

THIRD SUBSTITUTE TO 18-1604

FINANCE COMMITTEE MEETING 3/14/2018 9 A.M.

PROPERTY TAX INCENTIVE – PREVAILING WAGE REQUIREMENT

BE IT ORDAINED, by the Cook County Board of Commissioners, that Chapter 74 TAXATION, Section 74-71 of the Cook County Code is hereby amended as follows:

Sec. 74-71. - Laws regulating the payment of wages.

(a) Living wage requirement.

- (1) Unless expressly waived by the County Board, any Employer occupying a property that receives a property tax incentive for Class 6b industrial property, Class 8 industrial property, or Class 9 multifamily residential property shall pay not less than the Living Wage, as defined in the Cook County Procurement Code (Cook County, Ill., Code, Ch. 34, Art. IV, Div. 1 § 34-121), to each of its onsite Employees, unless such Employees' Wages are governed by Federal or State prevailing wage law. For purpose of this Section, the term "Employee" shall mean an Employee who performs duties or services for an Employer on average at least 30 hours per week in any two-week period for which the Employee is paid; "hours per week" shall mean hours for which an Employee is paid or entitled to payment by the Employer for a period of time during which no duties are performed by the Employee due to vacation, holiday, illness, incapacity, jury duty, military duty or approved leave of absence.
- (2) On and after July 1, 2020, the owner of any property that receives a property tax incentive shall notify all Employers who occupy such property as lessees of the requirements of this Section. Upon commencement of a lease, on or after July 1, 2020, of a property that receives a property tax incentive, any new lessee shall be required to submit to the municipality or the Cook County Board, as the case may be, an affidavit stating that such lessee is paying a Living Wage to its Employees in compliance with this Section. Notwithstanding anything herein to the contrary, the requirements of this Section shall not apply to an Employer who was a lessee and not an owner-occupant of a property that receives a property tax incentive prior to July 1, 2020.
- (3) This Section shall not apply to Employers that are not-for-profit organizations or funded by Federal grants or Federal loans or Employers who are lessees but are not owners of a property that receives a property tax incentive prior to adoption of this amended Ordinance. Further, this Section shall not apply to Employers who can demonstrate to the County Board that compliance with the requirements of this Section would cause such Employer to be in violation of the terms of a collective bargaining agreement between the Employer and a labor union.
- (4) Every Employer required to pay the Living Wage shall notify its Employees of the Living Wage requirements and shall notify all of its Employees annually of any adjustment to the Living Wage. In addition, the Employer shall notify its Employees that if any Employee contends that the Employer is not paying a Living Wage or has otherwise violated this section, that Employee may file a complaint with the Cook County Commissioner on Human Rights ("Commission"). The Commissioner shall investigate alleged violations of the Living Wage Ordinance and is authorized to adopt regulations for the proper administration and enforcement of its provisions. If at the conclusion of the Commission's investigation, the Commission finds that the Employer has violated this section, it shall (i) in the case of an Employer receiving a property tax incentive, notify the Assessor; or (ii) in the case of a Contractor or a subcontractor required to pay the Living

Wage, notify the CPO, who shall exercise such remedies as are in the best interest of the County, including ordering the Employer to pay back pay and penalties, as provided in this section.

- (5) If an Employer is found to be in violation of this section, such Employer may be required to pay back pay to each affected Employee, and may also be fined by the County up to \$100.00 for each affected Employee for each day paid at less than the Living Wage. Such penalties will not be imposed on any Person except after a hearing (Cook County, Ill., Code, Ch. 2, Art. IX). Further, if an Employer is found to be in violation of this section, the property tax incentive for this property is subject to revocation.
- (6) If an Employer is found to have retaliated against an affected Employee, the Employer's property tax incentive may be terminated unless such Employer appropriately reinstates or compensates such Employee.
- (7) For the purposes of this Section:

Property tax incentive means a reduction in the assessment level as set forth in Division 2 of this Article for Class 6b industrial property, Class 8 industrial property, or Class 9 multifamily residential property. "Property tax incentive" shall not include a Class 9 designation granted to supportive living facilities, which establish an alternative to nursing home care for low income older persons and persons with disabilities under Medicaid and which are certified by the State Department of Public Aid pursuant to Division 2 of this Article; and

Sales tax means the Retailer's Occupation Tax, the Service Occupation Tax and/or the Use Tax.

