

# First Source Commission Report

## I. Background

### History

Providence's First Source Ordinance was enacted in 1985. However, the City only began to implement the Ordinance in 2005 when the City Council first allocated money and passed amendments to strengthen the Ordinance. Believing these actions were insufficient, in 2006 several organizations, Councilmen and unemployed Providence residents filed a lawsuit against the City for not completely fulfilling its obligations under the Ordinance. As a result of this lawsuit, the City assigned a full time employee to implement the Ordinance; and began to allocate funding and create a First Source List as required in the Ordinance.<sup>1</sup>

### Goals of the Ordinance

1. To help unemployed Providence residents find jobs and to provide a trained workforce to qualified employers.
2. The Ordinance requires all employers who receive tax concessions, and/or abatements (other than adjustments), loans, grants-in-aid, grants from the office of community development, office of economic development, or other federal programs administered by the City, and all public works projects to hire all employees from the City's First Source list. (The only exceptions are supervisory employees, vacancies filled through internal promotions, and all businesses with four or less employees).
3. The First Source Ordinance specifically requires the City Department of Planning and Development (DOPD) to implement its provisions.
4. The DOPD has the power under the Ordinance to sanction any business in violation of the Ordinance. Sanctions include termination of aid or funding; termination of contract, and/or recovery of any benefits received during the time of the violation.

### The Financial State of the City

Providence, like many municipalities across the country has on going budget deficits; is struggling to provide City services; and, its residents are struggling to find employment to support their families.

- Structural Deficit: Days before the Council passed the Resolution creating the First Source Commission; Mayor Angel Taveras announced that the City faced a \$70 million structural deficit for the 2011 fiscal year and a \$110 million structural deficit for the 2012 fiscal year.<sup>2</sup>

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<sup>1</sup> Anthony Cottone May 16, 2006 Memorandum to John Simmons Re: First Source Ordinance/Litigation.

<sup>2</sup> March 4, 2011, "Providence Faces Staggering Budget Deficit," Alisha Pina, Providence Journal

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- 2011-2012 City Budget Raises Taxes: The new 2011-2012 City budget will raise taxes 5.8%, 1.3% above what is normally allowed under state law and will change the structure of the car tax to increase total collection.<sup>3</sup>
- High Unemployment: The most recent statistics issued by the RI Department of Labor and Training show that in July 2011 the State of Rhode Island had a 10.9% unemployment rate and the City a 15.1% unemployment rate.<sup>4</sup>
- High Foreclosure Rate: In the first three months of 2011 RI ranked in the top 5 for new foreclosure starts. During the same time period 8.26 % of mortgages were passed due.<sup>5</sup>
- Non-Profits paying more to City in lieu of taxes: While City residents struggle to find employment to provide a respectable standard of living for their families, approximately 40% of the City's property tax base is exempt from paying taxes. These same struggling families not only have to find the income to support their families, they have to pay a property tax rate that reflects the disproportionate number of tax exempt institutions that resident in the capital city. As a result the Mayor is in the process of negotiating increases in the PILOT payments these tax exempt Universities and Hospitals currently make to the City so that there is a better balance between what these very financially stable institutions pay and what the citizens of the City pay for services. As of July 2011, the Mayor's office was predicting an additional \$5.75 in revenue this year.<sup>6</sup>

### Work of the Commission

In March 2011, The City Council, working in conjunction with the Mayor's office, created a Commission to make written recommendations to the City Council after studying and evaluating implementation and enforcement of the Ordinance.

Since being created, the First Source Commission met on ten occasions.<sup>7</sup> It reviewed the Resolution, the Ordinance, all existing relevant programming manuals, and all reports on file. It took testimony from James Lombardi, Internal Auditor for the City, Tom Deller, Gary Bliss and Anastasia Williams from the City DOPD, Andrew Cortes from Building Futures and a database contractor for the First Source program, Lisa Jacques from Blue Cross/Blue Shield, Angelo DePeri and Robin Zukowski from the Renaissance Hotel, Jim Glover from Network RI/Workforce Solutions, and Lisa Dinerman, Senior Assistant City Solicitor.

From this information, the Commission issued the below Findings and Recommendations:

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<sup>3</sup> July 19, 2011, Mayor enacts \$613.8 million budget plan," Gregory Smith, Providence Journal.

<sup>4</sup> <http://www.dlt.ri.gov/lmi/laus/town/providence.htm>

<sup>5</sup> May 20, 2011, "RI Near Top of Foreclosure Rates," Christine Dunn, Providence Journal

<sup>6</sup> July 9, 2011, "Tax Hike Likely in Providence, Despite Aid, Cuts," Alisha Pina, Providence Journal.

