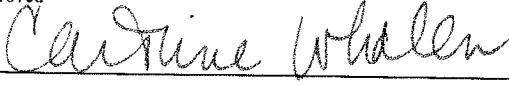




**King County  
Public Rules and Regulations**

Public Rules

King County

Title	Document Code No.
RULES IMPLEMENTING LIVING WAGE ORDINANCE 17909 (PR)	CON 7-21 (PR)
Department/Issuing Agency	Date
DES/FBOD/PROCUREMENT AND PAYABLES SECTION	December 16, 2015
Approved 	

- 1.0 SUBJECT TITLE: Rules Implementing Living Wage Ordinance 17909.
- 1.1 EFFECTIVE DATE: December 16, 2015
- 1.2 TYPE OF ACTION: New
- 2.0 PURPOSE: To establish uniform rules to implement the provisions of King County Ordinance 17909 requiring certain County Contractors to provide payment of a living wage to Covered Employees, and to create an implementation plan designed to provide clear guidance to entities seeking to comply with the law.
- 3.0 ORGANIZATIONS AFFECTED:
  - 3.1 All County departments, offices and agencies authorized to enter into or to administer Contracts on behalf of the County.
  - 3.2 All Contractors entering into a Contract valued at One Hundred Thousand Dollars (\$100,000) or more to perform services, exclusive of public work or architectural or engineering services.
- 4.0 REFERENCES:
  - 4.1 King County Ordinance 17909
  - 4.2 King County Code 3.12.010
  - 4.3 King County Code 2.93
- 5.0 DEFINITIONS:
  - 5.1 "Actuarial value" means the percentage of total average costs for covered benefits that a health benefits package will cover.

- 5.2 "Bonuses" means non-discretionary payments in addition to hourly, salary, commission or piece-rate payments paid under an agreement between an Employer and Employee.
- 5.3 "Commissions" means a sum of money paid to an Employee upon completion of a task, usually selling a certain amount of goods or services.
- 5.4 "Compensation" means wages together with the money paid by the employer towards an individual employee's health benefits plan.
- 5.5 "Contract" means a mutually binding legal relationship or any modification thereof obligating the County to pay a contractor one hundred thousand dollars or more to provide professional services, technical services or services, as defined in K.C.C 2.93.030 to, or at the direction of, the County. "Contract" does not include: a contract between a contract-awarding authority and another government or public entity; a contract that the County enters into as the administrator of grants received from a third party; a contract for public works; an architectural or engineering contract; or a collective bargaining agreement.
- 5.6 "Contract-awarding authority" means the County officer, department, commission, Employee or board authorized to enter into or to administer contracts on behalf of the County.
- 5.7 "Contractor" means any Person that enters into a Contract with the County, or negotiates the extension of an existing Contract with the County, after the effective date of this ordinance, or that is a Subcontractor performing services under such a Contract.
- 5.8 "Covered Employee" means an Employee is covered by the requirements of Ordinance 17909 for each hour the Employee is performing a Measureable Amount of Work under a Contract with the County or a Subcontract thereof.
- 5.9 "Director" means the manager of the Finance and Business Operations Division of the Department of Executive Services, or the manager's designee.
- 5.10 "Employee" means any individual employed by an Employer, whether on a full-time, part-time, temporary or seasonal basis, including temporary workers, contracted workers, contingent workers and Persons made available to work through a temporary services, staffing or employment agency or similar entity, group or combination acting as a unit, and the individuals constituting the group or unit.
- 5.11 "Employer" includes King County and any individual, partnership, association, corporation, business trust or Person or group of Persons acting directly or indirectly in the interest of an Employer in relation to an Employee.
- 5.12 "Health Benefits Plan" means a silver or higher level essential health benefits package, as defined in 42 U.S.C. Sec. 18022, or an equivalent plan that is designed to provide benefits that are actuarially equivalent to seventy percent of the full Actuarial Value of the benefits provided under the plan, whichever is greater.
- 5.13 "Hourly Minimum Compensation" means the minimum compensation due to an Employee under this chapter for each hour worked during a pay period.

