

AN ORDINANCE TO REQUIRE RESPONSIBLE BUSINESS PRACTICES BY LARGE RETAIL ESTABLISHMENTS BY ENSURING LIVING WAGES, HEALTH BENEFITS AND FREE SPEECH

WHEREAS, the City of Chicago is a home-rule municipality in accordance with the constitution of the State of Illinois of 1970; and

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

WHEREAS, the City declares that it is the policy of the City to maintain and improve the wage and health care standards of our community, while ensuring opportunities for free speech; and

WHEREAS, the City finds that large retail establishments are, without regulation, a danger to both our community's economic standards and to our civic life; and

WHEREAS, large retail establishments often pay very low wages, offer few if any benefits, and create destructive competition that forces other businesses to either do the same or be driven out of business; and

WHEREAS, taxpayers often see increased costs when businesses that provide health care to their employees are replaced by those that do not and instead rely on city health clinics, public hospitals, and publicly funded programs such as Kid Care, Family Care, and Medicaid to provide health care to their employees; and

WHEREAS, the City finds that as centralized business districts — surrounded by the streets, plazas and parks that constituted “traditional public forums” — give way to freestanding retail establishments located on private property that are largely visited by car and public transportation, the people of Chicago risk losing the opportunity for civic interaction with fellow residents; and

WHEREAS, the City has determined that to counter these tendencies and to provide for the economic and civic well-being of its citizens, new standards of economic and civic conduct must be established for such large retail establishments; and

WHEREAS, the City declares that in order to safeguard the public welfare, health, safety and prosperity of all Chicagoans, it is essential that large retail establishments provide a living wage, along with the health and other benefits required for employees to take care of their families; and

WHEREAS, the City also finds that large retail establishments are among the most effective and low-cost forums in which residents engaged in civic speech and conduct may reach their intended audience, and therefore declares that, as a matter of public policy, owners of large

retail stores should be required to permit the exercise of certain speech and conduct on their premises, subject to reasonable, non-discriminatory time, place and manner restrictions; and

WHEREAS, the City also declares that since smaller local stores are often driven out of business when large retail establishments enter a community, it is important that the City ensure that unemployed local residents get priority in hiring and, to this end, declares that the establishment of a First Source Hiring Policy will assist those local residents and also benefit employers by providing a pool of qualified job applicants whose job training has been specifically tailored to their needs; now, therefore

BE IT ORDAINED by the City Council of the City of Chicago, Cook County, Illinois, that the Municipal Code of the City of Chicago is amended by adding thereto and inserting therein a new Chapter 4-404, entitled “Large Retail Establishments,” and amending Section 8-4-050:

SECTION 1. The foregoing recitals are incorporated herein as the findings of the City Council.

SECTION 2. A new chapter of the Municipal Code of the City of Chicago is hereby created as follows:

4-404-010 Definitions.

- a. “City” means the City of Chicago.
- b. “Agency” means the City department or agency designated by the City to administer this Ordinance.
- c. “Business” means any natural person, corporation, partnership, limited liability company, joint venture, sole proprietorship, association, trust or any other entity.
- d. “Large Retail Establishment” means any Business that operates a retail store located within the geographic boundaries of the City of Chicago where the premises of the retail store comprise 75,000 square feet or more.
- e. “Non-Business Areas” mean those parts of a Large Retail Establishment where business is not conducted, including parking lots, sidewalks, pedestrian areas, outdoor Employee smoking areas, and other outdoor areas where business is not conducted.
- f. “Subcontractor” means any Business that performs services on-site for a Large Retail Establishment or for another Subcontractor or that holds a sublease authorizing that party to occupy, use, control or do business on the property of the Large Retail Establishment.
- g. “Employer” means any Large Retail Establishment or Subcontractor.
- h. “Employee” means any person who in a particular week performs at least two (2) hours of work on the premises of a Large Retail Establishment for either a Large Retail Establishment or for a Subcontractor. This definition includes persons performing work

on a full-time, part-time, temporary, or seasonal basis, including independent contractors, contracted workers, contingent workers, and persons made available to work through the services of a temporary services, staffing or employment agency or similar entity.