<sup>7</sup> Commission meetings were held on April 20, 2011, May 5, 2011, May 18, 2011, June 1, 2011, June 8, 2011, July 13, 2011, July 27, 2011, August 10, 2011, August 24, 2011, and August 31, 2011.



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## II. Findings

### A. **Funding**

1. According to research presented by a member of the Commission, after the City signed a superior court consent agreement in 2006 requiring it to fund First Source as required by the First Source Ordinance, it did allocate substantial sums annually to implement the ordinance's provisions but it did not make full use of the allocated monies in four of the five subsequent full fiscal years. In total for fiscal years 2007 through 2011, at least \$500,000 of the budgeted monies \$1,250,000 were not spent.<sup>8</sup>
2. Even when the City has funded First Source, any funds allocated that are not spent by June 30th are automatically "swept" into the City's general fund, even if there was a contractual obligation to spend these outstanding monies.
3. Unspent funds budgeted for First Source could have been reserved for use in following years but was not. Therefore, the approximate total of at least \$300,000 in unspent budgeted funds remained in the general fund as an unrestricted, unreserved surplus fund.
4. The DOPD had substantial difficulty providing the Commission with financial reports detailing expenditures because the monies are spent through the general fund as opposed to a budget and/or fund within the DOPD.

### B. **Administrative (Reporting for employers and submitting an application for prospective employees)**

5. The City has not promulgated any rules and regulations to implement First Source Ordinance.
6. According to testimony provided about First Source ordinances in other cities reviewed, Providence is the only City where First Source is in the planning department.
7. The City currently provides workshops for how to comply with First Source for all organizations interested in funding from the City. However, it does not do any outreach to the community seeking applicants.
8. The First Source list is filled with outdated names and information.
9. The DOPD cannot generate a computer list of potential applicants who would be qualified for available new employment.
10. Both Network RI and the City of Providence collect and maintain different lists of unemployed City residents for prospective employers with the City.
11. Subject to the direction of her supervisors, there is only one person dedicated to the implementation, monitoring and enforcement of First Source who employed by the City on a full time basis.

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<sup>8</sup> At the August 31, 2011 meeting, a representative of the City auditor informed the Commission that there is approximately \$200,000 in reserve plus \$300,000 in the general fund for a total of \$500,000 that was unspent.

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12. Moreover, that person has to “manually going through paper files to come up with names of peopled who you would submit to ... [a] particular company....” for potential employment.
13. There has been only a limited number Providence residents placed by the City through First Source.
14. A commission member personally went to Network RI and it took them twenty minutes to retrieve the proper forms so that he could document he was a City of Providence resident. The Commission finds this result a deterrent to City residents who want to find employment.
15. Allowing residents to apply and employers to view potential employees on-line would significantly increase the residents’ ability to get jobs and employers’ ability to comply with their First Source obligations.
16. According to testimony from the DOPD, through the CDBG there are a “large number of training programs” funded by First Source programs.
17. According to testimony from the DOPD, First Source funds are also used to pay a portion of “stipends to the workers who are being trained
18. According to testimony provided, most of the successful First Source Ordinances around the country generally do not have a “training component” to them.
19. According to the City there are still numerous tax stabilization agreements that are still active and required to report.

### **C. Compliance**

20. Former Internal Auditor Lombardi’s report, though incomplete, highlights the serious problems with the program on both the administrative and business end for organizations receiving grants from the City:
  - a. The list of business entities subject to the First Source Ordinance provided by the DOPD did not include recipients of tax stabilization agreements or all recipients of economic development loans.
  - b. Many organizations that did respond to the auditor indicated that they were unaware of the ordinance’s reporting requirements.
  - c. The report focused on the nonprofits receiving grants and not the businesses receiving tax stabilizations.
  - d. Organizations and Corporations do not differentiate in their reports which new hires who reside in Providence were hired off of the First Source List.
21. According to representatives of the City, compliance with First Source reporting obligations “almost doubled” after the audit.
22. Blue Cross, a TSA recipient that testified before the commission indicated that they subcontracted some of the functions needed to operate their facility to third party contractors that were not required to comply with the ordinance.