- 5.14 "Hourly Minimum Wage" means the minimum wage due to an Employee under this chapter for each hour worked during a pay period.
- 5.15 "Measurable Amount of Work" means a definitive allocation of an Employee's time that can be attributed to work performed under a Contract, but that is not less than a total of one hour in any one week period.
- 5.16 "Person" means any individual, partnership, corporation, limited liability company, sole proprietorship, association, joint adventure, estate, trust or other entity.
- 5.17 "Piece-rate" means a price paid per unit of work.
- 5.18 "Rate of inflation" means the Consumer Price Index annual percent change for urban wage earners and clerical workers, termed CPI-V/, or a successor index, for the twelve months before each September 1 as calculated by the United States Department of Labor
- 5.19 "Schedule 1 Employer" means an Employer that employs more than five hundred Employees in the United States, regardless of where those Employees are employed in the United States.
- 5.20 "Schedule 2 Employer" means an Employer that employs five hundred or fewer Employees in the United States, regardless of where those Employees are employed in the United States.
- 5.21 "Subcontractor" means any Person, not an Employee, that enters into a contract with a contractor or subcontractor, and that employs Employees for that purpose, to assist the contractor or subcontractor in performing a contract with the County.
- 5.22 "Wage" means compensation due to an Employee by reason of employment, payable in legal tender of the United States or checks on banks convertible into cash on demand at full face value, subject to such deductions, charges or allowances as may be permitted by rules of the Director. "Wages" include commissions, Piece-rate compensation and Bonuses, all of which shall be counted as wages in the work-week in which they were earned. An Employer payment toward a health benefits plan does not constitute a "wage."

## 6.0 POLICIES:

- 6.1 General: It is the policy of King County that a living wage will be paid to Covered Employees by Contractors providing certain services to the County. Payment of a living wage is necessary for public welfare, health, peace and safety of the citizens of King County. No Contract-awarding authority shall execute a Contract with a Contractor unless such Contractor has agreed that it will pay and its Subcontractors will pay a living wage as provided by Ordinance 17909 and these rules.

These rules are intended to provide the County with guidelines for implementing the requirements such that the County can provide clarification and assistance to businesses in learning about these emerging concepts of equality in employment and such that businesses are encouraged to provide a living wage to their Employees. Concurrently, the rules are intended to provide the County with guidelines for

implementing the requirements such that the County continues to be able to purchase necessary services to conduct its business.

- 6.2 Effective Date: These rules shall apply to any Contract awarded on or after April 1, 2015. They shall not apply to amendments or extensions pursuant to existing contract terms awarded prior to April 1, 2015, except that the extension process shall not be used for the purpose of evading the requirements of Ordinance 17909 or these provisions.
- 6.3 Contracts: All Contracts covered by Ordinance 17909 shall contain provisions developed by the Department of Executive Services providing for the payment of a living wage, except as exempted by Ordinance 17909 or these rules, and for appropriate remedies for the breach thereof as prescribed by Ordinance 17909.
- 6.4 Contractors: For all Contracts covered by Ordinance 17909, contractors, vendors or consultants who meet the criteria of a Schedule 1 Employer or Schedule 2 Employer shall provide a living wage as outlined in the tables included as Appendix 9.1 and Appendix 9.2, included with this Public Rule.
- 6.5 Subcontracts and Subcontractors: The living wage requirement applies to Subcontractors to a covered Contract.
- 6.6 Covered Entity: The scope of work, goods, or services as outlined in the Contract will define which Employees of an entity or part of the legal structure of the contracting company and participating subcontractors must be paid a living wage in compliance with Ordinance 17909. In the case of a joint venture, all joint venture members are required to comply with Ordinance 17909. All Subcontractors participating in the Contract must comply with Ordinance 17909.
- 6.7 Covered Employee: An Employee is covered by the requirements of Ordinance 17909 for each hour the Employee is performing a Measureable Amount of Work under a Contract with the County or a Subcontract thereof.
- 6.8 Location: Contractors are required to pay a living wage to Covered Employees regardless of the location of the Covered Employee throughout the Contractors' operations in the U.S. or internationally.