- (8) Living Wage Affidavit. Every municipality or the Cook County Board that provides a Resolution or Ordinance or authorized officer letter, as the case may be, to an applicant for a Class 6b industrial property or a Class 8 industrial property tax incentive shall maintain in its files and records documentation that such municipality or the County Board received and filed the Living Wage Affidavit submitted by the owner or lessee of such property stating that such owner or lessee is paying a Living Wage to its Employees in compliance with this Section. Further, an applicant or lessee of a Class 9 multifamily residential property tax incentive shall provide the municipality or the Cook County Board, as the case may be, a Living Wage Affidavit which shall be maintained by such municipality or the Cook County Board in its files and records.

(b) Prevailing wage requirement.

- (1) Notwithstanding anything contained in Section 74-71(b) to the contrary, and for the avoidance of doubt, any real estate granted any Property Tax Incentive under any Assessment Class as set forth in Section 74-71(b)(4)(b) on or before July 1, 2018 shall not be subject to the terms and conditions of Section 74-71(b). Real estate for which an application for any classification is filed with the Assessor on or before July 1, 2018 and which thereafter is determined by the Assessor to be eligible for the classification under the terms and conditions of this Division after July 1, 2018, shall not be subject to the terms and conditions of Section 74-71(b).
- (2) Any owner of real estate that on or after July 1, 2018 is an applicant for, or recipient of, any Property Tax Incentive under any Assessment Class as set forth in Division 2 of this Article for which a Resolution or Ordinance from the municipality or the County Board is or was required, or where an authorized officer letter is or was obtained in lieu of such Resolution or Ordinance, shall pay all laborers, workers and mechanics engaged in Construction work within the subject property not less than the prevailing rate of wages paid for work of a similar character on public

works in Cook County. This requirement extends to all contractors, subcontractors, and lessees who perform such Construction work, whether or not at the direction of the owner.

(3) The prevailing rate of wages shall be the same as the then-current rate for Cook County determined pursuant to the Illinois Prevailing Wage Act (820 ILCS 130/0.01 et seq.).

(4) (a) Unless otherwise defined herein, the definition of any terms used in this Section which are also used in the Illinois Prevailing Wage Act (820 ILCS 130/0.01 et seq.) shall be the same as that set forth in the Illinois Prevailing Wage Act.

(b) For the purposes of Section 74-71(b):

Property Tax Incentive means a reduction in the assessment level as set forth in Division 2 of this Article for any property regardless of the Assessment Class for which a Resolution or Ordinance from the municipality or the County Board is or was required, or where an authorized officer letter is or was obtained in lieu of such Resolution or Ordinance.

Construction work means all work on any newly constructed building or any improvement or renovation on any existing building or structure, on any real estate receiving a property tax incentive involving laborers, workers or mechanics, regardless of the public or private nature of the project. This includes any maintenance, repair, assembly, or disassembly work performed on equipment whether owned, leased, or rented.