### **D. Enforcement**



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23. According to testimony from the City Law Department, all companies, vendors, and citizens are presumed to know the law. This includes First Source obligations.
24. Despite having the authority to do so and despite the Internal Auditor's findings of non-compliance, no one from City government that testified before the Commission could ever recall any entity ever being sanctioned in any capacity for not complying with their obligations under the First Source Ordinance.
25. The vast majority of "well functioning...local hiring programs around the country have penalties built into them and that is a powerful deterrent."<sup>9</sup> However, according to City representatives no one has ever been penalized for non-compliance of the City of Providence FSO.
26. Two companies with TSAs that testified before the commission about their compliance with First Source. Both of these companies informed the commission that they do not contact the DOPD prior to filing vacancies and at least one company did not give preferences to City of Providence residents in making new hires, requirements of their First Source and TSA obligations.
27. Without proper enforcement First Source will not be effective and City of Providence residents will lose out on job opportunities that they should have otherwise had.
28. Based on the language, the First Source Ordinance is actually a very powerful, but has simply been unenforced since its inception over the past 25 years ago."<sup>10</sup>

### **III. Recommendations**

- A. **The Ordinance.** We recommend amending the First Source Ordinance as follows:
  1. Make hiring City residents and compliance of obligated entities the primary focus of the ordinance and make training a secondary focus.
  2. Develop funding mechanisms to ensure that the hiring and reporting requirements of First Source are properly funded on an annual basis. Testimony before the commission suggested establishing a First Source trust fund so that funds appropriated cannot be swept into the general fund on June 30<sup>th</sup>.
  3. Develop additional funding mechanisms to support training initiatives. All future tax stabilization agreements require a portion of their discounted taxes go to a job training fund.
  4. Move First Source and the employees responsible for its implementation to another department that is more aligned with its mission such as the economic development department.

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<sup>9</sup> Andrew Cortes, Meeting Minutes of the First Source Commission, May 19, 2011.

<sup>10</sup> Law Department memo by Christopher Marovelli to Adrienne Southgate, Esq., June 13, 2011 at page 6.

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- a. The City may also consider having First Source responsibilities in every department with First Source obligations. For example, it may make sense to have a First Source compliance person in a designated department such as the Department of Public Works.
5. Eliminate the need for a list to be kept by the City by ordinance.
6. Establish a \$25,000 annual threshold for First Source compliance for entities receiving grants or in-kind contributions from the City.
7. Delete the requirement that the ordinance requires covered entities to “enter into an agreement.” It is a redundant utilization of City resources that is unnecessary because, according to the City’s law department all parties are presumed to know the law. Also, require that First Source obligations be acknowledged in documentation to entities receiving funds from the City when they receive such funds.
8. First Source has limited application after construction is completed on TSAs. We recommend expanding its provisions to apply to include subcontractors of recipients after construction is completed (construction and non-construction), vendors, tenants, and vendors of tenants (to the extent practicable), working on the premises receiving the TSA.
9. Require the Department responsible for implementing First Source to submit quarterly reports to a yet-to-be determined subcommittee of the City Council that includes:
  - i. The names of the entities obligated to hire City residents under the First Source Ordinance; the monies they received from the City; the number of job vacancies from each employer; the number of job vacancies posted with First Source; the number of new hires they make; the number of new hires they made from the First Source list and the number of new hires they make that are City residents; and the percentage of people of color, women and with disabilities that were hired from the City of Providence.
  - ii. The names of the entities that received First Source training funds, the amount of funds they receive, and the number of First Source applicants these recipients trained, the number of placements, date of hire, where the trainees are placed, and track their retention; and,
  - iii. The number of entities that were required to, but did not submit timely reports and any fines they were levied with.
10. Require the executive branch to develop regulations to ensure that First Source is implemented to achieve its intended purpose.
11. Allow for the responsible Department to impose fines for not filing timely reports.
12. Amend the Ordinance to require the executive branch to monitor compliance.