*Comment: The following is an example of how Ordinance 17909 applies to companies that have several different locations: Company Z has offices in Seattle, Detroit, and Vancouver, B.C. Company Z enters into a consultant Contract with the County, with the consulting work to be performed in its Seattle and Vancouver, B.C. offices. Under its Contract with the County, Company Z must pay a living wage to Covered Employees (those Employees performing a Measureable Amount of Work on the County Contract) in both its Seattle and Vancouver, B.C. offices.*

- 6.9 Waivers: A Contract Awarding Authority, after encouraging a non-compliant prospective Contractor to comply with Ordinance 17909, may submit to the Finance

and Business Operations Director, or other appropriate King County Executive designee, a request to waive the requirement where:

- 6.9.1 Award of a Contract or amendment to a Contract is necessary in an emergency, as “emergency” is defined in K.C.C. 2.93.080;
- 6.9.2 The Contract is for a proprietary purchase under K.C.C. 2.93.070. Contracting department/agency shall perform all investigation necessary to establish these facts, and shall submit its findings in writing to Procurement & Payables (P&P);
- 6.9.3 There are no Contractors capable of responding to the County’s requirements that can comply with the provisions of Ordinance 17909;

*Comment: The following is an example of when a waiver under Section 6.7.3 might be necessary: In response to a call for bids/proposals, a Contract-awarding authority receives two bids/proposals for a particular Contract. Both Contractors satisfy all the County’s requirements except for providing a living wage. The County under these conditions may grant a waiver of the living wage requirement, provided that the Contract-awarding authority may not seek a waiver under this provision until they have sought to facilitate compliance from both responsive bidders/proposers.*

- 6.9.4 Application of the Ordinance 17909 requirements would result in an increased cost to the County that would make it necessary to reduce services to County residents;
  - 6.9.5 Application of the Ordinance 17909 requirements would have a material, adverse impact on the County.
- 6.10 Requests for Waivers: Requests for waivers of these provisions are to be made to the P&P Chief Procurement Officer by the requesting department/agency via a written justification prior to the award of the Contract. The written justification requesting a waiver must provide information on the following factors:
- 6.10.1 A description of the item or service to be purchased and the name of contractor, vendor or consultant;
  - 6.10.2 A clear statement of the kind of waiver being requested (i.e. emergency or proprietary);
  - 6.10.3 Reference to the section of Ordinance 17909 that is applicable to the requested waiver;
  - 6.10.4 An indication of reasons or rationale for the request for waiver and the special circumstances;

- 6.10.5 A description of the efforts taken to get the Contractor to comply and the results of these efforts;
- 6.10.6 A description of the steps taken to identify other qualified Contractors or methods of purchasing and an explanation of the rationale for selecting the Contractor or proposed method of purchasing.
- 6.10.7 The decisions by the Executive to issue or deny Waivers are final.
- 6.10.8 Additional Waiver Requirements. Where a Contract-awarding authority seeks to obtain the approval for a waiver from the Executive, the Contract-awarding authority must:
  - 6.10.8.1 Inform the prospective Contractor that the requirements of Ordinance 17909 apply to the Contract in question; and
  - 6.10.8.2 Attempt to award any future Contracts for the needed services to a Contractor that does provide a living wage and who does comply with the living wage requirements of Ordinance 17909; and
  - 6.10.8.3 Refer the proprietary provider to the County's P&P to assist them in fully complying with the requirements of Ordinance 17909.
- 6.11 Sanctions and Remedies: The Executive shall determine and impose appropriate sanctions or remedies, or both, for a Contractor's breach of the requirements of Ordinance 17909 and these rules including, but not limited to:
  - 6.11.1 Disqualification of the Contractor from bidding on or being awarded a County Contract for up to two (2) years, provided however, the Contractor shall be given reasonable notice and reasonable opportunity to be heard;
  - 6.11.2 Remedies allowable by Contract including, but not limited to, liquidated damages and termination of the Contract;
  - 6.11.3 Other appropriate civil remedies and sanctions allowable by law;
  - 6.11.4 Allowance for remedial action after a finding of non-compliance. Where the County determines that the best resolution of non-compliance would be remedial action by the Contractor, the County may require such action in lieu of Contract termination or disqualification. The Executive may require other appropriate remedial action, including full payment of back wages sufficient to bring Employee compensation into compliance with Ordinance 17909, provided that any remedial action authorized under Ordinance 17909 must be taken with sixty (60) days of the date of the finding of non-compliance. Circumstances that would favor remedial action include:

