

**ORDINANCE NO. 080755**  
**0-09-09**

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

11  
12 **WHEREAS**, the City awards contracts to provide services for the public.

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

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

18 **WHEREAS**, the City has set an example by providing a living wage to  
19 City employees as determined consistent with budgetary, pay plan and bargaining  
20 unit considerations; and

21 **WHEREAS**, The City desires to improve the quality of services to the  
22 City and the public through the payment of an adequate wage that promotes  
23 stability and quality in the work force and does not perpetuate underemployment,  
24 while at the same time not creating unemployment;

25 **WHEREAS**, at least 10 days notice has been given once by publication in  
26 a newspaper of general circulation notifying the public of this proposed ordinance  
27 and of a Public Hearing in the Auditorium of City Hall in the City of Gainesville;  
28 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  
23 is employed under the auspices of the educational institution, a person who is

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

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

8 (1) Food preparation and/or distribution;

9 (2) Custodial/cleaning;

10 (3) Refuse removal;

11 (4) Maintenance and repair;

12 (5) Recycling;

13 (6) Parking services;

14 (7) Painting/refinishing;

15 (8) Printing and reproduction services;

16 (9) Landscaping/grounds maintenance;

17 (10) Agricultural/forestry services;

18 (11) Construction services;

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

22 Health benefits are any plan, fund, or program established or maintained  
23 by the service contractor/subcontractor for the purpose of providing for its

1 participants or beneficiaries, through the purchase of insurance or otherwise,  
2 medical, surgical, or hospital care or benefits.

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

8 Service contractor/subcontractor is a for-profit individual, business  
9 entity, corporation, partnership, limited liability company, joint venture, or similar  
10 business, providing a covered service, who or which employs 50 or more persons,  
11 but not including employees of any subsidiaries, affiliates or parent businesses.

12 The calculation of number of employees is made as of the date of execution of the  
13 contract for covered services.

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

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

19 (b) Health benefits. For a service contractor/subcontractor to comply  
20 with the living wage provision by choosing to pay the lower wage scale available  
21 when the service contractor/subcontractor also offers health benefits, such health  
22 benefits shall cost an average of \$1.25 per hour per employee towards the  
23 provision of health benefits. The requirement may be satisfied by a cafeteria plan,

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

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

1 shall be noted in all solicitations for covered services, and disclosed during  
2 negotiations for extensions/amendments of contracts for covered services.

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

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

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

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

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

7           (b) Each contracting department shall include the following clause in  
8 each of its contracts for covered services (and extensions/amendments to existing  
9 contracts if not included in the 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  
12 Gainesville's living wage requirements, as applicable. Failure to do  
13 so shall be deemed a breach of contract and shall authorize the city  
14 to withhold payment of funds until the living wage requirements  
15 have been met.

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

1 party in any litigation between the contractor and a subcontractor  
2 concerning compliance with living wage requirements.

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

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

20 **Section 2.** The Codifier is directed to delete Sections 2-615 through 2-617  
21 of the current Code of Ordinances because of the automatic repeal provision in  
22 Section 7 of Ordinance No. 020663. It is the intention of the City Commission  
23 that the provisions of Section 1 of this ordinance shall become and be made a part



1 of the Code of Ordinances of the City of Gainesville, Florida, and that the  
2 Sections and Paragraphs of this Ordinance may be renumbered or relettered in  
3 order to accomplish such intentions.

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

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


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

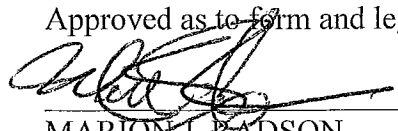
14 **PASSED AND ADOPTED** this 2<sup>nd</sup> day of April, 2009.

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PEGEEN HANRAHAN, MAYOR

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ATTEST:  
  
KURT M. LANNON  
CLERK OF THE COMMISSION

Approved as to form and legality  
  
MARION J. RADSON  
CITY ATTORNEY

APR - 2 2009

24 This Ordinance passed on first reading this 19<sup>th</sup> day of March, 2009.

25 This Ordinance passed on second reading this 2<sup>nd</sup> day of April, 2009.