**B. Administratively.** We recommend the following administrative changes:



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1. Consider moving First Source to the Department of Economic Development or other department with similar objectives.
2. Determine and hire the specific number of people needed to implement the provisions of the ordinance and any possible rules and regulations and develop a specific job description(s) and pay grade(s) for the person(s). The Commission strongly recommends that the City employ at least additional one-to-two full time employees to assist in the coordination, monitoring, and enforcement First Source Ordinance provisions, and also for outreach to the Community.
3. Streamline the NetworkRI and First Source workforce lists so that there is one list. Network RI should maintain the First Source List so the designated department can focus on compliance, enforcement, outreach, and training (to a secondary extent).
4. Allow city residents to submit a First Source employment application on-line.
5. Require that responsible Department to do community outreach to inform City residents of the availability of work opportunities through First Source.
6. So that there is accurate and up-to-date information, the First Source List should be purged every six months.
7. Improve the hiring and reporting system to be business, user and city friendly by requiring an online-based filing system and promulgate in the City's regulations specific daily fines of \$100 per-day for each day an entity is late in submitting their required reports. The Department may, in its sole discretion, allow up to a five-day grace period for not submitting timely reports to any entity required to submit them. However, the Department shall not allow any one entity to receive more than two (2) such grace periods in any one year.
8. Reporting requirements to the City Council should be designed to allow better tracking of women, minority and disabled hires.
9. Require organizations to verify and truthfully attest that they are or will be hiring from the First Source List before receiving funds or accepting tax payments.
10. The City should review all existing TSAs to determine who is complying and enforce the provisions of these agreements or avail themselves to the penalties currently in the ordinance.
11. Promulgate rules and regulations that allow for periodic audits of employers with First Source obligations for City to access non-confidential employee information in order to verify the entity's compliance with First Source.
12. Develop rules and regulations to implement the proposed changes to the ordinance. Include in the regulations any specific penalties for non-compliance with reporting *and* hiring obligations. Also include a clear set of new penalties that the responsible Department can impose for:
  - a. Failure to contact the responsible Department at least ten days prior to making new job opportunities public.

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- b. Companies that fail to file timely quarterly reports of first source hires. (i.e. a daily fine of \$100 for not reporting) These fines will accrue until the company has fulfilled all reporting requirements.
  - c. If a Company does not make a good faith effort to comply, the City can also seek liquidated damages and/or term the aid/funding.
  - d. Failure to give a City of Providence resident preference in hiring when required to.
  - e. If any non-profit entity that is required to comply with First Source hires more than 50% of its new workers who are not residents of the City of Providence. However, this will not be the sole grounds for revocation, nor will hiring 50% Providence residents be a "safe harbor" from revocation. Compliance with First Source will require a good faith effort to hire Providence residents for all First Source covered jobs.
  - f. Automatic termination of funding, aid, or contract for any fraudulent submission, false statement, and/or knowing or willful violation.
13. Set a process in place for appeals of penalties and fines issued by the City for non-compliance with First Source. If the appeal process involves any court action, require that the prevailing party be entitled to recover attorneys' fees in any appeal to superior court
14. Community based and social service Not- for- Profit Organizations (NPOs) that can independently and successfully recruit and hire 50% of its work force who are:
- i. Providence residents
  - ii. Low income as defined by the federal guidelines
  - iii. Reflective of the demographic population being served or
  - iv. Graduates of the NPO's programs

shall be exempt from the process below and considered to be in compliance with First Source. These hires shall be referred to First Source for inclusion on the list during the screening process and shall be eligible to be counted by the NPO and reported accordingly. Otherwise these First Source steps are to be followed:

- b. When a position is to be advertised by an NPO, it concurrently notifies FS
  - c. FS meets the same deadline for referrals as is posted for all applicants to submit resumes (typically 2 weeks)
  - d. If there is a need to re-advertise, FS is included in the second round also
  - e. Within an agency program year, if 51% FS compliance is not met, then FS will issue a written warning requiring a written strategy to become compliant and the NPO is fined
  - f. If the NPO remains non compliant for two years, it will not be eligible for any city funding for one year
15. Develop a policy for residents of the City of Providence who have registered with the First Source office to file a complaint with the responsible Department for not complying with the provisions of First Source.



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16. That the responsible Department develops and approves an annual budget for First Source implementation.
17. Publish all First Source violators on the City's Website.


### IV. Conclusion


Since our inception the First Source Commission has met on numerous occasions to review and analyze how to make implementation of the First Source Ordinance successful so that the City will be able to put as many of its residents to work as possible. The Commission's goals were simple: to gather all pertinent information, to probe into the process and fully examine the results so far, to pare out the initiative's strengths, weaknesses, victories and failures, and to offer concrete and streamlined solutions that would effect positive changes, all of it directed to increase and better monitor the increased hiring of City of Providence residents.

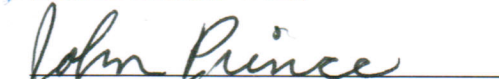
The state of our economy, and the rate of unemployment, in Providence, in RI, and in the nation, makes this a perfect time to re-evaluate the First Source Ordinance. The commission would like to thank the City Council for giving us the opportunity to evaluate The First Source Ordinance, the Mayor's office for their support and input, and specifically thank the City Clerk's staff for their support, sense of cooperation, and steady efficiency throughout the process.

#### THE FIRST SOURCE COMMISSION


  
Thomas Savioe, Chairman

  
Jenna Karlin, Vice-Chairwoman

  
Sharon Conard-Wells

  
John Prince

  
Eileen Hayes

  
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