

LEGISLATIVE #

180999A

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

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

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

15 **Covered services** are the following services purchased by the city under a single contract over
16 \$100,000.00:

- 17 (1) Food preparation and/or distribution;
- 18 (2) Custodial/cleaning;
- 19 (3) Refuse removal;
- 20 (4) Maintenance and repair;
- 21 (5) Recycling;
- 22 (6) Parking services;
- 23 (7) Painting/refinishing;
- 24 (8) Printing and reproduction services;
- 25 (9) Landscaping/grounds maintenance;
- 26 (10) Agricultural/forestry services;
- 27 (11) Construction services;

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

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

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

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

16 **Sec. 2-616. – Amount of living wage.**

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

21 (b) *Health benefits.* For a service contractor/subcontractor to comply with the living wage
22 provision by choosing to pay the lower wage scale available when the service
23 contractor/subcontractor also offers health benefits, such health benefits shall cost an
24 average of \$1.25 per hour per employee towards the provision of health benefits. The
25 requirement may be satisfied by a cafeteria plan, which includes health benefits, towards
26 which the service contractor/subcontractor makes a contribution of at least \$1.25 per
27 hour for each covered employee. If the health benefit program of a service
28 contractor/subcontractor requires an initial period of employment for a new employee
29 to be eligible for health benefits (eligibility period), such service contractor/subcontractor
30 may pay the health benefit living wage scale for up to six months of a new employee's
31 initial eligibility period. In this event, upon six months of employment, the new employee
32 will be paid the non-health benefit wage until such time as the new employee is offered
33 or provided health benefits.

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

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

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

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

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

1 (a) Procurement specifications. The living wage shall be required for new contracts for
2 covered services solicited, and extensions or amendments of existing contracts for
3 covered services with service contractors/subcontractors entered into, prior to midnight
4 on March 31, 2021 ~~after the effective date of the ordinance from which this article~~
5 ~~derives~~. This article shall be implemented in a fashion consistent with otherwise
6 applicable city purchasing policies and procedures.

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

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

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

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

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

33 (d) Retaliation and discrimination unlawful. It shall be unlawful and punishable as provided
34 in section 1-9 of this Code for an employer to discharge, reduce the compensation of, or

1 otherwise discriminate against any employee for filing a written complaint or otherwise
2 asserting his or her rights under this ordinance, participating in any of its proceedings or
3 using any available remedies to enforce his or her rights under the ordinance.

4 ~~**Sec. 2-618. – City employees.**~~

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

9 **Division 2. Requirements that apply to contracts solicited by the City after midnight on March**
10 **31, 2021.**

11
12 **Sec. 2-618. – Definitions.**

13 **City** means the City of Gainesville, Florida, a municipal corporation.

14 **Contract** means a written agreement between the City and the service contractor. Any set of
15 documents, including a Purchase Order provided both the City and the service contractor have
16 agreed to the terms and conditions.

17 **Cooperative purchasing agreement** means a contract of a public agency which allows the use of
18 the contract by other agencies under the same pricing and contract terms.

19 **Covered employee** means an employee of a service contractor/subcontractor, as further defined
20 in this article, that is directly involved in providing covered services pursuant to the service
21 contractor's/subcontractor's contract with the city, during the period of time they are providing
22 the covered services. Covered employee does not include a student enrolled in a degree program
23 who is employed under the auspices of the educational institution, a person who is employed
24 through an ongoing written job training program, or a worker with a disability as defined in 29
25 CFR 525.3, or employees hired or leased for temporary assignments of less than one year such
26 as short-term projects, substituting for an absent employee, or substituting while a vacant
27 position is filled.

28 **Covered services** means any services contracted for by the city, whether the contract is solely
29 for services or for both goods and services (such as a construction contract, where construction
30 services are provided as well as the goods that are necessary for the construction project.) This
31 division does not apply to contracts that are solely for goods (i.e., tangible objects or products.)
32 This division does not apply to contracts for Software as a Service. This division does not apply
33 to contracts for uniform rentals or cleaning. For purposes of this division, examples of services

1 include, but are not limited to, construction work, janitorial services, security services, food
2 preparation services, mowing, and maintenance.

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

6 **Living wage** means an hourly wage that is no less than the hourly base pay of the lowest pay
7 grade of the city as of the preceding October 1st of the effective date of the contract with the
8 city. The living wage will increase annually thereafter on October 1st of each succeeding year the
9 contract or any extension thereof is in effect. If the service contractor/subcontractor does not
10 offer health benefits to the covered employee, then the hourly wage must be increased by fifteen
11 percent (15%) for that covered employee.