- i. “Living Wage” has the meaning set forth in Section 4-404-020.
- j. “Benefits” means payments for medical or hospital care, pensions on retirement or death, or insurance to provide any of the forgoing, life insurance, disability and sickness insurance, or accident insurance, payments for defraying the costs of apprenticeship or other similar programs, or payments for other bona fide fringe benefits. Excluded from this definition are payments made pursuant to the Workers’ Compensation Act [820 ILCS 305/1 et seq.].
- k. “Benefits Supplement Rate” has the meaning set forth in Section 4-404-030.
- l. “First Source Hiring Agreement” means a signed agreement between an Employer and a Community Referral Agency that meets the requirements set forth in Section 4-404-050(a).
- m. “First Source Employment Position” means all Employee categories, excepting construction employment involving laborers, workers or mechanics.
- n. “Ex-offender” means any applicant for employment who has a criminal record, but who supplies proof of community ready socialization, which may include but is not limited to, sworn testimony, reference letters, self-improvement courses, educational or vocational attainment, and counseling.
- o. “Community Referral Agency” means 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 Chicago 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 Chicago residents; or the majority of services provided by the entity are furnished to low and moderate income Chicago 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. Is certified as meeting requirements (1) through (5) by the Agency.

4-404-020 Living Wage.

- a. Employers shall pay Employees no less than the Living Wage for each hour worked on the premises of a Large Retail Establishment.
- b. Beginning on the effective date of this Ordinance, the Living Wage shall be an hourly rate of \$10.42 — a wage which will enable a full-time worker to earn an income that will lift a family up to 115% of the Federal Poverty Guidelines for a family of four. To prevent inflation from eroding its value, beginning on January 1, 2005, and each year thereafter, the Living Wage shall increase by an amount corresponding to the prior year's increase, if any, in the Consumer Price Index for urban wage earners and clerical workers for the Chicago Consolidated Metropolitan Statistical Area.

4-404-030 Benefits.

- a. Employers shall provide Benefits to each Employee.
- b. Providing Benefits means either:
 1. Providing to the Employee a package of Benefits where the Employer's contribution to the cost of the Benefits is no less than the Benefits Supplement Rate for each hour worked by the Employee; or
 2. Payment to the Employee of a wage rate of no less than the sum of the current Living Wage and the Benefits Supplement Rate.
- c. Beginning on the effective date of this Ordinance, the Benefits Supplement Rate shall be \$3.00 per hour. To prevent inflation from eroding its value, beginning on January 1, 2005 and each year thereafter, the Benefits Supplement Rate shall be upwardly adjusted in proportion to the increase, if any, during the preceding 12-months in the Consumer Price Index for Medical Care for the Chicago Consolidated MSA.

4-404-040 Notice, Posting and Payroll Records.

- a. By December 1 of each year, the Agency shall publish and make available to Employers a bulletin announcing the adjusted Living Wage and Benefits Supplements Rate for the upcoming year, which shall take effect on January 1. If the Agency fails to do so, Employers shall calculate adjustments to the Living Wage and Benefits Supplement Rate as described in this Ordinance, and shall begin utilizing the adjusted rate by the subsequent January 1.
- b. By December 1 of each year, the Agency shall publish and make available to Employers, in all languages spoken by more than five percent of the Chicago work force, a notice

suitable for posting by Employers in the workplace informing Employees of the current Living Wage and Benefits Supplements Rate and of their rights under this Ordinance.

- c. Every Employer shall post in a conspicuous place at any workplace or job site where any Employee works the notice published each year by the Agency informing Employees of the current Living Wage and Benefits Supplements Rate and of their rights under this Ordinance. Every Employer shall post such notices in English, Spanish, and any other language spoken by at least five percent of the Employees at the workplace or job site.
- d. Employers shall retain payroll and benefits records pertaining to Employees for a period of four years, and shall allow the Agency access to such records, with appropriate notice and at a mutually agreeable time, to monitor compliance with the requirements of this Ordinance. Where an Employer does not maintain or retain adequate records documenting wages paid or does not allow the Agency reasonable access to such records, it shall be presumed that the Employer paid no more than the applicable federal or state minimum wage without benefits, absent clear and convincing evidence otherwise.

