Ordinance No. 104-2025
AS AMENDED

By Mayor Bibb and Council Members Santana, Slife and Howse-Jones

AN EMERGENCY ORDINANCE

To supplement the Codified Ordinances of Cleveland, Ohio, 1976, by enacting new Sections 669.01 to 669.07 and 669.99 relating to unlawful discriminatory salary practices; and to amend various sections of the codified ordinances.

WHEREAS, disparities in salary histories can perpetuate wage inequality, particularly affecting women, people of color, and other marginalized groups; and

WHEREAS, studies have demonstrated that basing salary offers on previous compensation can entrench systemic discrimination and perpetuate the wage gap, and that prohibiting this practice can lead to systemically measurable increases in wages for women and people of color; and

WHEREAS, in the United States, on average women are paid 83 cents for every dollar earned by men, and the gender wage gap costs women at least $406,760 over a 40-year career. Many women of color are paid even less, and for every dollar made by white, non-Hispanic men, Black women make 66 cents and Latinas make 58 cents, in 2023 according to the American Association of University Women; and

WHEREAS, prohibiting employers from asking about a job applicant's salary history can help ensure that compensation is based on the qualifications, experience, and responsibilities of the position rather than the applicant’s identity or background; and

WHEREAS, at least twenty-two (22) states and dozens of other cities, including Cincinnati, Columbus, and Toledo, have successfully implemented similar legislation, leading to more equitable compensation practices across the United States; and

WHEREAS, this ordinance constitutes an emergency measure providing for the immediate preservation of the public peace, property, health, or safety to remedy wage discrimination and to promote wage equity; now, therefore,

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF CLEVELAND:

Section 1. That the Codified Ordinances of Cleveland, Ohio, 1976, are supplemented by enacting new Sections 669.01 to 669.07 and 669.99 to read as follows:

Ordinance No. 104-2025
AS AMENDED

Chapter 669
Unlawful Discriminatory Salary Practices

Section 669.01 Definitions

For the purposes of this chapter:

(a) "Applicant" means any person applying for Employment, as defined in this section, to be performed within the geographic boundaries of the City of Cleveland, and whose application, in whole or in part, will be solicited, received, processed, or considered in the City of Cleveland, regardless of whether the person is interviewed.

(b) "City" means the City of Cleveland and all City divisions, departments, and offices.

(c) "Days" means calendar days.

(d) "Employer" means an individual, firm, limited liability company, partnership, association, labor organization, corporation, or any other entity, whether or not organized for profit, and including any agent of the same, that employs fifteen (15) or more persons within the City of Cleveland. "Employer" includes job placement and referral agencies and other employment agencies when such agencies operate on behalf of an entity that otherwise meets the definition of "Employer." "Employer" does not include any unit of local, state, or federal government, except it does include the City.

(e) "Employment" means any occupation, vocation, job, or work, including but not limited to, temporary and seasonal work, part-time work, contracted work, contingent work, work on commission, and work through the services of a temporary or other employment agency, for which the Applicant is to receive a Salary. Employment does not include work as an independent contractor.

(f) "Fair Employment Wage Board" or "FEWB" means the board established under Chapter 189 of these Codified Ordinances.

(g) "Inquire" means to communicate any direct or indirect statement, question, prompting or other communication, orally or in writing, personally or through an agent, to gather information from or about an Applicant, or to conduct a search of publicly available records or reports for the purpose of gathering information from or about an Applicant. "Inquire" does not include informing the Applicant in writing or otherwise about the position's proposed or anticipated Salary.

(h) "Respondent" means the Employer and/or person alleged to have committed a violation of Section 669.02.

(i) "Salary" means a person's financial compensation in exchange for labor, including but not limited to wages, commissions, hourly earnings, and other monetary earnings, and also includes benefits.

(j) "Salary History" means an Applicant's current or prior Salary. "Salary History" does not include any objective measure of an Applicant's productivity such as revenue, sales, or other production reports.

