

ORDINANCE NO. 180999

An ordinance of the City of Gainesville, Florida, amending Article IX of the Code of Ordinances relating to Living Wage Requirements; providing directions to the codifier; providing a severability clause; providing a repealing clause; and providing an effective date.

WHEREAS, the City Commission discussed the Living Wage Requirements in the current City Code and in the current Alachua County Code and directed the City Attorney to draft this ordinance; and

WHEREAS, at least 10 days' notice has been given once by publication in a newspaper of general circulation notifying the public of this proposed ordinance and of public hearings to be held in the City Commission Auditorium, City Hall, City of Gainesville; and

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

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

Section 1. Article IX titled "Living Wage Requirements" Code of Ordinances of the City of Gainesville is amended to read as set forth below.

Article IX. – Living Wage Requirements

Division 1. Requirements that apply to contracts solicited by the City prior to midnight on September 30, 2019

Sec. 2-615. - Definitions.

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

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

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

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

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

- 44 (1) Food preparation and/or distribution;
- 45 (2) Custodial/cleaning;
- 46 (3) Refuse removal;
- 47 (4) Maintenance and repair;
- 48 (5) Recycling;
- 49 (6) Parking services;
- 50 (7) Painting/refinishing;
- 51 (8) Printing and reproduction services;
- 52 (9) Landscaping/grounds maintenance;
- 53 (10) Agricultural/forestry services;
- 54 (11) Construction services;

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

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

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

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

70 Sec. 2-616. – Amount of living wage.

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

75 (b) *Health benefits.* For a service contractor/subcontractor to comply with the living
76 wage provision by choosing to pay the lower wage scale available when the
77 service contractor/subcontractor also offers health benefits, such health benefits
78 shall cost an average of \$1.25 per hour per employee towards the provision of
79 health benefits. The requirement may be satisfied by a cafeteria plan, which
80 includes health benefits, towards which the service contractor/subcontractor
81 makes a contribution of at least \$1.25 per hour for each covered employee. If the
82 health benefit program of a service contractor/subcontractor requires an initial
83 period of employment for a new employee to be eligible for health benefits
84 (eligibility period), such service contractor/subcontractor may pay the health
85 benefit living wage scale for up to six months of a new employee's initial
86 eligibility period. In this event, upon six months of employment, the new
87 employee will be paid the non-health benefit wage until such time as the new
88 employee is offered or provided health benefits.

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

94 new federal poverty guidelines by the DHHS, the non-health benefit wage will be
95 adjusted the same amount, and the adjusted rates will be applied to contracts for
96 which bids/proposals are solicited, or extensions/amendments of existing
97 contracts entered into, after the effective date of the adjustment. Provided further,
98 however, that in no event shall the health benefit wage exceed the lowest hourly
99 base rate of pay of any regular, full-time city employee in effect at the time
100 bids/proposals for contracts are solicited, or in the case of extensions/amendments
101 of then existing contracts, the rate in effect at the time such extension/amendment
102 is entered into. The applicable living wage shall be noted in all solicitations for
103 covered services, and disclosed during negotiations for extensions/amendments of
104 contracts for covered services.

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

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

118 (e) *Posting.* A copy of the living wage rate shall be kept posted by the employer in a
119 prominent place where it can easily be seen by the covered employees and shall
120 be supplied to any covered employee upon request. In addition, it is the
121 responsibility of the service contractors/subcontractors to make any person
122 submitting a bid for a subcontract providing covered services aware of the
123 requirements of this article.

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

125 (a) Procurement specifications. The living wage shall be required for new contracts
126 for covered services solicited, and extensions or amendments of existing contracts
127 for covered services with service contractors/subcontractors entered into, after the
128 effective date of the ordinance from which this article derives. This article shall be

129 implemented in a fashion consistent with otherwise applicable city purchasing
130 policies and procedures.

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

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

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

139 (2) The contractor will include the provision of (1) above in each subcontract for
140 covered services with a service contractor/subcontractor, as defined herein, so that
141 the provisions of (1) above will be binding upon each such service
142 contractor/subcontractor. The contractor will take such action with respect to any
143 such subcontract as may be directed by the contract administrator as a means of
144 enforcing such provisions; provided, however, the city shall not be deemed a
145 necessary or indispensable party in any litigation between the contractor and a
146 subcontractor concerning compliance with living wage requirements.

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

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

164 **Sec. 2-618. - City employees.**

165 The city will set an example by providing a living wage, as described in section 2-616(a)—(c), to
166 the city's regular employees as determined consistent with budgetary, pay plan and bargaining
167 considerations and obligations. The requirements of sections 2-616(d) and (e) and section 2-617
168 do not apply to the city.

169 ~~Sec. 2-619. – Reserved.~~

170 **Division 2. Requirements that apply to contracts solicited by the City after midnight on**
171 **September 30, 2019**

172
173 **Sec. 2-619.1 – Definitions.**

174 City means the City of Gainesville, Florida, a municipal corporation.

175 Cooperative purchasing agreement means services purchased under the terms and
176 conditions of another local, state, federal, or other public agency’s bid or cooperative bids put
177 together by agencies.