(5) Any owner of real estate that on or after July 1, 2018 is an applicant for, or recipient of, any Property Tax Incentive under any Assessment Class as set forth in Division 2 of this Article for which a Resolution or Ordinance from the municipality or the County Board is or was required, or where an authorized officer letter is or was obtained in lieu of such Resolution or Ordinance, shall:

(a) keep, or cause a contractor, subcontractor, or lessee performing the Construction work within the subject property to keep, for a period of 5 years from the date of the last payment made, records of all laborers, mechanics, and other workers engaged in Construction work within the subject property. Such records shall include (i) the worker's name, (ii) the worker's address, (iii) the worker's telephone number when available, (iv) the worker's social security number, (v) the worker's classification or classifications, (vi) the worker's gross and net wages paid in each pay period, (vii) the worker's number of hours worked each day, (viii) the worker's starting and ending times of work each day, (ix) the worker's hourly wage rate, (x) the worker's hourly overtime wage rate, (xi) the worker's hourly fringe benefit rates, (xii) the name and address of each fringe benefit fund, (xiii) the plan sponsor of each fringe benefit, if applicable, and (xiv) the plan administrator of each fringe benefit, if applicable; and

(b) no later than the 15th day of each calendar month file, or cause a contractor, subcontractor, or lessee performing the Construction work to file electronically with the governmental body approving said resolution or ordinance a certified payroll for the immediately preceding month. A certified payroll must be filed for only those calendar months during which such Construction work has occurred. The certified payroll shall consist of a complete copy of the records identified in this subsection (a) but may exclude the starting and ending times of work each day. The certified payroll shall be accompanied by a statement signed by the owner or an officer, authorized employee, or agent of the owner which avers that: (i) he or she has examined the certified payroll records required to be submitted by this Section and such records are true and accurate; and (ii) the hourly rate paid to each worker is not less than the general prevailing rate

of hourly wages required by this Section. An owner is not prohibited from relying on the certification of a contractor, subcontractor, or lessee provided the owner does not knowingly rely upon a false certification. Each governmental body shall keep the records submitted in accordance with this subsection (b) for a period of 5 years from the date of the last payment for Construction work. The records submitted in accordance with this subsection (b) shall be considered public records, except an employee's address, telephone number, and social security number, and made available in accordance with the Freedom of Information Act. The governmental body shall accept any reasonable submissions that meet the requirements of this Section.

(6) The recipient must provide credible evidence that, at all times after it receives and maintains any tax incentive classification under Division 2 of this Article, if any Construction work, occurs at the subject property, then any contractors, subcontractors, or lessees who perform such work must participate in an active apprenticeship and training program approved and registered with the United States Department of Labor's Office of Apprenticeship, if the contractor or subcontractor employs people in a covered occupation.

(7) Prevailing Wage Affidavit. Every municipality or the Cook County Board that provides a Resolution or Ordinance or authorized officer letter, as the case may be, to an applicant for, or a recipient of, any Property Tax Incentive as set forth in Section 71-74 (b)(4)(b) shall maintain in its files and records documentation that such municipality or the County Board received and filed the Prevailing Wage Affidavit submitted by the owner of such property stating that such owner shall pay, or cause a contractor, subcontractor, or lessee to pay, the prevailing rate of wages in compliance with this Section and comply with subsections (b)(5) and (b)(6) of this Section. The failure to file such affidavit and supporting documents within the time established by the Assessor's rules shall result in the loss of the incentive for the period relating to the non-filing or revocation under Section 74-73.

~~(b)~~(c) State or Federal Laws.

(1) Except where a Person has requested an exception from the Assessor and the County Board expressly finds that granting the exception is in the best interest of the County, such Person including any Substantial Owner (as defined in Cook County, Ill., Code, Ch. 34, Art. V § 34-367) shall be ineligible to receive any property tax incentive noted in Division 2 of this Article if, during the five-year period prior to the date of the application, such Person or Substantial Owner (as defined in Cook County, Ill., Code, Ch. 34, Art. V § 34-367) admitted guilt or liability or has been adjudicated guilty or liable in any judicial or administrative proceeding of committing a repeated or willful violation of the Illinois Wage Payment and Collection Act, 820 ILCS 115/1 et seq., the Illinois Minimum Wage Act, 820 ILCS 105/1 et seq., the Illinois Worker Adjustment and Retraining Notification Act, 820 ILCS 65/1 et seq., the Worker Adjustment and Retraining Notification Act, 29 U.S.C. 2101 et seq., the Employee Classification Act, 820 ILCS 185/1 et seq., the Fair Labor Standards Act of 1938, 29 U.S.C. 201, et seq., the Illinois Prevailing Wage Act, 820 ILCS 130/1 et seq., or any comparable state statute or regulation of any state, which governs the payment of wages.