Section 669.02 Unlawful Discriminatory Salary History Practices

(a) Except as otherwise provided in this section, it shall be unlawful discriminatory practice for an Employer to do any of the following:

(1) Inquire about the Salary History of an Applicant;

(2) Screen an Applicant based on their current or prior Salary History, including requiring that an Applicant's prior Salary History satisfy minimum or maximum criteria;

(3) Rely solely on the Salary History of an Applicant, except as provided in division (d) of this section, in deciding whether to offer Employment to an Applicant, or in determining the Salary for such Applicant during the hiring process, including the negotiation of an employment contract; and

(4) Refuse to hire or otherwise disfavor, injure, or retaliate against an Applicant for not disclosing their Salary History.

(b) Notwithstanding division (a) of this section, an Employer may, without inquiring about Salary History, engage in discussions with the Applicant about their expectations with respect to Salary, including but not limited to, unvested equity or deferred compensation that an Applicant would forfeit by resigning from their current Employer.

(c) Employers shall provide the Salary range or scale for potential Employment in the notification, advertisement, or other formal posting that offers the opportunity to apply for Employment.

(d) The requirement(s) and prohibitions contained in this section shall not apply to any of the following:

(1) Any actions taken by an Employer pursuant to any federal, state, or local law that specifically authorizes the reliance on Salary History to determine an employee's compensation;

(2) Applicants for internal transfer or promotion with their current Employer;

(3) A voluntary and unprompted disclosure of Salary History information by an Applicant;

(4) Any attempt by an Employer to verify an Applicant's disclosure of non salary related information or conduct a background check, provided that if such verification or background check discloses the Applicant's Salary History, such disclosure shall not be solely relied upon for purposes of determining the

Salary of such Applicant during the hiring process, including the negotiation of an employment contract;

(5) Applicants who are re-hired by the Employer, provided that the Employer already has past Salary History for the Applicant from the previous employment of Applicant;

(6) Employee positions for which the Salary is determined pursuant to procedures established by collective bargaining; and

(7) Federal, state, and local governmental Employers, other than the City.

Section 669.03 Administration

(a) The administration of this chapter shall be the responsibility of the Fair Employment Wage Board (FEWB).

(b) In addition to any powers conferred on the FEWB under these Codified Ordinances, the FEWB shall have power to:

(1) Make technical studies and prepare and disseminate educational materials related to this chapter;

(2) Make specific and detailed recommendations related to this chapter to interested parties;

(3) Receive and consider complaints alleging violations of this chapter;

(4) Assess penalties under Section ~~669.05~~ 669.99; and

(5) Adopt such reasonable rules and procedures as are necessary to effect the provisions of this chapter.

Section 669.04 Complaints

(a) Any person may allege that a violation of Section 669.02 has occurred by filing a written complaint with the FEWB within one hundred and eighty (180) days of the alleged violation.

(1) The complaint shall include a description of the violation.

(2) The complaint shall include the name, address, and other relevant identifying information of the Respondent.

(3) The complaint shall include any documentation of the alleged violation, including but not limited to job application material or links to a website that Inquires about the Salary History of an Applicant, to the extent that such documentation is available.

(4) The complaint may but is not required to include the aggrieved party's signature and identifying information, such as name, address, phone number, and email address.

(b) The FEWB shall consider the complaint at its next meeting but no later than ninety (90) days from receipt of the complaint.

(1) If the complaint contains neither documentation of the alleged violation nor the aggrieved party's signature and identifying information, then within ten (10) days of the meeting, the FEWB shall issue to the Respondent:

A. copy of the complaint; and

B. written notice stating the prohibitions and requirement(s) under this chapter; and further stating that, while the complaint named the Respondent, because of the lack of information available, no further action would be taken without a new or amended complaint.

(2) If the complaint contains documentation of the alleged violation or the aggrieved party's signature and identifying information, then based on the complaint, the FEWB shall ascertain whether a violation of Section 669.02 has occurred.

A. If the FEWB finds by a preponderance of the evidence that no violation occurred, then it shall notify the aggrieved party by written or electronic notice, if the aggrieved party has provided sufficient identifying information to be notified.