178 Covered employee means a person paid by a contractor or subcontractor directly involved
179 in providing services pursuant to the contractor or subcontractor’s contract with the city, during
180 the period of time the person is providing the services. Covered employee does not include an
181 inmate, a student enrolled in a degree program who is employed under the auspices of the
182 educational institution, a person who is employed through an ongoing written job training
183 program, or a worker with a disability as defined in 29 CFR 525.3.

184 Health benefits means any plan, fund, or program established or maintained by the
185 service contractor of subcontractor for the purpose of providing for its participants or
186 beneficiaries, through the purchase of insurance or otherwise, medical, surgical, or hospital care
187 or benefits.

188 Living wage means an hourly wage that is equivalent to the hourly wage of the lowest
189 paid classified employee of the city ((Q: as of the effective date of the contract with the city?)).
190 If the service contractor/subcontractor does not offer health benefits to the covered employee or
191 if the covered employee is in a waiting/eligibility period before health benefits are available to
192 that covered employee, then \$2.10 must be added to the hourly wage of that covered employee.

193 Payroll records means the records pertaining to covered employees that document their
194 name, address, employee classification, rate of pay, daily and weekly number of hours worked,
195 deductions made and actual wages paid and whether health benefits, as described herein, are
196 being provided or offered to covered employees.

197 Service contractor/subcontractor means a natural person or legal entity (such as, but not
198 limited to, a corporation, partnership, limited liability company or joint venture) providing

199 services to the city, but not including any subsidiaries, affiliates or parent entities of the entity
200 providing services to the city.

201 **Section 2-619.2. - Living Wage Requirements.**

- 202 (a) Except as otherwise provided by law, a service contractor/subcontractor shall pay a
203 living wage to all of its covered employees.
- 204 (b) Each service contractor/subcontractor shall certify to the city that it will pay a living
205 wage to each of its covered employees and that it will require the same of its
206 subcontractors. Upon execution, the certification shall become an obligation under
207 the contract with the city. The certification must also include, at a minimum, the
208 following:
- 209 (1) The name, address, and phone number of the service contractor/subcontractor and
210 a local contact person;
- 211 (2) The specific services being provided to the city by the service
212 contractor/subcontractor;
- 213 (3) An agreement to comply with the terms of this article as part of its contractual
214 obligations.
- 215 (c) A copy of the living wage rate shall be posted by the service contractor/subcontractor
216 in a prominent place where it can easily be seen by the covered employees and shall
217 be supplied to any covered employee upon request.
- 218 (d) Each service contractor shall make all of its service subcontractors aware of the
219 requirements of this article and shall include provisions in each of its service
220 subcontracts to ensure compliance with this article. The city shall not be deemed a
221 necessary or indispensable party in any litigation between the service contractor and a
222 subcontractor.
- 223 (e) Each service contractor/subcontractor shall produce payroll records to the city as
224 necessary for the city's investigation of any complaint of violation of this article.
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226 **Sec. 2-619.3. –Re-solicitation; Enforcement.**

- 227 (a) If a city solicitation for services results in no responsive bids/proposals/quotes, the
228 purchasing department may, after providing notification to and receiving approval
229 from the applicable charter officer, re-solicit without requiring compliance with this
230 article.
- 231 (b) Failure to comply with this article may be enforced by the city as a breach of contract
232 and/or a code violation and shall entitle the city to take all appropriate legal action to
233 enforce the provisions of this article.
- 234 (c) A person who claims that he or she is a covered employee of a service
235 contractor/subcontractor who is not complying with the requirements of this article
236 may file a written complaint with the ((Q: city's purchasing department?)). This

237 complaint process is not exclusive or in any way meant to prohibit any relief afforded
238 by a court of law or other legal process.

239 (d) A service contractor/subcontractor shall not discharge, reduce the compensation of, or
240 otherwise retaliate against any covered employee for filing a written complaint or
241 otherwise asserting his or her rights under this article, participating in any
242 proceedings or using any available remedies to enforce his or her rights under this
243 article. A person who claims that he or she has been a victim of a violation of this
244 subsection may file a written complaint with the city's ((Q: equal opportunity office –
245 does the EO code then need to be amended to address how this complaint would be
246 investigated, resolved, etc.....)).

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

251 **Section 4.** If any word, phrase, clause, paragraph, section or provision of this ordinance
252 or the application hereof to any person or circumstance is held invalid or unconstitutional, such
253 finding shall not affect the other provisions or application of the ordinance which can be given
254 effect without the invalid or unconstitutional provisions or application, and to this end the
255 provisions of this ordinance are declared severable.

256 **Section 5.** All ordinances or parts of ordinances, in conflict herewith are to the extent of
257 such conflict hereby repealed.

258 **Section 6.** This ordinance shall become effective immediately upon adoption.

259 **PASSED AND ADOPTED THIS _____ DAY OF _____, 2019.**

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LAUREN POE
MAYOR

267 ATTEST: Approved as to form and legality

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272 _____
273 OMICHELE D. GAINEY
274 CLERK OF THE COMMISSION

275 _____
276 NICOLLE M. SHALLEY
277 CITY ATTORNEY

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276 This ordinance passed on first reading this ____ day of _____, 2019.

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278 This ordinance passed on second reading this ____ day of _____, 2019.

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