(2) The Assessor shall obtain an affidavit or certification from every Person and Substantial Owner (as defined in Cook County, Ill., Code, Ch. 34, Art. V § 34-367) who seeks a property tax incentive from the County as noted in Division 2 of this Article certifying that the Person or Substantial Owner (as defined in Cook County, Ill., Code, Ch. 34, Art. V § 34-367) has not violated the statutory provisions identified in Subsection (a) of this Section.

- (3) If the County or Assessor becomes aware that a Person or Substantial Owner (as defined in Cook County, Ill., Code, Ch. 34, Art. V § 34-367) has admitted guilt or liability or has been adjudicated guilty or liable in any judicial or administrative proceeding of committing a repeated or willful violation of the Illinois Wage Payment and Collection Act, 820 ILCS 115/1 et seq., the Illinois Minimum Wage Act, 820 ILCS 105/1 et seq., the Illinois Worker Adjustment and Retraining Notification Act, 820 ILCS 65/1 et seq., the Worker Adjustment and Retraining Notification Act, 29 U.S.C. 2101 et seq., the Employee Classification Act, 820 ILCS 185/1 et seq., the Fair Labor Standards Act of 1938, 29 U.S.C. 201, et seq., the Illinois Prevailing Wage Act, 820 ILCS 130/1 et seq., or any comparable state statute or regulation of any state, which governs the payment of wages during the five-year period prior to the date of the application, but after the County has reclassified the Person's or Substantial Owner's (as defined in Cook County, Ill., Code, Ch. 34, Art. V § 34-367) subject property under a property tax incentive classification, then, after notice from the Assessor of such violation, the Person or Substantial Owner shall have 45 days to cure its violation and request an exception or waiver from the Assessor. Failure to cure or obtain an exception or waiver of ineligibility from the Assessor shall serve as grounds for revocation of the classification as provided by the Assessor or by the County Board by Resolution or Ordinance. In case of revocation or cancellation, the Incentive Classification shall be deemed null and void for the tax year in which the incentive was revoked or cancelled as to the subject property. In such an instance, the taxpayer shall be liable for and shall reimburse to the County Collector an amount equal to the difference in the amount of taxes that would have been collected had the subject property not received the property tax incentive.

Sec. 74-75 - Incentive Classification Affidavit Requirement Waiver.

(a) This Section shall apply to existing incentives classifications, pending applications and eligibility/renewal applications submitted during the 2017 and 2018 assessment year. The Assessor's Office shall liberally construe this Section to effectuate its intent as set forth in subsections (b) and (c) below.

(b) Compliance with the existing affidavit requirements of Sections 74-71(b)(~~7~~)(~~2~~), ~~74-71(c)(2)~~, 74-72 and 74-74 (b) and (d) shall be waived for the 2017 and 2018 assessment years. Such waiver shall be lifted at the beginning of the 2019 assessment year and the affidavit requirements of Sections 74-71, 74-72 and 74-74 that are then in effect shall be effective for the 2019 assessment year and subsequent assessment years.

(c) Existing incentives classifications, pending applications and eligibility/renewal applications submitted during the 2017 and 2018 assessment year shall not be suspended, revoked or terminated for failure to comply with the affidavit requirements of Sections 74-71(b)(~~7~~)(~~2~~), ~~74-71(c)(2)~~, 74-72 and 74-74(b) and (d), and all affidavits submitted pursuant to such Sections shall be considered void for any purpose.

Effective date: This ordinance shall be in effect immediately upon adoption.