

Legislative #
180999B

ARTICLE IX. - LIVING WAGE REQUIREMENTS²⁹¹

Footnotes:

— (29) —

Editor's note— Ord. No. 080755, §§ 1, 2, repealed art. IX and enacted a new article as set out herein. The former art. IX, §§ 2-615—2-617, pertained to similar subject matter and derived from Ord. No. 020663, §§ 1—3, adopted March 17, 2003, and Ord. No. 030168, § 1, adopted Sept. 8, 2003.

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:]

City means the City of Gainesville Municipal Corporation.

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

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

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

- (1) Food preparation and/or distribution;
- (2) Custodial/cleaning;
- (3) Refuse removal;
- (4) Maintenance and repair;
- (5) Recycling;
- (6) Parking services;
- (7) Painting/refinishing;
- (8) Printing and reproduction services;
- (9) Landscaping/grounds maintenance;
- (10) Agricultural/forestry services;
- (11) Construction services;

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

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

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

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

(Ord. No. 080755, § 1, 4-2-09)

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

- (a) **Living wage paid.** A service contractor/subcontractor shall pay to all of its covered employees a living wage of no less than \$8.70 per hour (health benefit wage) and offer health benefits as described in this section, or otherwise \$9.95 per hour (non-health benefit wage).
- (b) **Health benefits.** For a service contractor/subcontractor to comply with the living wage provision by choosing to pay the lower wage scale available when the service contractor/subcontractor also offers health benefits, such health benefits shall cost an average of \$1.25 per hour per employee towards the provision of health benefits. The requirement may be satisfied by a cafeteria plan, which includes health benefits, towards which the service contractor/subcontractor makes a contribution of at least \$1.25 per hour for each covered employee. If the health benefit program of a service contractor/subcontractor requires an initial period of employment for a new employee to be eligible for health benefits (eligibility period), such service contractor/subcontractor may pay the health benefit living wage scale for up to six months of a new employee's initial eligibility period. In this event, upon six months of employment, the new employee will be paid the non-health benefit wage until such time as the new employee is offered or provided health benefits.
- (c) **Adjustment.** The living wage (health benefit wage) specified in subsection (a) above is based on the federal poverty guidelines for a family of four as determined by the U.S. Department of Health and Human Services (DHHS), and published in the Federal Register February 14, 2002. It will be adjusted annually as of the first day of the second month following the month of publication of the new federal poverty guidelines by the DHHS, the non-health benefit wage will be adjusted the same amount, and the adjusted rates will be applied to contracts for which bids/proposals are solicited, or extensions/amendments of existing contracts entered into, after the effective date of the adjustment. Provided further, however, that in no event shall the health benefit wage exceed the lowest hourly base rate of pay of any regular, full-time city employee in effect at the time bids/proposals for contracts are solicited, or in the case of extensions/amendments of then existing contracts, the rate in effect at the time such extension/amendment is entered into. The applicable living wage shall be noted in all solicitations for covered services, and disclosed during negotiations for extensions/amendments of contracts for covered services.
- (d) **Certification.** Prior to executing any contract with the city or service contractor for a covered service the service contractor/subcontractor, as applicable, shall certify to the contractor administrator (city) that it will pay each of its covered employees a living wage as herein defined, during the period of time they are directly involved in providing covered services under the contract. Upon execution, the certification shall become an obligation under the contract. The certification must also include, at a minimum, the following:
 - (1) The name, address, and phone number of the service contractor/subcontractor and a local contact person;
 - (2) The specific project for which the service contract is sought;
 - (3) The amount of the contract and the department contract administrator;
 - (4) An agreement to comply with the terms of this article as part of its contractual obligations.
- (e) **Posting.** A copy of the living wage rate shall be kept posted by the employer in a prominent place where it can easily be seen by the covered employees and shall be supplied to any covered employee upon request. In addition, it is the responsibility of the service contractors/subcontractors

to make any person submitting a bid for a subcontract providing covered services aware of the requirements of this article.

(Ord. No. 080755, § 1, 4-2-09)

Sec. 2-617. - Application; enforcement.

- (a) Procurement specifications. The living wage shall be required for new contracts for covered services solicited, and extensions or amendments of existing contracts for covered services with service contractors/subcontractors entered into, after the effective date of the ordinance from which this article derives. This article shall be implemented in a fashion consistent with otherwise applicable city purchasing policies and procedures.
- (b) Each contracting department shall include the following clause in each of its contracts for covered services (and extensions/amendments to existing contracts if not included in the original contract):

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

- (1) The contractor shall comply with the provisions of the City of Gainesville's living wage requirements, as applicable. Failure to do so shall be deemed a breach of contract and shall authorize the city to withhold payment of funds until the living wage requirements have been met.
 - (2) The contractor will include the provision of (1) above in each subcontract for covered services with a service contractor/subcontractor, as defined herein, so that the provisions of (1) above will be binding upon each such service contractor/subcontractor. The contractor will take such action with respect to any such subcontract as may be directed by the contract administrator as a means of enforcing such provisions; provided, however, the city shall not be deemed a necessary or indispensable party in any litigation between the contractor and a subcontractor concerning compliance with living wage requirements.
- (c) A person who claims that this article applies or applied to him or her as a covered employee and that the service contractor/subcontractor is or was not complying with the requirements of this article has a right to file a written complaint. Each charter officer shall establish administrative procedures for the filing, processing and resolution of written complaints under this ordinance for their respective areas of responsibility(s) of the city. A covered employer may be required to produce payroll and other records deemed relevant to the investigation of a complaint. Remedies set forth in any administrative procedures will not be exclusive or in any way meant to prohibit any relief afforded by a court of law or otherwise prohibit the city from terminating a contract, filing a complaint, or taking legal action for noncompliance.
 - (d) Retaliation and discrimination unlawful. It shall be unlawful and punishable as provided in section 1-9 of this Code for an employer to discharge, reduce the compensation of, or otherwise discriminate against any employee for filing a written complaint or otherwise asserting his or her rights under this ordinance, participating in any of its proceedings or using any available remedies to enforce his or her rights under the ordinance.

(Ord. No. 080755, § 1, 4-2-09)

Sec. 2-618. - City employees.

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

(Ord. No. [140296](#), § 1, 7-2-15)

Sec. 2-619. - Reserved.