faith and support of the Living Wage Ordinance that has been adopted by the City, the City's Purchase Division and the Syracuse City School District need to determine when they need start to develop the request for proposal documents so that there is not a repetition of the gap experienced with the rebidding of the parking garage management contracts, noted above. A smooth transition from the current contracts to the new ones that will fall under the Living Wage Ordinance will reflect a real sense of belief in the law enacted.

Recommendation #2: The City's Common Councilors Who Support The Living Wage Concept In A Broader Context And Fuller Implementation Must Start A Dialogue With The County Legislature To Convince County Legislators To Enact A Countywide Living Wage Law For Onondaga County

If the hesitancy seen so far in the enforcement of the City's Living Wage Ordinance can be interpreted as a reflection of the belief that it is not far reaching enough to meet the expectations of its sponsors, and that a more comprehensive law is truly needed, then it is incumbent on the supporters of the Living Wage to start the process of working toward a larger type of legislation. If the supporters determine that the majority of current members of the Common Council are of like mind, then the Council should find a way to work with members of the County Legislature to start scheduling discussions to debate the rationale for expanding the initial steps taken by City government.

City of Syracuse
Department of Audit

Philip LaTessa
City Auditor

October 3, 2006