

# City of Providence

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

## CHAPTER 2005-45

No. 412

### AN ORDINANCE RELATIVE TO DISPLACED WORKERS NOTIFICATION, AS AMENDED

EFFECTIVE ~~XXXXXX~~ *Approved* September 11, 2005

***Be it ordained by the City of Providence:***

PROVIDENCE CODE CHAPTER ----

Section . Definitions.

The following definitions shall apply throughout this Chapter:

(1) "Awarding authority" means any person that awards or otherwise enters into contracts for ~~security~~, janitorial, building maintenance ~~or health care services~~ performed within the City of Providence, including any subcontracts for these services. **This section shall not apply to real properties containing five or less residential units.**

(2) "Contractor" means any person that enters into a service contract with the awarding authority and any sub-contractors to such service contract at any tier, who employs ~~three at least~~ (3) or more persons.

(3) "Employee-" means any person employed to provide services pursuant to a service contract. ~~and includes registered nurses. "Employee" does not include a person who is (a) a managerial, supervisory, or confidential employee, including those employees who would so be defined under the Fair Labor Standards Act; or (b) is employed less than 15 hours a week.~~

(4) "Person" means any individual, proprietorship, partnership, joint venture, corporation, limited liability company, trust, association, or other entity that may employ individuals or enter into other contracts.

(5) "Service contract" means a contract let to a contractor by the awarding authority for the furnishing of ~~security~~, janitorial, or building maintenance service. ~~or non-professional health care services, including any services to be performed by registered nurses.~~

(6) "Successorship service contract" means a service contract with the awarding authority where substantially the same services to be performed have previously been rendered to the awarding authority as part of the same program or at the same facility under another service contract that recently has been terminated or has ended within the previous ninety (90) days.

Section ~~9-2302~~. Transition Employment Period

All service contractors and awarding authorities who enter into service contracts to be performed within the City of Providence shall be subject to the following obligations:

No.

CHAPTER  
AN ORDINANCE

IN CITY COUNCIL  
MAR 17 2005  
FIRST READING  
REFERRED TO COMMITTEE ON  
ORDINANCES

Michael B. Clement CLERK  
(CS)

THE COMMITTEE ON

Ordinance

Recommends

Recontinued  
Barbara M. Stetson  
July 7, 2005 CLERK (CS)

THE COMMITTEE ON  
ORDINANCES

Approves Passage of

The Within Ordinance

as amended

Claire E. Burtch  
July 27, 2005 CLERK

Councilmen Aponte, Luna and Segal

(1) The awarding authority shall give advance notice to a service contractor, and any collective bargaining representative of any of the service contract employees, that a service contract will be terminated or ended and the name, telephone number and address of the successor contractor or contractors if known. The terminating or ending contractor shall, within three (3) days after receipt of such notice, provide to the successor contractor, the name, date of hire, and employment occupation classification of each employee employed at the site or sites covered by the predecessor contractor at the time of receiving said notice.

(2) On the date said contract ends, the terminating or ending contractor shall update the information previously provided to make it current to the actual termination date.

(3) If the terminating contractor is not notified of the identity of the successor contractor, in the notice required by paragraph (1) of this section, the terminating contractor shall provide such information to the awarding authority within three (3) days of receipt of such notice. The awarding authority shall be responsible for providing such information to the successor contractor as soon as that contractor has been selected.

(4) A successor contractor or sub-contractor shall retain, for a ninety (90)-day transition employment period commencing with the onset of the successorship service contract, all employees who have been employed by the terminated contractor or its sub-contractor at the site or sites covered by the contract for at least the eight (8) months immediately preceding the date the predecessor contract is terminated.

In the event that the successorship service contract is terminated or ended prior to the expiration of the 90-day transition employment period, then any contractor or sub-contractor awarded a subsequent successorship service contract shall be bound by the requirements set forth in this subsection to retain, for a new ninety (90)-day transition employment period commencing with the onset of the subsequent successorship service contract, all employees who have been employed by any one or a combination of the terminated or ending contractors at the site or sites covered by the contract for at least the eight (8) months immediately preceding the date of the most recently terminated or ended contract.

