

Legislative #

140296

ORDINANCE NO. 140296

An ordinance of the City of Gainesville, Florida amending Article IX of Chapter 2 of the City Code of Ordinances relating to Living Wage, by adding a Section 2-618 on requirements for City employees; providing directions to the codifier; providing a severability clause; providing a repealing clause; and providing an immediate effective date.

WHEREAS, the City Commission adopted Ordinance No. 020663 commonly referred to as the Living Wage Ordinance on March 17, 2003 to improve the quality of services to the City and the public through the payment of an adequate wage that promotes stability and quality in the work force and does not perpetuate underemployment, while at the same time not creating unemployment; and

WHEREAS, the City readopted the Living Wage Ordinance by Ordinance No. 080755 on April 2, 2009; and

WHEREAS, the City has set an example by providing a living wage to City employees as determined consistent with budgetary, pay plan and bargaining unit considerations and obligations, and wishes to amend the Living Wage Ordinance consistent with the City’s practice; and

WHEREAS, notice was given and publication made by advertisement in a newspaper of general circulation ten (10) days prior to the public hearing; and

WHEREAS, public hearings were held pursuant to the notice described above at which hearings the parties in interest and all others had an opportunity to be and were, in fact, heard.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COMMISSION OF THE CITY OF GAINESVILLE, FLORIDA:

Section 1. Section 2-618 of the Code of Ordinances is created and added to read:

ARTICLE IX. - LIVING WAGE REQUIREMENTS

1 **Sec. 2-615. - Definitions.**

2 [The following words and phrases as used in this article shall have the following meanings
3 unless a different meaning is clearly required by the context:]

4 *City* means the City of Gainesville Municipal Corporation.

5 *Cooperative purchasing agreement* "is materials, equipment or services purchased under the
6 terms and conditions of another local, state, federal, or other public agency's bid or cooperative
7 bids put together by agencies.

8 *Covered employee* means an employee of a service contractor/subcontractor, as further
9 defined in this article, that is directly involved in providing covered services pursuant to the
10 service contractor's/subcontractor's contract with the city, during the period of time he or she is
11 providing the covered services. The term "covered employee" shall not include a person
12 described in 29 USC 213(a)(3) (seasonal employee), a student enrolled in a degree program who
13 is employed under the auspices of the educational institution, a person who is employed by the
14 service contractor/subcontractor through an ongoing written job training program, a worker with
15 a disability as defined in 29 CFR 525.3, or employees hired or leased for temporary assignments
16 of less than one year such as short-term projects, substituting for an absent employee, or
17 substituting while a vacant position is being filled.

18 *Covered services* are the following services purchased by the city under a single contract
19 over \$100,000.00:

- 20 (1) Food preparation and/or distribution;
21 (2) Custodial/cleaning;
22 (3) Refuse removal;
23 (4) Maintenance and repair;

- 1 (5) Recycling;
- 2 (6) Parking services;
- 3 (7) Painting/refinishing;
- 4 (8) Printing and reproduction services;
- 5 (9) Landscaping/grounds maintenance;
- 6 (10) Agricultural/forestry services;
- 7 (11) Construction services;

8 except when such services are services provided under a cooperative purchasing agreement, or
9 services provided by service contractors/subcontractors located within the City of Gainesville
10 enterprise zone.

11 *Health benefits* are any plan, fund, or program established or maintained by the service
12 contractor/subcontractor for the purpose of providing for its participants or beneficiaries, through
13 the purchase of insurance or otherwise, medical, surgical, or hospital care or benefits.

14 *Payroll records* include name, address, the covered employee's correct classification, rate of
15 pay, daily and weekly number of hours worked, deductions made and actual wages paid and, if
16 applicable, those records necessary to determine whether health benefits, as described herein, are
17 being provided or offered to covered employees.

18 *Service contractor/subcontractor* is a for-profit individual, business entity, corporation,
19 partnership, limited liability company, joint venture, or similar business, providing a covered
20 service, who or which employs 50 or more persons, but not including employees of any
21 subsidiaries, affiliates or parent businesses. The calculation of number of employees is made as
22 of the date of execution of the contract for covered services.

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1 **Sec. 2-616. - Amount of living wage.**

2 (a) *Living wage paid.* A service contractor/subcontractor shall pay to all of its covered
3 employees a living wage of no less than \$8.70 per hour (health benefit wage) and offer
4 health benefits as described in this section, or otherwise \$9.95 per hour (non-health benefit
5 wage).

6 (b) *Health benefits.* For a service contractor/subcontractor to comply with the living wage
7 provision by choosing to pay the lower wage scale available when the service
8 contractor/subcontractor also offers health benefits, such health benefits shall cost an
9 average of \$1.25 per hour per employee towards the provision of health benefits. The
10 requirement may be satisfied by a cafeteria plan, which includes health benefits, towards
11 which the service contractor/subcontractor makes a contribution of at least \$1.25 per hour
12 for each covered employee. If the health benefit program of a service
13 contractor/subcontractor requires an initial period of employment for a new employee to be
14 eligible for health benefits (eligibility period), such service contractor/subcontractor may
15 pay the health benefit living wage scale for up to six months of a new employee's initial
16 eligibility period. In this event, upon six months of employment, the new employee will be
17 paid the non-health benefit wage until such time as the new employee is offered or provided
18 health benefits.

