

ORDINANCE NO. 020663
0-02-10

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5 **An ordinance of the City of Gainesville, Florida, creating Article IX,**
6 **of Chapter 2 of the City of Gainesville Code of Ordinances,**
7 **establishing a living wage requirement for certain employees of**
8 **contractors providing selected services to the city; providing**
9 **directions to the codifier; providing a severability clause; providing a**
10 **repealing clause; and providing a delayed effective date with a sunset**
11 **provision.**
12

13 **WHEREAS,** the City awards contracts to provide services for the public. Such
14 expenditures of public money also serve the public purpose by creating jobs, expanding the
15 City's economic base, and promoting economic security for all citizens; and

16 **WHEREAS,** the City provides direct financial assistance to businesses for the purpose
17 of economic development and job growth; and

18 **WHEREAS,** the City has set an example by providing a living wage to City employees
19 as determined consistent with budgetary, pay plan and bargaining unit considerations; and

20 **WHEREAS,** The City desires to improve the quality of services to the City and the
21 public through the payment of an adequate wage that promotes stability and quality in the work
22 force and does not perpetuate underemployment, while at the same time not creating
23 unemployment;

24 **WHEREAS,** pursuant to law, at least ten days notice has been given prior to adoption by
25 publication in a newspaper of general circulation notifying the public of this proposed Ordinance
26 and of a Public Hearing to be held in the City Commission meeting room, First Floor, City Hall, in
27 the City of Gainesville; and

28 **WHEREAS,** Public Hearings were held pursuant to law, at which hearings the parties in
29 interest and all others had an opportunity to be and were, in fact heard.

1 **NOW THEREFORE BE IT ORDAINED BY THE CITY COMMISSIONERS OF**
2 **THE CITY OF GAINESVILLE OF GAINESVILLE, FLORIDA**

3 **Section 1.** Section 2-615 of Article IX, entitled "Living Wage Requirements", of Chapter 2 of
4 the City of Gainesville Code of Ordinances of Gainesville, Florida, is hereby created as follows:

5 Art. IX. Living Wage Requirements.

6 **Sec. 2-615. Definitions**

- 7 a. *City* means the City of Gainesville Municipal Corporation.
- 8 b. *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
10 to the Service Contractor's/Subcontractor's contract with the City, during the period of
11 time he or she is providing the Covered Services. The term *covered employee* shall not
12 include a person described in 29 USC 213(a)(3) (seasonal employee), a student enrolled
13 in a degree program who is employed under the auspices of the educational institution, a
14 person who is employed by the Service Contractor/Subcontractor through an ongoing
15 written job training program, a worker with a disability as defined in 29 CFR 525.3, or
16 employees hired or leased for temporary assignments of less than one-year such as short-
17 term projects, substituting for an absent employee, or substituting while a vacant
18 position is being filled.
- 19 c. *Service Contractor/Subcontractor* is a for-profit individual, business entity, corporation,
20 partnership, limited liability company, joint venture, or similar business, providing a
21 covered service, who or which employs 50 or more persons, but not including
22 employees of any subsidiaries, affiliates or parent businesses. The calculation of

1 number of employees is made as of the date of execution of the contract for Covered
2 Services.

3 d. *Payroll Records* include name, address, the Covered Employee's correct classification,
4 rate of pay, daily and weekly number of hours worked, deductions made and actual
5 wages paid and, if applicable, those records necessary to determine whether Health
6 Benefits, as described herein, are being provided or offered to Covered Employees.

7 e. *Cooperative Purchasing Agreement*" is materials, equipment or services purchased
8 under the terms and conditions of another local, state, federal, or other public agency's
9 bid or cooperative bids put together by agencies.
10 f. *Health Benefits* are any plan, fund, or program established or maintained by the Service
11 Contractor/Subcontractor for the purpose of providing for its participants or
12 beneficiaries, through the purchase of insurance or otherwise, medical, surgical, or
13 hospital care or benefits.