The successor contractor or sub-contractor shall hand deliver a written offer of employment to each employee as required by this section in the employee's native language or another language in which the employee is fluent. Such offer shall state the time within which the employee must accept such offer but in no case may that time be less than ten (10) days from the date of the offer and in no case may the tenth day occur any later than five (5) days prior to the expiration of the predecessor contract.

The written offer required by this Section shall be substantially in the form set forth in Section \_\_\_\_\_ - in a language in which each employee is fluent.

(5) If at any time a successor contractor determines that fewer employees are required to perform the new service contract than were required by the terminated contractor, the successor contractor shall be required to retain employees by seniority within each job classification.

(6) During ~~the~~ ninety (90)-day transition employment period, the successor contractor shall maintain a preferential hiring list of employees eligible for retention under paragraph (Section 4) of this section, not retained by the successor contractor from which the successor contractor shall hire additional employees.

(7) Except as provided under ~~subsection paragraph~~ (6) of this section, during the transition employment ~~such 90-day~~ period, the successor contractor shall not discharge without cause an employee retained pursuant to this Chapter. Cause shall be based only on the performance or conduct of the particular employee.

Section 9-2303. Enforcement.

(1) An employee displaced or terminated in violation of this Chapter may bring an action in a Court of competent jurisdiction against the awarding authority, the terminated contractor and/or the successor contractor, jointly or severally, for violations of any obligations imposed under this Chapter and may be awarded:

(a) back pay, including the value of benefits, for each day during which the violation continues, which shall be calculated at a rate of compensation not less than the higher of:

(i-1) the average regular rate of pay received by the employee, during the last year of the employee's employment in the same job classification times average hours worked per work day over the past four (4) months or

(ii-2) the final regular rate of pay received by the employee at the time of termination times the average hours worked per work day over the past four (4) months; and

(b) reinstatement to his or her former position at no less than the last wage rate, with benefits and hours worked per work day, that the employee received.

(2) If the employee is the prevailing party in any such legal action, the Court shall award reasonable attorney's fees and costs to the employee as part of the costs recoverable.

(3) This section shall not be construed to limit an employee's right to bring common law cause of action for wrongful termination.

(4) Each day a violation continues shall constitute a separate violation.

~~—(5) Any awarding authority or contractor who knowingly violates this Chapter shall pay penalties per employee per day of violation of \$50 to \$100.~~

#### Section 9-2304. Notice to Displaced Worker.

(1) English Language Notice:

DATE:

TO: (name of employee)

#### IMPORTANT INFORMATION REGARDING YOUR EMPLOYMENT

We have received information that you are employed by (name of predecessor contractor) and are currently performing work at (address of worksite). (Name of predecessor contractor) has lost its contract with the owners of (address of worksite) and will no longer be providing (security or janitorial or building maintenance or food and beverage, hotel service or health care) services as of (last day of predecessor contract).

We are (name of successor contractor) and have been hired by the owners of (address of worksite) to provide the same (security or janitorial or building maintenance or food and beverage, hotel service or health care) service. We are offering you a job with us for a 90 day probationary period starting (first day of successor contract) to perform the same type of work that you have already been doing for (name of predecessor contractor) under the following terms:

Pay rate (per hour): \$ \_\_\_\_\_  
Hours per shift: \_\_\_\_\_  
Total Hours Per Week: \_\_\_\_\_  
Benefits: \_\_\_\_\_

You must respond to this offer within the next ten (10) days. If you want to continue working at (address of worksite) you must let us know by (mm/dd/yyyy - no later than 5 days prior to the expiration of the predecessor contract or 10 days after the date of this letter if the predecessor contract has already expired). If we do not receive your response by the end of business that day, we will not hire you and you will lose your job. We can be reached at (successor contractor phone number).

The Protection of Displaced Contract Workers Ordinance, Chapter of the Providence Code gives you the following rights:

1. You have the right, with certain exceptions, to be hired by our company for the first ninety (90) days that we begin to provide services at (address of worksite).
2. During this 90 day period, you cannot be fired without just cause.
3. If you believe that you have been fired or laid off in violation of this Ordinance, you have the right to sue us and be awarded back pay, attorneys fees and court costs.

