

ORDINANCE NO. 080755
0-09-09

An ordinance of the City of Gainesville, Florida, creating Article IX, of Chapter 2 of the City of Gainesville Code of Ordinances, establishing a living wage requirement for certain employees of contractors providing selected services to the city; providing directions to the codifier; providing a severability clause; providing a repealing clause; and providing an immediate effective date.

WHEREAS, the City awards contracts to provide services for the public.

Such expenditures of public money also serve the public purpose by creating jobs, expanding the City's economic base, and promoting economic security for all citizens; and

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

WHEREAS, The City desires 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;

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 a Public Hearing in the Auditorium of City Hall in the City of Gainesville; and

1 **WHEREAS**, the Public Hearings were held pursuant to the published
2 notice described at which hearings the parties in interest and all others had an
3 opportunity to be and were, in fact, heard; and

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

6 **Section 1.** Sections 2-615, 2-616, and 2-617 of Article IX, entitled
7 "Living Wage Requirements", of Chapter 2 of the City of Gainesville Code of
8 Ordinances of Gainesville, Florida, is hereby created as follows:

9 **ARTICLE IX. LIVING WAGE REQUIREMENTS**

10 **Sec. 2-615. Definitions.**

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

13 City means the City of Gainesville Municipal Corporation.

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

17 Covered employee means an employee of a service
18 contractor/subcontractor, as further defined in this article, that is directly involved
19 in providing covered services pursuant to the service contractor's/subcontractor's
20 contract with the city, during the period of time he or she is providing the covered
21 services. The term "covered employee" shall not include a person described in 29
22 USC 213(a)(3) (seasonal employee), a student enrolled in a degree program who

1 is employed under the auspices of the educational institution, a person who is
2 employed by the service contractor/subcontractor through an ongoing written job
3 training program, a worker with a disability as defined in 29 CFR 525.3, or
4 employees hired or leased for temporary assignments of less than one year such as
5 short-term projects, substituting for an absent employee, or substituting while a
6 vacant position is being filled.

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

9 (1) Food preparation and/or distribution;

10 (2) Custodial/cleaning;

11 (3) Refuse removal;

12 (4) Maintenance and repair;

13 (5) Recycling;

14 (6) Parking services;

15 (7) Painting/refinishing;

16 (8) Printing and reproduction services;

17 (9) Landscaping/grounds maintenance;

18 (10) Agricultural/forestry services;

19 (11) Construction services;

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

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

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

10 Service contractor/subcontractor is a for-profit individual, business
11 entity, corporation, partnership, limited liability company, joint venture, or similar
12 business, providing a covered service, who or which employs 50 or more persons,
13 but not including employees of any subsidiaries, affiliates or parent businesses.
14 The calculation of number of employees is made as of the date of execution of the
15 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
18 of its covered employees a living wage of no less than \$8.70 per hour (health
19 benefit wage) and offer health benefits as described in this section, or otherwise
20 \$9.95 per hour (non-health benefit wage).

21 (b) Health benefits. For a service contractor/subcontractor to comply
22 with the living wage provision by choosing to pay the lower wage scale available

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

13 (c) Adjustment. The living wage (health benefit wage) specified in
14 subsection (a) above is based on the federal poverty guidelines for a family of four
15 as determined by the U.S. Department of Health and Human Services (DHHS),
16 and published in the Federal Register February 14, 2002. It will be adjusted
17 annually as of the first day of the second month following the month of
18 publication of the new federal poverty guidelines by the DHHS, the non-health
19 benefit wage will be adjusted the same amount, and the adjusted rates will be
20 applied to contracts for which bids/proposals are solicited, or
21 extensions/amendments of existing contracts entered into, after the effective date
22 of the adjustment. Provided further, however, that in no event shall the health

1 benefit wage exceed the lowest hourly base rate of pay of any regular, full-time
2 city employee in effect at the time bids/proposals for contracts are solicited, or in
3 the case of extensions/amendments of then existing contracts, the rate in effect at
4 the time such extension/amendment is entered into. The applicable living wage
5 shall be noted in all solicitations for covered services, and disclosed during
6 negotiations for extensions/amendments of contracts for covered services.

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

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

21 (e) Posting. A copy of the living wage rate shall be kept posted by the
22 employer in a prominent place where it can easily be seen by the covered

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

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

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

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

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

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

21 (2) The contractor will include the provision of (1) above in each
22 subcontract for covered services with a service

1 contractor/subcontractor, as defined herein, so that the provisions
2 of (1) above will be binding upon each such service
3 contractor/subcontractor. The contractor will take such action with
4 respect to any such subcontract as may be directed by the contract
5 administrator as a means of enforcing such provisions; provided,
6 however, the city shall not be deemed a necessary or indispensable
7 party in any litigation between the contractor and a subcontractor
8 concerning compliance with living wage requirements.

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

20 (d) Retaliation and discrimination unlawful. It shall be unlawful and
21 punishable as provided in section 1-9 of this Code for an employer to discharge,
22 reduce the compensation of, or otherwise discriminate against any employee for

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ATTEST:

Approved as to form and legality

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KURT M. LANNON

MARION J. RADSON

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CLERK OF THE COMMISSION

CITY ATTORNEY

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This Ordinance passed on first reading this ____ day of _____, 2009.

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This Ordinance passed on second reading this ____ day of _____, 2009.