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Testimony of the Boston Municipal Research Bureau

Before the
City of Boston Living Wage Advisory Committee

November 8, 1999

Regarding: The Proposed Jobs and Living Wage Rules, Regulations and Guidelines

Members of the Living Wage Advisory Committee, my name is Samuel Tyler and I am President of the Boston Municipal Research Bureau. I am here to present the Bureau's response to the rules, regulations and guidelines being proposed to implement Boston's Living Wage Ordinance.

The Research Bureau has been involved with the living wage ordinance since it was first presented in the City Council in July, 1997. Based on the Bureau's recommendation to delay implementation of the ordinance, Mayor Menino and Council President Kelly, in June, 1998, agreed to a small working group to review the ordinance and recommend changes. The Bureau was a part of that working group which met over the summer of 1998 and produced a revised ordinance that was approved by the City Council on September 2, 1998.

Based on our review of the proposed rules, regulations and guidelines for Boston's Living Wage Ordinance, the Bureau offers the following comments.

- 1. Regulation 5, Section B** – The timing requirement in the regulations for a vendor to sign a living wage agreement should be changed to be consistent with the ordinance. The ordinance requires that the vendor sign a living wage agreement “at the time of the signing of a service contract with the City of Boston or subcontract with a vendor.” The regulations require the agreement to be signed at the time a covered vendor is “awarded a contract, responds to a request for proposal or invitation to bid.” The regulations exceed the requirements of the ordinance and should be changed to conform to the ordinance.
- 2. Regulation 5, Section C1** – The regulation's definition of a covered subcontractor should be changed to reflect the ordinance's definition of a subcontractor covered. The ordinance defines service subcontract as “a subcontract of \$25,000 or more awarded to a vendor by a covered vendor, provided the subcontract is paid for by funds from the service contract.” The regulations define a subcontractor as “any service subcontractor receiving funds from a service contract.” Thus, it would appear that the regulations require all subcontractors to comply with the ordinance. Section C1 should be changed to reflect the definition of subcontract in the ordinance.
- 3. Regulation 5, Section G1** - The exemptions from the ordinance in the regulation's definition of youth or educational programs is consistent with the ordinance but is too restrictive in student positions in higher

education by limiting the exemptions to contracts awarded to work-study or cooperative educational programs. This definition does not include work positions for students in colleges or universities that are not full-time positions.

4. Regulation 5, Section H1c – The regulation requires a higher standard for the vendor to explain legal reasons for a waiver from the ordinance than is required in the ordinance. The ordinance requires the vendor to provide an “explanation” of how compliance with the ordinance would violate cited provisions. The regulations require the vendor to describe “in detail the legal reasons” compliance would violate cited provisions.

5. Regulation 5, Section J2c – The regulations on quarterly reports extends authority to the Director that is not granted in the ordinance. The working group extensively debated the amount of information that should be included in a quarterly report in the summer of 1998. Section 7D of the ordinance lists the information that should be included in a quarterly report. That information is consistent with the requirements of Section J, Subsections 2a&b in the regulations. However, Subsection 2c adds “any other information the Director deems relevant.” Delegation of that authority to the Director was not authorized in the ordinance and Subsection 2c should be deleted in the regulations.

6. Regulation 9 – The provisions for public participation in the meetings of the Advisory Committee are good but the timing of meeting notices may need to be changed. The regulation states that meeting times and places will be posted with the City Clerk at least 48 hours prior to the meeting. However, members of the public must request that an item be placed on the agenda at least 72 hours prior to the meeting. The timing of meetings should be changed to insure that the public is able to request an item be placed on the agenda before the meeting is scheduled. Quarterly meetings should be scheduled in advance to insure public participation. All meetings should be scheduled with sufficient notice to enable the public to request an item be placed on the agenda. The Advisory Committee should adopt the provision for public hearing procedures in Regulation 10A1c and send prior notice of Advisory Committee meetings to any person or group that files a written request for meeting dates. This request should be renewed annually in December. This prior notice should be received in sufficient time to allow those notified the opportunity to request an item to be placed on the agenda.

7. Regulation 10B – Notice of emergency regulations approved by the Director should be sent to any person or group that have requested notification of any rule-making hearings within five business days of the action. The brief statement of the reasons for the Director’s findings, as submitted to the City Clerk, should be sent with the notification. If the Director decides to make a change in regulations without a public hearing, s(he) should be required to inform those who have expressed interest in rule-making hearings of the change within 5 business days.

8. Regulation 10C – Reconsideration should be given to the provision that a simple majority of members present at a scheduled meeting can promulgate any new regulations or changes. A quorum does not appear to be included in the regulations. A quorum requirement should be adopted and a special threshold for promulgating new regulations or changes should be considered.

9. Regulation 12 – The term “payroll records” in this section should be amended to “payroll records for covered employees.” For the enforcement of the ordinance or regulations, records that fall under the subpoena power should be more tightly defined as payroll records for covered employees. It is not the intention of this ordinance to give the Living Wage Division the authority to subpoena all payroll records of a covered vendor.

10. Regulation 13, Section A5 – For the reasons stated above, Section A5 should be amended to substitute “all payrolls for covered employees” for “all payrolls” that can be examined by the Living Wage Division.

11. Regulation 13, Section A3 – This section raises the question as to whether proper due process is afforded an employer accused of violating the ordinance. The section provides that statements made by an

employee shall be treated as confidential and not disclosed to the covered vendor without the consent of the employee.

12. Regulation 13, Section C – The regulations covering the Living Wage Division’s role to investigate complaints by covered employees or other persons and complaints about discrimination or retaliation against covered employees are consistent with the ordinance. Not as clear is which section of the ordinance is the basis for the regulations that allow the Living Wage Division to investigate possible violations on its own without a complaint.

Not included in this statement is the Bureau’s review of the living wage forms and its conformity to the ordinance. A statement based on that review will be presented to the Director before the end of the week.