14 g. *Covered Services* are the following services purchased by the City under a single
15 contract over \$100,000:

- 16 (i) food preparation and/or distribution;
- 17 (ii) custodial/cleaning;
- 18 (iii) refuse removal;
- 19 (iv) maintenance and repair;
- 20 (v) recycling;
- 21 (vi) parking services;
- 22 (vii) painting/refinishing;
- 23 (viii) printing and reproduction services;

1 (ix) landscaping/grounds maintenance;

2 (x) agricultural/forestry services;

3 (xi) construction services;

4 except when such services are:

5 services provided under a cooperative purchasing agreement; or

6 services provided by Service Contractors/Subcontractors located within the City of

7 Gainesville enterprise zone.

8 **Section 2.** Section 2-616 of the City of Gainesville Code of Ordinances is hereby created to
9 read as follows:

10 **Sec. 2-616. Amount of Living Wage.**

11 a. Living Wage Paid.

12 A Service Contractor/Subcontractor shall pay to all of its Covered Employees a Living
13 Wage of no less than \$8.70 per hour (Health Benefit Wage) and offer Health Benefits as
14 described in this section, or otherwise \$9.95 per hour (non-Health Benefit wage).

15 b. Health Benefits. For a Service Contractor/Subcontractor to comply with the Living
16 Wage provision by choosing to pay the lower wage scale available when the Service
17 Contractor/Subcontractor also offers Health Benefits, such Health Benefits shall cost an
18 average of \$1.25 per hour per employee towards the provision of Health Benefits. The
19 requirement may be satisfied by a Cafeteria Plan, which includes Health Benefits,
20 towards which the Service Contractor/Subcontractor makes a contribution of at least
21 \$1.25 per hour for each covered employee. If the Health Benefit program of a Service
22 Contractor/Subcontractor requires an initial period of employment for a new employee
23 to be eligible for Health Benefits (eligibility period), such Service

1 Contractor/Subcontractor may pay the Health Benefit Living Wage wage scale for up to
2 six months of a new employee's initial eligibility period. In this event, upon six months
3 of employment, the new employee will be paid the Non-Health Benefit Wage until such
4 time as the new employee is offered or provided Health Benefits.

5 c. Adjustment. The Living Wage (Non-Health Benefit Wage) specified in (a) above is
6 based on the Federal Poverty Guidelines for a family of four as determined by the U.S.
7 Department of Health and Human Services (DHHS) and published in the Federal
8 Register February 14, 2002. It will be adjusted annually as of the first day of the second
9 month following the month of publication of the new Federal Poverty Guidelines by the
10 DHHS and the adjusted rates will be applied to contracts for which bids/proposals are
11 solicited, or extensions/amendments of existing contracts entered into, after the effective
12 date of the adjustment. Provided further, however, that in no event shall the living wage
13 (Non-health Benefit Wage) exceed the lowest hourly base rate of pay of any regular,
14 full-time City employee in effect at the time bids/proposals for contracts are solicited, or
15 in the case of extensions/amendments of then existing contracts, the rate in effect at the
16 time such extension/amendment is entered into. The applicable living wage shall be
17 noted in all solicitations for covered services, and disclosed during negotiations for
18 extensions/amendments of contracts for covered services.

19 d. Certification. Prior to executing any contract with the City or Service Contractor for a
20 Covered Service the Service Contractor/Subcontractor, as applicable, shall certify to the
21 contractor administrator (City) that it will pay each of its Covered Employees a Living
22 Wage as herein defined, during the period of time they are directly involved in providing
23 Covered Services under the Contract. Upon execution, the certification shall become an

1 obligation under the contract. The certification must also include, at a minimum, the
2 following:

- 3 1. the name, address, and phone number of the Service Contractor/Subcontractor
4 and a local contact person,
- 5 2. the specific project for which the service contract is sought;
- 6 3. the amount of the contract and the Department contract administrator,
- 7 4. An agreement to comply with the terms of this Ordinance as part of its
8 contractual obligations.