FROM: (Name of successor contractor)  
(Address of successor contractor)  
(Telephone # of successor contractor)

(2) Spanish Language Notice:

FECHA: \_\_\_\_\_

PARA: (nombre del trabajador)

### INFORMACION IMPORTANTE SOBRE SU EMPLEO

Hemos recibido información que usted está empleado por (nombre de la Compañía anterior) y que actualmente está trabajando en (dirección del lugar de empleo). (Nombre de la compañía anterior) ha terminado el termino de su contrato con los dueños de(dirección del lugar de empleo) y no proveerá más (servicios de ~~seguridad~~ o de limpieza o mantenimiento de edificio ~~o de comida y bebida, servicios a hoteles o servicios de salud~~) servicios desde el (el último día de contrato de la compañía anterior).

Somos (nombre de la nueva compañía en contrato) y hemos sido contratados por los dueños de (dirección del lugar de trabajo) para proveer el mismo (~~seguridad~~ o de limpieza o mantenimiento de edificio ~~o de comida y bebida, servicio de hoteles o servicios de salud~~) servicio. Le estamos ofreciendo un empleo con nosotros con 90 dias de periodo probatorio comenzando el (primer día de contrato de la compañía nueva) desempeñando el mismo tipo de trabajo que ha estado haciendo para (nombre de la compañía anterior) bajo los siguiente términos:

Salario (por hora): \$ \_\_\_\_\_  
Horas por días: \_\_\_\_\_  
Total de horas por semana: \_\_\_\_\_  
Beneficios: \_\_\_\_\_

Usted deberá de contestar nuestra oferta entre los próximos diez días. Si usted quiere continuar trabajando en (dirección del lugar de trabajo) deberá de dejárnoslo saber no más tardar del (mes/día/año) - a no más tardar de 5 dias antes de la expiracion del contrato de la compania anterior o 10 dias después de haber recibido esta carta si el contrato de la compañía anterior ya está expirado). Si no recibimos su contestación ese dia al terminar el dia laboral no le contrataremos y usted perderá su empleo. Puede comunicarse con nosotros (número telefónico de la compañía nueva).

La Ordenanza de Protección para Trabajadores Desempleados bajo Contrato, Capitulo 9-2300 del Código de Filadela le da los siguientes derechos:

1. Usted tiene el derecho, con ciertas excepciones, de ser contratado por nuestra compañía por los primeros 90 días en que comencemos a dar servicios en (dirección del lugar de empleo).

2. Durante este periodo de 90 días usted no puede ser despedido sin causa justificada.

3. Si usted cree que ha sido despedido o le han dado de baja en violación a esta Ordenanza usted tiene el derecho de demandarnos y recibir su salario, honorarios de abogado y costo de corte.

DE: (Nombre de la Compañía nueva bajo contrato)  
(Dirección de la Compañía nueva bajo contrato)  
(Teléfono # de la Compañía nueva bajo contrato)

SECTION 2. Section \_\_\_\_\_ of the Providence code is hereby amended to read as follows:

\_\_\_\_\_. Licenses.

\* \* \*

\_\_\_\_\_. (4) Every person required to procure a license under this Section shall as a condition to the receipt or retention of said license:

\* \* \*

\_\_\_\_\_. (d)(1) The Department of \_\_\_\_\_ and \_\_\_\_\_ shall refrain from issuing or shall revoke, the business privilege license of any person, who under color of such license intends to operate, or is operating, in violation of the provisions of sub sections \_\_\_\_\_ 4)(b), [or] (4)(c) [or] (4)(d), or (4)(e), and shall take all steps necessary to terminate the business operations of any business establishment that has violated any of such subsections, including but not limited to the following:

\* \* \*

\_\_\_\_\_. (e) refrain from violating any provision of chapter \_\_\_\_\_ of the Providence Code entitled "Protection of Displaced Contract Workers." The Providence Labor Standards Unit shall have the responsibility for the enforcement of the provisions of this subsection and in connection therewith shall:

\_\_\_\_\_. (.1) Cause a notice containing the provisions of this ordinance to be sent to all persons currently engaged in performing health care, janitorial or building maintenance services within the City of Providence as indicated on the application for Providence Business Tax Account Number filed with the Revenue Department and to all persons who shall in the future indicate on their application for Providence Business Tax Account Number filed with the Revenue Department that they intend to engage in such businesses.