4-404-050 Access to Large Retail Establishments.

- a. Every person shall have access to the Non-Business Areas of a Large Retail Establishment and of its Subcontractors to engage in non-commercial speech with customers and Employees on matters relating to community affairs, religion, politics, business practices, workplace rights or topics of public concern. Such speech may include distributing literature relating to such matters and soliciting signatures on forms or petitions addressed to public officials, government agencies, religious organizations, business entities, or other community institutions.
- b. *Reasonable Time, Place, and Manner Restrictions.* Such speech shall be conducted in an orderly manner and may be subject to any of the following time, place and manner restrictions that the management of the Employer chooses to establish:
 - 1. A restriction on the use of bright lights, loudspeakers, musical instruments, radios, televisions, amplifiers, and similar devices; and
 - 2. A restriction on littering, including a reasonable charge, not to exceed \$100, for cleanup costs resulting from the distribution of literature.

Provided, however, such restrictions shall not discriminate based on the subject-matter or content of the speech.

- c. *Enforcement by the Chicago Police.* The Chicago Police shall not remove for trespass from the premises of an Employer any person or group engaging in any speech activity in Non-Business Areas. Provided, however, the Chicago Police may enforce any injunction issued by a court prohibiting an individual or group from entering the premises of an Employer for violating time, place and manner restrictions established by the management pursuant to Section 4-404-050. The Chicago Police shall be free to enforce any non-trespass related violations of the law by any individual or group.

4-404-060 First Source and Affirmative Action Hiring Requirements.

- a. All Employers shall enter into a First Source Hiring Agreement with one or more Community Referral Agencies, under which the Employer shall agree to comply with the following terms:
 1. Prior to announcing or advertising a First Source Employment Position for work created either as a result of a vacancy of an existing position or of a new employment position, an Employer shall notify the Community Referral Agency about the position, including a description of job responsibilities and qualifications, including expectations, salary, work schedule, duration of employment, required standard of appearance, and any special requirements (e.g. language skills, drivers' license, etc.);
 2. The Employer shall not make such public announcement or advertisement for a period of five (5) business days after notification to the Community Referral Agency of the availability of such position. Such five (5) day period is hereinafter referred to as the "Advance Notice Period." The Advance Notice Period shall be waived if the Community Referral Agency has no qualified candidates to refer to the Employer;
 3. The Community Referral Agency shall maintain a database of job opportunities subject to this Ordinance and shall provide information on such job opportunities to all Chicago residents who receive services. Targeted Job Applicants shall be referred in the following order: (a) First Priority: individuals whose place of employment has been displaced or seen job loss due to the opening of the Large Retail Establishment; (b) Second Priority: individuals living in the local community; (c) Third Priority: low-income individuals living in the city of Chicago;
 4. Community Referral Agencies shall institute a tracking system and record which applicants were interviewed, which applicants were not interviewed, and which applicants were hired for the positions;
 5. The 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 by a Community Referral Agency;
 6. The agreement shall not require the Employer to hire any applicant referred under the terms of this agreement. However, 90% of all job vacancies must be filled through a Community Referral Agency;
 7. No employer or any employee or agent thereof shall discriminate directly or indirectly against any individual in hiring, classification, grading, discharge, discipline, compensation or other term or condition of employment because of the individual's race, color, sex, gender identity, age, religion, disability, national

origin, ancestry, sexual orientation, marital status, parental status, status as an Ex-offender, military discharge status or source of income;