9 e. Posting. A copy of the living wage rate shall be kept posted by the employer in a
10 prominent place where it can easily be seen by the Covered Employees and shall be
11 supplied to any covered employee upon request. In addition, it is the responsibility of the
12 service Contractors/Subcontractors to make any person submitting a bid for a
13 subcontract providing covered services aware of the requirements of this Ordinance.

14 **Section 3.** Section 2-617 of the City of Gainesville Code of Ordinances is hereby created to
15 read as follows:

16 **Sec. 2-617. Application, Enforcement.**

17 a. Procurement Specifications. The Living Wage shall be required for new contracts for
18 Covered Services solicited, and extensions or amendments of existing contracts for
19 Covered Services with Service Contractors/Subcontractors entered into, after the
20 effective date of this ordinance. This ordinance shall be implemented in a fashion
21 consistent with otherwise applicable City Purchasing Policies and Procedures.

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

4 During the performance of this contract, the Contractor agrees as follows:

5 (1) The Contractor shall comply with the provisions of the City of Gainesville's
6 living wage requirements, as applicable. Failure to do so shall be deemed a
7 breach of contract and shall authorize the City to withhold payment of funds until
8 the living wage requirements have been met.

9 (2) The Contractor will include the provision of (1) above in each subcontract for
10 Covered Services with a Service Contractor/Subcontractor, as defined herein, so
11 that the provisions of (1) above will be binding upon each such Service
12 Contractor/Subcontractor. The Contractor will take such action with respect to
13 any such subcontract as may be directed by the contract administrator as a means
14 of enforcing such provisions; provided, however, the City shall not be deemed a
15 necessary or indispensable party in any litigation between the contractor and a
16 subcontractor concerning compliance with living wage requirements.

17 c. A person who claims that this Article applies or applied to him or her as a covered
18 employee and that the Service Contractor/Subcontractor is or was not complying with
19 the requirements of this Ordinance has a right to file a written complaint. Each Charter
20 Officer shall establish administrative procedures for the filing, processing and resolution
21 of written complaints under this ordinance for their respective areas of responsibility(s)
22 of the City of Gainesville. A covered employer may be required to produce payroll and
23 other records ~~it~~ deemed relevant to the investigation of a complaint. Remedies set forth

1 in any administrative procedures will not be exclusive or in any way meant to prohibit
2 any relief afforded by a court of law or otherwise prohibit the City from terminating a
3 contract, filing a complaint, or taking legal action for non-compliance.

4 d. Retaliation and Discrimination Unlawful. It shall be unlawful and punishable as
5 provided in Section 1-9 of the Code of Ordinances for an employer to discharge, reduce
6 the compensation of, or otherwise discriminate against any employee for filing a written
7 complaint or otherwise asserting his or her rights under this ordinance, participating in
8 any of its proceedings or using any available remedies to enforce his or her rights under
9 the ordinance.

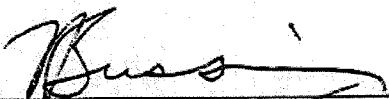
10 **Section 4.** If any section, subsection, sentence, clause or provision of this ordinance is held
11 invalid, the remainder of this ordinance shall not be affected by such invalidity.

12 **Section 5.** It is the intention of the City Commissioners, and it is hereby ordained that the
13 provisions of this ordinance, including any sunset provision, shall become and be made a part of
14 the Code the City of the Gainesville, Gainesville, Florida. The sections of this ordinance may
15 be renumbered or re-lettered to accomplish such intention, and the word "ordinance" may be
16 changed to "section," "article," or other appropriate word.

17 **Section 6.** This ordinance shall become effective one hundred eighty days (180) days after the
18 date of adoption.

19 **Section 7.** This Ordinance shall be automatically repealed five years from the date of adoption.
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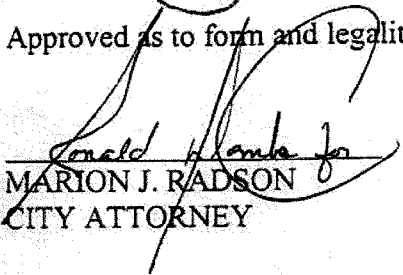
1 PASSED AND ADOPTED this 17th day of March, 2003.