B. If the FEWB finds by a preponderance of the evidence that a violation has occurred, then it shall:

1. Within ten (10) days of the FEWB's finding, issue to the Respondent:

a. copy of the complaint, and

b. written notice stating each of the following: the prohibitions and requirement(s) under this chapter; the basis for FEWB's finding of a violation; and any proposed resolution process described in subdivision (2) below; and

2. Attempt to resolve the complaint by methods of education, conference, conciliation, and persuasion with all interested parties.

(3) The FEWB shall determine if the complaint is resolved, except that the complaint shall be considered resolved if, within ninety (90) days of receiving a copy of the complaint from the FEWB under Section 669.04(b)(2)B.1.a., the Respondent:

A. corrects its deficient processes, policies, and/or application materials; and

B. provides to the FEWB a credible plan to commit no further violations of Section 669.02.

Section 669.05 Appeal and Collection

(a) A civil penalty imposed under Section 669.99 may be appealed by the Respondent to the Director of Finance or their designee within thirty (30) days after receipt of the civil penalty. The Director or their designee shall have jurisdiction to affirm or reverse the civil penalty by issuing a written decision. The final decision of the Director or their designee may be further appealed to the Board of Zoning Appeals within thirty (30) days after the written decision is issued.

(b) If a civil penalty has been imposed under Section 669.99, and any portion of it remains unpaid thirty (30) days following the Respondent's receipt of the civil penalty or, if an appeal had been requested, thirty (30) days following receipt of final appellate decision, the City may initiate a civil action or any other means provided for in these Codified Ordinances or the Revised Code to collect the penalty and recover costs.

Section 669.06 Severability

If any provision or section of this chapter or the enforcement of any such provision or section is held to be invalid or unenforceable by a court of competent jurisdiction, such invalidity or unenforceability shall not affect or render invalid or unenforceable any other provision or section of this chapter. To this end, each of the provisions and sections of this chapter are severable.

Section 669.07 Effective Date

This chapter shall take effect and be in force after it becomes law.

zz

Section 669.99 Civil Penalties

If the FEWB has found that a violation has occurred but the complaint has not been resolved and ninety (90) days have passed since the Respondent has received a copy of the complaint from the FEWB under Section 669.04(b)(2)B.1.a., then the FEWB may assess a civil penalty. The civil penalties are as follows and shall be adjusted on an annual basis by the first (1st) day of February in proportion to any increases in the previous year in the consumer price index for all Urban Consumers (CPI-U), as published by the Bureau of Labor Statistics, U.S. Department of Labor:

(a) If the Respondent has not been found to have committed any prior violations of this chapter during the five (5) years immediately preceding the date on which the complaint was submitted, the civil penalty shall not exceed one thousand dollars ($1,000.00).

(b) If the Respondent has been found to have committed one prior violation of this chapter during the five (5) years immediately preceding the date on which the complaint was submitted, then the civil penalty shall not exceed two thousand five hundred dollars ($2,500.00).

(c) If the Respondent has been found to have committed two or more violations of this chapter during the five (5) years immediately preceding the date on which the complaint was submitted, then the civil penalty shall not exceed five thousand dollars ($5,000.00).

Section 2. That Sections 189.04, 191.01 and 190.03 of the Codified Ordinances of Cleveland Ohio, 1976, as amended by Ordinance No. 892-2022, passed December 5, 2022, are amended to read as follows:

Section 189.04 Fair Employment Wage Board

(a) The Fair Employment Wage Board (FEWB) shall review the effectiveness of the living wage ordinance to ensure that the community is informed on whether those companies that are receiving public assistance, government loans, and service contracts from the City are adhering to the ordinance. The FEWB shall make recommendations to the Cleveland City Council, when appropriate, regarding issues pertaining to the living wage policy. The FEWB shall also perform the duties and responsibilities assigned to it under the Wage Theft and Payroll Fraud Prevention ordinance as codified in Chapter 190 and under the Unlawful Discriminatory Salary Practices ordinance as codified in Chapter 669.