19 (c) *Adjustment.* The living wage (health benefit wage) specified in subsection (a) above is based
20 on the federal poverty guidelines for a family of four as determined by the U.S. Department
21 of Health and Human Services (DHHS), and published in the Federal Register February 14,
22 2002. It will be adjusted annually as of the first day of the second month following the
23 month of publication of the new federal poverty guidelines by the DHHS, the non-health

1 benefit wage will be adjusted the same amount, and the adjusted rates will be applied to
2 contracts for which bids/proposals are solicited, or extensions/amendments of existing
3 contracts entered into, after the effective date of the adjustment. Provided further, however,
4 that in no event shall the health benefit wage exceed the lowest hourly base rate of pay of
5 any regular, full-time city employee in effect at the time bids/proposals for contracts are
6 solicited, or in the case of extensions/amendments of then existing contracts, the rate in
7 effect at the time such extension/amendment is entered into. The applicable living wage
8 shall be noted in all solicitations for covered services, and disclosed during negotiations for
9 extensions/amendments of contracts for covered services.

10 (d) *Certification.* Prior to executing any contract with the city or service contractor for a covered
11 service the service contractor/subcontractor, as applicable, shall certify to the contractor
12 administrator (city) that it will pay each of its covered employees a living wage as herein
13 defined, during the period of time they are directly involved in providing covered services
14 under the contract. Upon execution, the certification shall become an obligation under the
15 contract. The certification must also include, at a minimum, the following:

- 16 (1) The name, address, and phone number of the service contractor/subcontractor and a
17 local contact person;
- 18 (2) The specific project for which the service contract is sought;
- 19 (3) The amount of the contract and the department contract administrator;
- 20 (4) An agreement to comply with the terms of this article as part of its contractual
21 obligations.

22 (e) *Posting.* A copy of the living wage rate shall be kept posted by the employer in a prominent
23 place where it can easily be seen by the covered employees and shall be supplied to any

1 covered employee upon request. In addition, it is the responsibility of the service
2 contractors/subcontractors to make any person submitting a bid for a subcontract providing
3 covered services aware of the requirements of this article.

4 **Sec. 2-617. - Application; enforcement.**

5 (a) Procurement specifications. The living wage shall be required for new contracts for covered
6 services solicited, and extensions or amendments of existing contracts for covered services
7 with service contractors/subcontractors entered into, after the effective date of the ordinance
8 from which this article derives. This article shall be implemented in a fashion consistent
9 with otherwise applicable city purchasing policies and procedures.

10 (b) Each contracting department shall include the following clause in each of its contracts for
11 covered services (and extensions/amendments to existing contracts if not included in the
12 original contract):

13 During the performance of this contract, the contractor agrees as follows:

14 (1) The contractor shall comply with the provisions of the City of Gainesville's living wage
15 requirements, as applicable. Failure to do so shall be deemed a breach of contract and
16 shall authorize the city to withhold payment of funds until the living wage requirements
17 have been met.

18 (2) The contractor will include the provision of (1) above in each subcontract for covered
19 services with a service contractor/subcontractor, as defined herein, so that the
20 provisions of (1) above will be binding upon each such service contractor/subcontractor.
21 The contractor will take such action with respect to any such subcontract as may be
22 directed by the contract administrator as a means of enforcing such provisions;
23 provided, however, the city shall not be deemed a necessary or indispensable party in

1 any litigation between the contractor and a subcontractor concerning compliance with
2 living wage requirements.

3 (c) A person who claims that this article applies or applied to him or her as a covered employee
4 and that the service contractor/subcontractor is or was not complying with the requirements
5 of this article has a right to file a written complaint. Each charter officer shall establish
6 administrative procedures for the filing, processing and resolution of written complaints
7 under this ordinance for their respective areas of responsibility(s) of the city. A covered
8 employer may be required to produce payroll and other records deemed relevant to the
9 investigation of a complaint. Remedies set forth in any administrative procedures will not be
10 exclusive or in any way meant to prohibit any relief afforded by a court of law or otherwise
11 prohibit the city from terminating a contract, filing a complaint, or taking legal action for
12 noncompliance.

13 (d) Retaliation and discrimination unlawful. It shall be unlawful and punishable as provided in
14 section 1-9 of this Code for an employer to discharge, reduce the compensation of, or
15 otherwise discriminate against any employee for filing a written complaint or otherwise
16 asserting his or her rights under this ordinance, participating in any of its proceedings or
17 using any available remedies to enforce his or her rights under the ordinance.

18 **Sec. 2-618. – City employees.**

19 The City will set an example by providing a living wage, as described in Section 2-616(a)-(c), to
20 the City’s regular employees as determined consistent with budgetary, pay plan and bargaining
21 considerations and obligations. The requirements of Sections 2-616(d) and (e) and 2-617 do not
22 apply to the City.

23 ~~Secs. 2-618, 2-619.~~ - Reserved.

1 **Section 2.** It is the intention of the City Commission that the provisions of Section 1 of
 2 this Ordinance shall become and be made a part of the Code of Ordinances of the City of
 3 Gainesville, Florida, and that the sections and paragraphs of this Ordinance may be renumbered
 4 or relettered in order to accomplish such intentions.

5 **Section 3.** If any word, phrase, clause, paragraph, section or provision of this ordinance
 6 or the application hereof to any person or circumstance is held invalid or unconstitutional, such
 7 finding shall not affect the other provision sor application of the ordinance which can be given
 8 effect without the invalid or unconstitutional provisions or applicaton, and to this end the
 9 provisions of this ordinance are declared seerable.

10 **Section 4.** This ordinance shall become effective immediately upon final adoption.

11 **PASSED AND ADOPTED** this ____ day of _____, 2015.

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 EDWARD B. BRADDY
 MAYOR

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ATTEST:

Approved as to form and legality

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 KURT M. LANNON
 CLERK OF THE COMMISSION

 NICOLLE M. SHALLEY
 CITY ATTORNEY

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This ordinance passed on first reading this ____ day of _____, 2015.

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This ordinance passed on second reading this ____ day of _____, 2015.

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