- 6.11.4.1 Where the Contractor's non-compliance was nominal or unintentional; or
  - 6.11.4.2 Where the Contractor believed in good faith that Employee compensation policies were in compliance with the requirements of Ordinance 17909 and these rules and procedures; or
  - 6.11.4.3 Where the County determines that remedial action is superior to other authorized sanctions or remedies in ensuring the provision of living wages to eligible Employees.
- 6.11.5 The P&P Section may reject an entity's bid or proposal if it determines that the entity was set up, or is being used, for the purpose of evading the requirements or the intent of Ordinance 17909 or these rules.
- 6.11.5.1 The P&P Section may examine the corporate structure of the entity to determine whether it has been created for separate, independent and legitimate business reasons, and not for the purpose of evading the requirements or the intent of Ordinance 17909. The factors to be considered in this determination may include but are not limited to:
    - 6.11.5.1.1 The legal structure of the entity;
    - 6.11.5.1.2 The degree of control the entity exercises over the provision of a living wage;
    - 6.11.5.1.3 The date the entity was formed; and
    - 6.11.5.1.4 The role within the entity of the Person signing the Contract.
- 6.12 Investigative Authority: Upon the Contractor's entry into a Contract with the County or upon the County's receipt of a Contractor's Bid Form or any other document in which the Contractor asserts its compliance with the living wage requirement, the County shall have the authority to inspect all supporting evidence reasonably necessary to validate the Contractor's compliance with Ordinance 17909 and these rules. Supporting evidence may include but is not limited to: documentation that defines or outlines payroll, reports, and information (including interviews) from Contractors, Contractor Employees, bidders, members of the Contract-awarding authority, and others as necessary. Such investigation may be made subsequent to a report of non-compliance or pursuant to a random audit of a Contractor's payment of living wages.

A Contractor's failure to provide information requested pursuant to the County's investigative authority, will be a material breach of the Contract and subject the Contractor to sanctions and/or remedies, as authorized by Contract and these rules.

- 6.13 Registering a Complaint of Non-Compliance: A Covered Employee may report to the P&P Section (P&P) any alleged breach by a Contractor of Ordinance 17909. All complaints under Ordinance 17909 from a Covered Employee shall be submitted to P&P. Contracting departments, other contractors, other Covered Employees, or other parties on behalf of a specific Covered Employee may also make complaints; however they will not be considered to be protests. Protests must follow the formal bid protest procedure. Complaints may be submitted by phone or by e-mail to: [livingwage@kingcounty.gov](mailto:livingwage@kingcounty.gov). Complainants may request confidentiality when registering their complaints with P&P. P&P will honor such requests for confidentiality to the extent permitted by law (See, RCW Ch. 42.56, Washington Public Records Act).
- 6.14 Legislative Authority: Nothing in these provisions shall limit the right of the County Council to waive the requirements of Ordinance 17909 or these rules and procedures.
- 6.15 Employees under eighteen years of age: The County's human resources director shall establish by rule the minimum wage for employees under the age of eighteen years, but any percentage of the hourly rate established by rule shall not be lower than the percentage applicable under state statutes and regulations.

7.0 PROCEDURES:

**Action By:** Requisitioning Department

**Action:**

- 7.1 Seeks a waiver from requirements of payment of a living wage when no responsive Contractor can meet the requirements of Ordinance 17909.

**Action By:** Contract-awarding authority

**Action:**

- 7.2 Issues Contract materials, including standard living wage boilerplate made available by P&P Section.
- 7.3 Conducts investigations related to submitted complaints for failure to pay a living wage.

**Action By:** Contractor

**Action:**

- 7.4 Shall be in full compliance with the requirements of Ordinance 17909.

**Action By:** Executive or his or her designee

**Action:**

- 7.5 Approves waiver procedure.



- 7.6 Approves investigation and audit procedures.
- 7.7 Determines and imposes appropriate sanctions or remedies for violations of living wage requirements.