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4 THOMAS D. BUSSING, MAYOR

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6 ATTEST:

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10 KURT M. LANNON
11 CLERK OF THE COMMISSION

Approved as to form and legality

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13 
14 MARION J. RADSON
CITY ATTORNEY

13 This Ordinance passed on first reading this 24th day of February, 2003.

14 This Ordinance passed on second reading this 17th day of March, 2003.

ORDINANCE NO. 030168
0-03-77

An ordinance of the City of Gainesville, Florida, correcting a scrivener's error in subsection 2-616(c) of Article IX of Chapter 2 of the City of Gainesville Code of Ordinances, by changing a reference to the appropriate living wage rate, providing directions to the codifier; providing a severability clause; providing a repealing clause; and providing an effective date.

WHEREAS, an amendment to subsection 2-616(c), adopted on the second reading of Ordinance 020663, made reference to the incorrect living wage rate and did not accurately reflect the intent of the ordinance as amended; and

WHEREAS, this error may be corrected by changing such references prior to the effective date of the ordinance; and

WHEREAS, at least ten (10) days notice has been given of the public hearing once by publication in a newspaper of general circulation notifying the public of this proposed ordinance and of a Public Hearing in the City Commission meeting room, First Floor, City Hall, in the City of Gainesville;

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

Section 1. Subsection 2-616(c) of Article IX, entitled "Amount of Living Wage;" "Adjustment" of Chapter 2 of the City of Gainesville Code of Ordinances, is hereby amended to read as follows:

Sec. 2-616. Amount of living wage.

1 c. Adjustment. The Living Wage (~~Non-Health Benefit Wage~~) specified in (a) above
2 is based on the Federal Poverty Guidelines for a family of four as determined by
3 the U.S. Department of Health and Human Services (DHHS) and published in the
4 Federal Register February 14, 2002. It will be adjusted annually as of the first day
5 of the second month following the month of publication of the new Federal
6 Poverty Guidelines by the DHHS and the adjusted rates will be applied to
7 contracts for which bids/proposals are solicited, or extensions/amendments of
8 existing contracts entered into, after the effective date of the adjustment. Provided
9 further, however, that in no event shall the ~~living wage~~ (~~Non-health Benefit~~
10 Wage) exceed the lowest hourly base rate of pay of any regular, full-time City
11 employee in effect at the time bids/proposals for contracts are solicited, or in the
12 case of extensions/amendments of then existing contracts, the rate in effect at the
13 time such extension/amendment is entered into. The applicable living wage shall
14 be noted in all solicitations for covered services, and disclosed during negotiations
15 for extensions/amendments of contracts for covered services.

16 **Section 2.** It is the intention of the City Commission that the provisions of Section 1 of
17 this ordinance shall become and be made a part of the Code of Ordinances of the City of
18 Gainesville, Florida, and that the Sections and Paragraphs of this Ordinance may be renumbered
19 or relettered in order to accomplish such intentions.

20 **Section 3.** If any section, sentence, clause or phrase of this ordinance is held to be invalid
21 or unconstitutional by any court of competent jurisdiction, then said holding shall in no way

1 affect the validity of the remaining portions of this ordinance.

2 **Section 4.** All ordinances, or parts of ordinances, in conflict herewith are to the extent of
3 such conflict hereby repealed.

4 **Section 5.** This ordinance shall become effective immediately upon final adoption.

5 **PASSED AND ADOPTED** this 8th day of September, 2003.

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ATTEST:

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KURT LANNON,
CLERK OF THE COMMISSION

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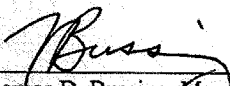
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This Ordinance passed on first reading this 25th day of August, 2003.

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This Ordinance passed on second reading this 8th day of September, 2003.

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Thomas D. Bussing, Mayor

Approved as to form and legality:

By: 
MARION J. RADSON, CITY ATTORNEY

SEP - 9 2003

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CODE: Words ~~stricken~~ are deletions; words underlined are additions.