\_\_\_\_\_. (.2) Maintain a current list of all business privilege license holders for performing, health care, janitorial or building maintenance services within the City of Providence.

\_\_\_\_\_. (.3) Investigate all complaints against any contractor or subcontractor or awarding authority and in connection therewith or with respect to any investigation shall have full power and authority to subpoena any witness, books, records, or other data of any person for the purposes of obtaining information pertinent to such investigation. The Director of the Providence Labor Standards Unit shall make a finding in writing with respect to each complaint filed, and shall send a copy thereof to the complainant and the contractor and shall maintain it on file. Upon request, the unit shall provide any affected contractor or subcontractor with a hearing.

~~(.4) Refer all complaints determined to have merit to the Department of Licenses and Inspections for revocation of the offending person's business privilege license pursuant to this subsection (d)(1).~~

~~(.5) Monitor the operations of contractors, subcontractors and awarding authorities to ensure compliance with Chapter of the Providence Code.~~

~~[(e)] (f)~~

\* \* \*

~~[(f)] (g)~~

\* \* \*

SECTION 3. Effective Date. This ordinance shall take effect thirty (30) days after its final enactment.

**IN CITY COUNCIL**  
AUG 4 2005  
**FIRST READING**  
**READ AND PASSED, AS AMENDED**  
*Claire E. Bestwick*  
**CLERK**

**IN CITY COUNCIL**  
SEP 1 2005  
**FINAL READING**  
**READ AND PASSED**  
*[Signature]*  
**PRESIDENT**  
*Claire E. Bestwick*  
**CLERK**

Effective without the Mayor's Signature:

*Claire E. Bestwick*  
Claire E. Bestwick  
Acting City Clerk



## Department of Law

August 4, 2005

Councilman Terrence M. Hassett  
47 Raymond Street  
Providence, RI 02903

Re: Displaced Workers Ordinance

Dear Councilman:

Please accept the following as our response to the questions you posed in your letter of August 1 to Fred Stolle concerning the version of the so-called Displaced Workers Ordinance (the "Ordinance") which was approved by the Council's Committee on Ordinances on July 27 and which will be considered by the full Council this Thursday, August 4.

### Question 1: The Council's Jurisdiction

Although the question is one of first impression in Rhode Island and involves complicated and unsettled areas of federal and state preemption in the area of labor law, it does not appear that the Council, which has historically almost no track record of legislating in the area, has the power under the Home Rule Charter to enact the Ordinance, even if one were to assume for argument's sake that the Ordinance is not in direct contravention of either the city charter or the general laws of the state.

We believe it likely that a court would conclude that the City is preempted from enforcing the Ordinance under state law because it could be successfully argued that: (1) uniform regulation throughout the state in the precise area would be necessary and desirable; (2) as noted, the area is not one that historically has been within the domain of the City; and "most critical," (3) the ordinance would have a significant effect upon entities, i.e., building owners, outside the City. See Town of East Greenwich v. O'Neil, 617 A.2d 104, 111 (R.I. 1992).

In 1994, an ordinance substantially similar to the one under consideration was enacted in the District of Columbia and was quickly challenged on grounds of, among other things, federal preemption. Judge Hogan of the United States District Court, while noting that the ordinance represented an "unprecedented incursion into an area that was previously unregulated" and had "upset the delicate balance between labor and



management," held that the ordinance was preempted by the National Labor Relations Act. See Washington Services Contractors Coalition v. District of Columbia, 858 F.Supp. 1219, 1230 (D.D.C. 1994), *rev'd.*, 54 F.3d 811 (D.C. Cir. 1995), *cert. denied*, 516 U.S. 1145, 116 S.Ct. 1015, 134 L.Ed.2d 96 (1996).