8. Employers shall, on a quarterly basis, notify the Agency of the number, by job classification and starting salary, of Targeted Job Applicants hired by the Employer during that quarter and the total number of Employees hired by the Employer and their salaries during that quarter. Community Referral Agencies shall also report the number, by job classification, of applicants referred to Employers. Employers shall retain records sufficient to report compliance with this First Source Hiring Policy, including records of referrals from Community Referral Agencies, job applications, the number of Targeted Job Applicants hired, and their current incomes. To the extent allowed by law, and upon reasonable notice, these records shall be made available to the Agency for inspection upon request. Records may be redacted so that individuals are not identified by name and so that other confidential information is excluded;
 9. In the event an Employer has not met the 90% First Source requirement during a particular six-month period, the Agency may require the Employer to provide reasons it has not met the goal and the Agency may determine whether the Employer has nonetheless adhered to this Policy.
- b. All contracts, including those for construction, made with Subcontractors by Large Retail Establishments shall follow the guidelines specified in applicable ordinances of the City governing contracting with minority and women-owned business enterprises, prohibiting discrimination and requiring appropriate affirmative action with respect to minority and women participants in the work force, including but not limited to Section 2-92-390 (relating to hiring of women and minorities) and Sections 2-92-420 through 2-92-570 (relating to contracting with minority-owned and women-owned business enterprises), to the extent permitted by law. Large Retail Establishments shall file semi-annual reports with the Agency documenting compliance with such ordinance guidelines with respect to work performed and disclosing the extent to which that work is performed by minority and women workers and minority-owned and women-owned business enterprises.

4-404-070 Prohibition Against Retaliation, Reduction of Benefits, or Infringement of Free Speech in the Workplace.

- a. It shall be unlawful for an Employer or any other party to discriminate in any manner or take adverse action against any person in retaliation for exercising rights protected under this Ordinance or for informing other Employees of any legal rights under federal, state or local law, to the extent that such protection is permitted by state and federal law. Rights protected under this Ordinance include, but are not limited to: the right to file a complaint or inform any person about any party's alleged noncompliance with this Ordinance or any other federal, state or local law; and the right to inform any person of his or her potential rights under this Ordinance or other law and to assist him or her in asserting such rights. Protections of this Ordinance shall apply to any person who mistakenly, but in good faith, alleges noncompliance with this Ordinance or any other law. Taking adverse action against a person within ninety (90) days of the person's

exercise of rights protected under this Ordinance shall raise a rebuttable presumption of having done so in retaliation for the exercise of such rights.

- b. No Employer may fund wage or benefits increases required by this Ordinance, or otherwise respond to the requirements of this Ordinance, by reducing the health insurance, pension, vacation, or other non-wage benefits of any of its Employees.

4-404-080 Implementation and Enforcement.

- a. *Implementation.* The Agency shall be authorized to coordinate implementation and enforcement of this Ordinance and may promulgate appropriate guidelines or rules for such purposes. Any guidelines or rules promulgated by the Agency shall have the force and effect of law and may be relied on by Employers, Employees and other parties to determine their rights and responsibilities under this Ordinance. Any guidelines or rules may establish procedures for ensuring fair, efficient and cost-effective implementation of this Ordinance, including supplementary procedures for helping to inform Employees of their rights under this Ordinance, for monitoring Employer compliance with this Ordinance, and for providing administrative hearings to determine whether an Employer or other person has violated the requirements of this Ordinance.
- b. *Administrative Enforcement.* The Agency is authorized to take appropriate steps to enforce this Ordinance. The Agency may investigate any possible violations of this Ordinance by an Employer or other person. Where the Agency has reason to believe that a violation has occurred, it may order any appropriate temporary or interim relief to mitigate the violation or maintain the status quo pending completion of a full investigation or hearing. Where the Agency, after a hearing that affords a suspected violator due process, determines that a violation has occurred, it may order any appropriate relief including, but not limited to, reinstatement, the payment of any back wages or benefits unlawfully withheld, and the payment of an additional sum as an administrative penalty in the amount of \$100 to each Employee or person whose rights under this Ordinance were violated for each day or portion thereof that the violation occurred or continued. Where prompt compliance is not forthcoming, the Agency may take any appropriate enforcement action to secure compliance, including initiating a civil action and/or, except where prohibited by state or federal law, instructing City agencies or departments to revoke or suspend any registration certificates, permits or licenses held or requested by the Employer or person until such time as the violation is remedied. In order to compensate the City for the costs of investigating and remedying the violation, the Agency may also order the violating Employer or person to pay to the City a sum of not more than \$100 for each day or portion thereof for each Employee or person as to whom the violation occurred or continued. Such funds shall be allocated to the Agency and shall be used to offset the costs of implementing and enforcing this Ordinance. The amounts of all sums and payments authorized or required under this Ordinance shall be updated annually for inflation, beginning January 1, 2005, using the inflation rate and procedures set forth in Section 4-404-020. An Employee or other person may report to the Agency in writing any suspected violation of this Ordinance. The Agency shall encourage reporting pursuant to this subsection by keeping confidential, to the maximum extent permitted by applicable laws, the name and other identifying information of the