8.0 RESPONSIBILITIES:

- 8.1 The Contractor is responsible for:
  - 8.1.1 Ensuring the payment of a living wage to Covered Employees per Ordinance 17909;
  - 8.1.2 Ensuring the retention of records sufficient to document that the Contractor can certify compliance with Ordinance 17909;
- 8.2 Contract-awarding authority is responsible for:
  - 8.2.1 Assuring all relevant language and documents are included in all covered solicitations and Contracts issued by the Contract-awarding authority;
  - 8.2.2 Awarding Contracts to Contractors who are in compliance with the Ordinance 17909.
  - 8.2.3 Determining whether violations of the requirements of Ordinance 17909 will result in disqualification of the Contractor from bidding on or being awarded a County contract per County code, policy and procedures.
- 8.3 The Executive or his or her designee is responsible for:
  - 8.3.1 Adopting public and administrative rules establishing standards and procedures to implement Ordinance 17909;
  - 8.3.2 Receiving, reviewing and approving all appropriate waivers associated with Ordinance 17909;
  - 8.3.3 Receiving, investigating and resolving living wage complaints.

9.0 APPENDICES:

- 9.1 Schedule 1 Employer Wage Tables
  - 9.1.1 For Schedule 1 Employers, beginning April 1, 2015, and ending January 1, 2016, Schedule 1 employers shall pay Covered Employees an Hourly Minimum Wage of at least eleven dollars. Except as otherwise provided in 9.1.2. below, beginning January 1 of each year thereafter, Schedule 1 Employers shall pay Covered Employees an Hourly Minimum Wage as follows:

Year	Hourly Minimum Wage
2016	\$13.00
2017	\$15.00

Beginning January 1, 2018, the Hourly Minimum Wage paid by a Schedule 1 employer to Covered Employees shall be increased annually on a percentage basis to reflect the Rate of Inflation and calculated to the nearest cent on January 1 of each year thereafter,

- 9.1.2 Beginning January 1, 2016, and ending January 1, 2019, Schedule 1 employers that pay toward a Covered Employee's Health Benefits Plan shall pay the Employee no less than an Hourly Minimum Wage as follows:

Year	Hourly Minimum Wage
2016	\$12.50
2017	\$13.50
2018	\$15.00

- 9.1.3 Beginning January 1, 2019, payment by the Employer of a Health Benefits Plan for Employees shall no longer affect the Hourly Minimum Wage paid by a Schedule 1 Employer.

9.2 Schedule 2 Employer Wage Tables

- 9.2.1 For Schedule 2 Employers, beginning April 1, 2015, and ending January 1, 2016, Schedule 2 Employers shall pay their Covered Employees an Hourly Minimum Wage of at least ten dollars. Beginning January 1, 2016, and each year thereafter through January 1, 2025, Schedule 2 Employers shall pay Covered Employees no less than the Hourly Minimum Wage shown in the following schedule:

Year	Hourly Minimum Wage
2016	\$10.50
2017	\$11.00
2018	\$11.50
2019	\$12.00
2020	\$13.50
2021	\$15.00
2022	\$15.75
2023	\$16.50
2024	\$17.25

Beginning January 1, 2025, and January 1 of every year thereafter, the Hourly Minimum Wage paid by a Schedule 2 Employer to Covered Employees shall equal the Hourly Minimum Wage applicable to Schedule 1 Employers.

9.2.2 For Schedule 2 Employers, beginning April 1, 2015, and ending January 7, 2016, Schedule 2 Employers shall pay Covered Employees an Hourly Minimum Compensation of at least eleven dollars. Beginning January 7, 2016, 2017, 2018, 2019, and 2020, Schedule 2 Employers shall pay their Covered Employee no less than the Hourly Minimum Compensation shown in the following schedule:

Year	Hourly Minimum Compensation
2016	\$12.00
2017	\$13.00
2018	\$14.00
2019	\$15.00
2020	\$15.75

Beginning January 1, 2021, the Hourly Minimum Compensation paid by a Schedule 2 Employer to their Covered Employees shall equal the Hourly Minimum Wage applicable to Schedule 1 Employers.

9.3 Living Wage Waiver Request Form

9.3.1 This appendix is available from the Procurement & Payables Section