(b) The FEWB shall be composed of two (2) representatives from the business community, two (2) representatives from labor organizations, one (1) representative from community groups, one (1) representative from the Mayor's office and one (1) representative from Cleveland City Council. The FEWB members shall be appointed to the FEWB by the Mayor, subject to the approval of City Council. Each FEWB member shall be a resident of the City of Cleveland. No person shall be appointed to the Fair Employment Wage Board who has any interest in a contract, loan, grant or other financial assistance from the City of Cleveland.

(c) The Mayor shall initially appoint three (3) members of the FEWB for one (1) year terms, two (2) members to two (2) year terms, and two (2) members for a three (3) year term. Thereafter, all members shall serve three (3) year terms. Members may serve more than one (1) term.

(d) At the beginning of each year the FEWB members shall elect a chairperson and vice chairperson by majority vote. The FEWB shall hold meetings quarterly and in special sessions as called by the chairperson or by a majority of the members. All meetings of the FEWB shall be open to the public. All meetings will allow for public testimony on compliance with the Fair Employment Wage Chapter and

minutes of all meetings shall be taken. The FEWB shall adopt such rules and regulations as the Board may deem necessary or desirable for the conduct of its business.

(e) The FEWB shall be provided with and shall review:

(1) All reports on compliance filed by Applicable Departments as provided by this chapter;

(2) The results of any investigations of Covered Employers as provided by this chapter;

(3) All applications for exemptions from coverage filed by recipients of Assistance and Service Contractors as provided by this chapter.

The FEWB shall provide recommendations regarding such matters to City Council.

(f) The FEWB shall monitor, analyze and study information provided by the City to ensure that Covered Employees whose employers are receiving incentives for the offer or provision of health care insurance are receiving or being offered substantially equivalent health care benefits as are provided to City employees.

Section 190.01 Definitions

(a) (1) "Adverse Determination" means a final adjudication, not subject to appeal, by a court of competent jurisdiction, a final action by a state or federal governmental agency, or a final adjudication by an arbitrator or arbitral body of competent jurisdiction, including, but not limited to, an administrative merit determination, arbitration award or decision, civil judgment, or criminal conviction, that a Contractor, Subcontractor or Recipient of Assistance has committed Wage Theft or Payroll Fraud, or a final adjudication, not subject to appeal, by a court of competent jurisdiction, that a Contractor, Subcontractor, or Recipient of Assistance has violated Section 669.02 of these Codified Ordinances. If the person or entity appeals or contests the final adjudication, final action, or final determination, the Adverse Determination becomes effective whenever that initial adjudication, action, or determination, in whole or in part, is affirmed on appeal or after the contest, or the appeal or contest is denied.

(2) A settlement agreement or other similar agreement entered into by a person or entity related to any allegations of Wage Theft or Payroll Fraud to resolve the matter prior to the issuance of an Adverse Determination or while an appeal is pending shall not constitute an Adverse Determination.

(3) Nothing in this section shall be construed to permit a collateral attack on the jurisdiction of a court, state or federal governmental agency, or an arbitrator or arbitral body to avoid being placed on the Adverse Determination List.

(b) "Adverse Determination List" means a list published by the Fair Wage Employment Board and updated every month, of persons or entities that have received an Adverse Determination within the preceding three (3) years.

(c) "Applicable Department" means the City department administering Construction and Improvement Contracts or Service Contracts or the City department to which a person or entity applies for Assistance.

(d) "Assistance" shall have the same meaning as in division (b) of Section 189.01.

(e) "Contract" means any Construction or Improvement Contract and any Service Contract entered into pursuant to these Codified Ordinances.

(f) "Contractor" means any person or entity who enters into a Construction or Improvement Contract or Service Contract with the City.

(g) "Construction or Improvement Contract" means any contract entered into pursuant to Charter Section 167 or Chapter 185 of the Codified Ordinances.

(h) "City" means the City of Cleveland and all City departments, divisions and offices.

(i) "Fair Employment Wage Board" or "FEWB" means the board established under Chapter 189 of these Codified Ordinances.

