

1 **ORDINANCE NO. 140296**

2 **An ordinance of the City of Gainesville, Florida amending**
3 **Article IX of Chapter 2 of the City Code of Ordinances**
4 **relating to Living Wage, by adding a Section 2-618 on**
5 **requirements for City employees; providing directions to the**
6 **codifier; providing a severability clause; providing a repealing**
7 **clause; and providing an immediate effective date.**

8
9 **WHEREAS**, the City Commission adopted Ordinance No. 020663 commonly referred to
10 as the Living Wage Ordinance on March 17, 2003 to improve the quality of services to the City
11 and the public through the payment of an adequate wage that promotes stability and quality in
12 the work force and does not perpetuate underemployment, while at the same time not creating
13 unemployment; and

14 **WHEREAS**, the City readopted the Living Wage Ordinance by Ordinance No. 080755
15 on April 2, 2009; and

16 **WHEREAS**, the City has set an example by providing a living wage to City employees
17 as determined consistent with budgetary, pay plan and bargaining unit considerations and
18 obligations, and wishes to amend the Living Wage Ordinance consistent with the City's practice;
19 and

20 **WHEREAS**, notice was given and publication made by advertisement in a newspaper of
21 general circulation ten (10) days prior to the public hearing; and

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

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

26 **Section 1.** Section 2-618 of the Code of Ordinances is created and added to read:

27 **ARTICLE IX. - LIVING WAGE REQUIREMENTS**

1 **Sec. 2-615. - Definitions.**

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

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

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

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

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

- 20 (1) Food preparation and/or distribution;
21 (2) Custodial/cleaning;
22 (3) Refuse removal;
23 (4) Maintenance and repair;
24 (5) Recycling;

- 1 (6) Parking services;
- 2 (7) Painting/refinishing;
- 3 (8) Printing and reproduction services;
- 4 (9) Landscaping/grounds maintenance;
- 5 (10) Agricultural/forestry services;
- 6 (11) Construction services;

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

10 *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 beneficiaries, through
12 the purchase of insurance or otherwise, medical, surgical, or hospital care or benefits.

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

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

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

23 (a) *Living wage paid.* A service contractor/subcontractor shall pay to all of its covered

1 employees a living wage of no less than \$8.70 per hour (health benefit wage) and offer health
2 benefits as described in this section, or otherwise \$9.95 per hour (non-health benefit wage).

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

16 (c) *Adjustment.* The living wage (health benefit wage) specified in subsection (a) above is based
17 on the federal poverty guidelines for a family of four as determined by the U.S. Department
18 of Health and Human Services (DHHS), and published in the Federal Register February 14,
19 2002. It will be adjusted annually as of the first day of the second month following the
20 month of publication of the new federal poverty guidelines by the DHHS, the non-health
21 benefit wage will be adjusted the same amount, and the adjusted rates will be applied to
22 contracts for which bids/proposals are solicited, or extensions/amendments of existing
23 contracts entered into, after the effective date of the adjustment. Provided further, however,

1 that in no event shall the health benefit wage exceed the lowest hourly base rate of pay of
2 any regular, full-time city employee in effect at the time bids/proposals for contracts are
3 solicited, or in the case of extensions/amendments of then existing contracts, the rate in
4 effect at 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 negotiations for
6 extensions/amendments of contracts for covered services.

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

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

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

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

2 (a) Procurement specifications. The living wage shall be required for new contracts for covered
3 services solicited, and extensions or amendments of existing contracts for covered services
4 with service contractors/subcontractors entered into, after the effective date of the ordinance
5 from which this article derives. This article shall be implemented in a fashion consistent
6 with otherwise 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 wage
12 requirements, as applicable. Failure to do so shall be deemed a breach of contract and
13 shall authorize the city to withhold payment of funds until the living wage requirements
14 have been met.

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

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

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

16 **Sec. 2-618. – City employees.**

17 The City will set an example by providing a living wage, as described in Section 2-616(a)-(c), to
18 the City’s regular employees as determined consistent with budgetary, pay plan and bargaining
19 considerations and obligations. The requirements of Sections 2-616(d) and (e) and 2-617 do not
20 apply to the City.

21 ~~Secs. 2-618, 2-619.~~ - Reserved.

22 **Section 2.** It is the intention of the City Commission that the provisions of Section 1 of
23 this Ordinance shall become and be made a part of the Code of Ordinances of the City of

1 Gainesville, Florida, and that the sections and paragraphs of this Ordinance may be renumbered
2 or relettered in order to accomplish such intentions.

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

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


9 **PASSED AND ADOPTED** this 2nd day of July, 2015.

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EDWARD B. BRADDY
MAYOR

14 ATTEST:

Approved as to form and legality

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KURT M. LANNON
CLERK OF THE COMMISSION


NICOLLE M. SHALLEY
CITY ATTORNEY

22 This ordinance passed on first reading this 18th day of June, 2015.

23 This ordinance passed on second reading this 2nd day of July, 2015.

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