Employee or person reporting the violation. Provided, however, that with the authorization of such person, the Agency may disclose his or her name and identifying information as necessary to enforce this Ordinance or for other appropriate purposes.

- c. *Civil Enforcement.* The Agency, the Corporation Counsel, any person aggrieved by a violation of this Ordinance, any entity a member of which is aggrieved by a violation of this Ordinance, or any membership organization that represents workers, may bring a civil action in a court of competent jurisdiction against an Employer or other person violating this Ordinance and, upon prevailing, shall be entitled to such legal or equitable relief as may be appropriate to remedy the violation including, without limitation, the payment of any back wages unlawfully withheld, the payment of an additional sum as liquidated damages in the amount of \$100 to each Employee or person whose rights under this Ordinance were violated for each day or portion thereof that the violation occurred or continued, reinstatement in employment, compensatory damages and/or declaratory and injunctive relief, and shall be awarded reasonable attorneys' fees and costs. An Employer shall be jointly liable for violations of this Ordinance by its Subcontractors. If an Employer brings an action against a person or group for engaging in any of the activities enumerated in Section 4-404-050 and the defendant prevails, the defendant shall recover reasonable attorneys' fees and costs.

4-404-090 Waiver Through Collective Bargaining. All or any portion of the applicable requirements of this Ordinance shall not apply to Employees covered by a bona fide collective bargaining agreement to the extent that such requirements are expressly waived in the collective bargaining agreement in clear and unambiguous terms that expressly make reference to this Ordinance.

4-404-100 Relationship to Other Requirements. This Ordinance provides for payment of minimum wage and benefits and the protection of free speech in and around Large Retail Establishments and shall not be construed to preempt or otherwise limit or affect the applicability of any other law, regulation, requirement, policy or standard that provides for payment of higher or supplemental wages or benefits, or that extends other broader speech protections on behalf of the public or Employees.

4-404-110 Effective Date. This Ordinance shall become effective ninety (90) days after it is adopted. This Ordinance is intended to have prospective effect only.

4-404-120 Severability. If any part or provision of this Ordinance, or the application of this Ordinance to any person or circumstance, is held invalid, the remainder of this Ordinance, including the application of such part or provisions to other persons or circumstances, shall not be affected by such a holding and shall continue in full force and effect. To this end, the provisions of this Ordinance are severable.

SECTION 3. Section 8-4-050 of the Municipal Code of the City of Chicago is hereby amended by adding the following:

No person commits trespass when engaging in non-commercial speech at a Large Retail Establishment as specified in Section 4-404-070.

SECTION 4. All ordinances, resolutions, motions or orders in conflict with this ordinance are hereby repealed to the extent of such conflict.

ADOPTED this _____ day of _____, _____
pursuant to a roll call vote as follows:

AYES: _____
NAYS: _____
ABSENT: _____
ABSTENTION: _____

APPROVED by me this _____ day of _____, _____

Mayor of the City of Chicago,
Cook County, Illinois

ATTESTED and filed in my office
this _____ day of _____, _____

Clerk of the City of Chicago,
Cook County, Illinois