On appeal, however, Judge Hogan was reversed. The Court of Appeals for the District of Columbia Circuit (generally regarded as the second most powerful court in the country) held that there was no federal preemption because, the court reasoned, the ordinance did not mandate that successor contractors recognize any specific union and the ordinance did not intrude into the collective bargaining process. In addition, the court held that the ordinance did not violate the so-called contracts clause of the United States Constitution. See Washington Service Contractors, *supra*, 54 F.3d 811, 815-16 (D.C. Cir. 1995), *cert. denied*, 516 U.S. 1145, 116 S.Ct. 1015, 134 L.Ed.2d 96 (1996).

Significantly, the opinion of the District of Columbia Circuit in Washington Service Contractors, *supra*, is not binding upon the First Circuit or upon the Rhode Island District Court. That being said, it is difficult to glean a consistent philosophy on issues of federal labor preemption such as to predict how our local court would decide the precise issue, which, as noted, is one of first impression. See, e.g., Southern Gas Co. v. R.I. Div. Public Utilities and Carriers, 306 F.Supp.2d 129 (D.R.I. 2004) (Torres, J.) (state statute prohibiting private employees from turning or shutting off gas service unless they had two years of relevant experience not preempted by NLRA); Associated Builders & Contractors of RI v. City of Providence, 108 F. Supp.2d 73 (D.R.I. 2000) (Torres, J.) (City ordinance requiring execution of private labor agreements as condition precedent to favorable tax treatment in connection with union Station project preempted by NLRA); Charlesgate Nursing Center v. State of Rhode Island, 723 F. Supp. 859, 865-66 (R.I. 1989) (statute prohibiting hiring of replacement workers during strike preempted by NLRA).

## **Question 2: "Terminated" vs. "Displaced" Workers**

The best way to answer your fourth question is by example. If, for example, an owner of several buildings with ten "floating" maintenance workers on his or her payroll were to purchase a building in Providence and then enter into a "successorship service contract" involving ten other maintenance workers who are currently cleaning the acquired building, it would appear that the original ten "floating" workers would not be covered by the Ordinance in the event that the owner, due to limited resources, decided to terminate them. Of course, the workers at the acquired building would be covered and the owner would not be permitted to terminate any of them during the transition period.

Councilman Hassett  
August 3, 2005  
Page Three

**Question 3: Workers' Compensation Coverage**

We agree with your conclusion that under state law a so-called successor contractor would assume liability for the workers' compensation liability coverage for any employees covered by the Ordinance who stayed on the job during the ninety (90) day "transition" period (and presumably there also would be additional costs associated with unemployment insurance and complying with other federal and state employment provisions). We defer to your conclusions as to the fairness of such a result from a policy standpoint.

**Question 4: Premature Termination of Successorship Contract**

You asked what would happen in the event a successorship contract is terminated for whatever reason after only sixty (60) days. Would the contractor have to keep effected workers employed for the complete ninety (90) day transition period?

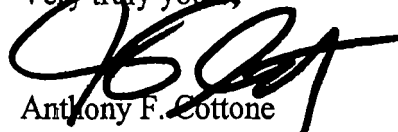
No. The terminated contractor is off the hook and any new contractor on the scene would be liable for a new ninety-day transition period only to those workers who had been on the job no longer than eight months prior to execution of the newest contract. See the Ordinance, Section 4 at page 2.

**Question 5: Enforcement**

Under the Ordinance, workers are afforded a private right of action for a variety of compensatory damages, including attorneys' fees, see the Ordinance, Section 1 at page 3, which implicates the state preemption issues discussed above. (The original version of the Ordinance provided for some enforcement by the City, but that provision was deleted prior to passage by the Committee.)

We would be happy to provide copies of this letter to Councilmen Aponte, Luna and Segal (whom you copied on your letter to us), as well as to Councilman Igliozi, who asked for a copy, at your request.

Very truly yours,



Anthony F. Cottone

cc: Joseph M. Fernandez, Esq.  
Adrienne Southgate, Esq.  
Fred Stolle, Esq.