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

16 **Service contractor/subcontractor** means a natural person or legal entity (such as, but not limited
17 to, a corporation, partnership, limited liability company or joint venture) providing services to
18 the city, but not including any subsidiaries, affiliates or parent entities of the entity providing
19 services to the city.

20 **Section 2-619. - Living wage requirements.**

21 (a) The following are requirements of each service contractor/subcontractor:

22 (1) A service contractor/subcontractor shall pay a living wage to each of its covered
23 employees during the time they are providing the covered services.

24 (2) A copy of the living wage rate shall be posted by the service
25 contractor/subcontractor in a prominent place where it can easily be seen by the
26 covered employees and shall be supplied to any covered employee upon request.

27 (3) Each service contractor shall make all of its service subcontractors aware of the
28 requirements of this division and shall include the contract provisions listed in (b)
29 below in each of its service subcontracts to ensure compliance with this article.
30 The city shall not be deemed a necessary or indispensable party in any litigation
31 between the service contractor and a subcontractor.

1 (4) A service contractor/subcontractor shall not discharge, reduce the compensation
2 of, or otherwise retaliate against any covered employee for filing a complaint,
3 participating in any proceedings or otherwise asserting the requirement to pay a
4 living wage under this division. A covered employee who claims their employer
5 has not paid them a living wage as required by this division may file a written
6 complaint with the city.

7 (5) Each service contractor/subcontractor shall produce payroll records, and any
8 other requested documentation to the city as necessary for the city to audit or
9 investigate compliance with or a reported violation of this division.

10 (b) Each contract between the city and a service contractor (and between the service
11 contractor and its subcontractor(s)) shall include language referencing the requirements of this
12 division, in substantially the following form: "The definitions, terms and conditions of the city's
13 living wage requirements set forth in Division 2 of Article IX of Chapter 2 of the City's Code of
14 Ordinances shall apply to this agreement. These requirements include that the service
15 contractor/subcontractor: shall pay a living wage to each covered employee during the term of
16 this agreement, including any extension(s) to this agreement; shall maintain records sufficient to
17 demonstrate compliance with the living wage requirements; shall not discharge, reduce the
18 compensation of, or otherwise retaliate against any covered employee for filing a complaint,
19 participating in any proceedings or otherwise asserting the requirement to pay a living wage;
20 shall cooperate with any city audit or investigation concerning compliance with or a reported
21 violation of the living wage requirements, including providing all requested documentation.
22 Failure to comply with the City's living wage requirements shall be a material breach of this
23 agreement, enforceable by the city through all rights and remedies at law and equity."

24 (c) The living wage requirements in this division do not apply in the following circumstances:

25 (1) If a city solicitation for services results in no responsive bids/proposals/quotes,
26 the applicable charter officer, or designee, may waive the living wage
27 requirement and authorize award to the lowest bidder responsive to the other
28 bid requirements.

29 (2) If the work to be performed under the contract is funded by a federal or state
30 grant and that grant does not allow local living wage requirements.

31 (3) If the living wage requirements are precluded by law.

32 (4) Purchases made under state, federal, or other public agency agreements or
33 cooperative contracts.

1 (5) Non-competitive situations as defined by the City’s current Procurement Policy.

2 (6) For the emergency related services procured during a declared state of emergency

3 (7) All other exceptions will need to be justified and waiver approved by the City
4 Manager or designee for general government or the General Manager or designee
5 for Gainesville Regional Utilities.

6
7 **Section 2.** It is the intention of the City Commission that the provisions of Section 1 of this
8 Ordinance shall become and be made a part of the Code of Ordinances of the City of Gainesville,
9 Florida, and that the sections and paragraphs of this Ordinance may be renumbered or relettered
10 in order to accomplish such intentions.

11 **Section 3.** If any word, phrase, clause, paragraph, section or provision of this ordinance or the
12 application hereof to any person or circumstance is held invalid or unconstitutional, such finding
13 shall not affect the other provisions or application of the ordinance which can be given effect
14 without the invalid or unconstitutional provisions or application, and to this end the provisions
15 of this ordinance are declared severable.

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

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

19
20 PASSED AND ADOPTED THIS _____ DAY OF _____, 2020.

21 _____
22 LAUREN POE
23 MAYOR
24
25
26

1 ATTEST:

Approved as to form and legality

2

3

4

5

6 _____
OMICHELE D. GAINEY
7 CLERK OF THE COMMISSION

NICOLLE M. SHALLEY
CITY ATTORNEY

8

9

10 This ordinance passed on first reading this ____ day of _____, 2020.

11

12 This ordinance passed on second reading this ____ day of _____, 2020

13