(j) "Payroll Fraud" means concealing an entity's true payroll tax liability or other financial liability to a government agency from government licensing, regulatory or taxing agencies through misclassification of employees, failure to report or underreported payment of wages, or executing a cash transaction while failing to maintain proper records of reporting and withholding.

(k) "Person or Entity" means any individual, proprietorship, partnership, joint venture, corporation, limited liability company, trust, association, or other entity recognized at law by the State of Ohio, and their successors, predecessors, affiliates, and assigns, who may employ individuals or enter into contracts with the City.

(l) "Recipient of Assistance" means:

(1) Any Person or Entity who enters into one (1) or more Contracts with the City for Assistance;

(2) Any Person or Entity that is a direct recipient of Assistance.

(m) "Service Contract" shall have the same meaning as in division (j) of Section 189.01.

(n) "Subcontract" means any contract between a Contractor and a person or entity to assist in performance of a Contract; and a contract between a person receiving Assistance and a person or entity to support the project or matter for which the person is receiving Assistance.

(o) "Wage Theft" means a violation of the Ohio Prompt Pay Statute, RC 4113.15; the Ohio Minimum Fair Wage Standards Act, RC Chapter 4111; Oh. Const. Art. II, Sec. 34a; RC Chapters 4109 or 4115; RC 4113.17, 4113.18, 4113.52 or 4113.61; or a violation of any substantially equivalent federal or state law; as any of these laws may be amended or superseded.

Section 190.03 Monitoring Contracts; Adverse Determination List

(a) Any person employed on a Contract or Subcontract, who alleges that a violation of federal or state law relating to Wage Theft or Payroll Fraud has occurred, may file a written complaint with the Director of the Applicable Department within one hundred and eighty (180) days of the alleged violation or knowledge of the alleged violation. The complaint shall be a statement with the name and address of the person making the charge, the name and address of the employer alleged to have committed the violation of federal or state law, and any other information as may be required by the Director of the Applicable Department. The Director of the Applicable Department shall inform the FEWB of the complaint and refer the complainant to the appropriate governmental agency for review.

(b) The FEWB shall create and maintain a list of persons or entities that have reported Adverse Determinations pursuant to Section 190.02, the Adverse Determination List. The FEWB shall cause the list to be published on the City website and updated every month. The FEWB shall monitor the outcome of any assessed civil penalties under Section 669.99 of these Codified Ordinances and any referral made pursuant to division (a) of this section and update the Adverse Determination List as necessary.

Section 3. That the repeal of existing Sections 189.04, 191.01, and 190.03 of the Codified Ordinances of Cleveland Ohio, 1976, as amended by Ordinance No. 892-2022, passed December 5, 2022, and the enactment of Chapter 669 shall be effective one hundred and eighty (180) days after the effective date of this ordinance.

Section 4. That this ordinance is declared to be an emergency measure and, provided it receives the affirmative vote of two-thirds of all the members elected to Council, it shall take effect and be in force immediately upon its passage and approval by the Mayor; otherwise it shall take effect and be in force from and after the earliest period allowed by law.

SM/JHO
1-13-2025
FOR: Mayor Bibb and Council Members Santana, Slife, Howse - Jones

Ord. No. 104-2025 AS AMENDED

REPORT
after second Reading

By Mayor Bibb and Council Members Santana, Slife and Howse-Jones

AN EMERGENCY ORDINANCE

To supplement the Codified Ordinances of Cleveland, Ohio, 1976, by enacting new Sections 669.01 to 669.07 and 669.99 relating to unlawful discriminatory salary practices; and to amend various sections of the codified ordinances.

READ FIRST TIME **REPORTS**

and referred to _____

_____

by the council _____

_____

CITY CLERK

READ SECOND TIME

by the council _____

_____

CITY CLERK

READ THIRD TIME

by the council _____

_____

PRESIDENT

_____

CITY CLERK

_____

APPROVED

_____

_____

MAYOR

Recorded Vol. _____ Page _____

Published in the City Record _____