ARTICLE VII. - LIVING WAGE

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Sec. 26-100. - Title.

Sections 26-100 through 26-105 of Article VII of Chapter 26, Broward County Code, may be cited as the "Broward County Living Wage Ordinance."

(Ord. No. 2002-45, § 1, 10-8-02; Ord. No. 2008-45, § 1, 10-7-08)

Sec. 26-101. - Definitions.

As used in this article, reference to one gender shall include the other; use of the plural shall include the singular; and use of the singular shall include the plural. The following definitions apply unless the context in which the word or phrase is used requires a different meaning:

(a) *County* means the government of Broward County, its departments, divisions, and boards.

(b) *Covered employee* means an individual who is hired by a service contractor for a minimum of twenty (20) hours per week and who, during the employment, is or was involved in providing services pursuant to the service contractor's contract with the County, or a County employee who is in a part-time or full-time benefit-eligible position, as provided in Section 14.7, Broward County Administrative Code. Employees whose primary compensation is composed of gratuities are not covered employees under this article.

(c) *Covered employer* means any and all service contractors and subcontractors of service contractors that provide covered services pursuant to a County service contract.

(d) *Service contractor* means any for profit individual, business entity, corporation, partnership, limited liability company, joint venture, or similar entity that is conducting business in or with Broward County and meets either of the following criteria:

- **(1)** The individual or entity is paid in whole, whether directly of indirectly, from one or more of the County's general fund, enterprise funds, capital project funds, or any other funds to provide covered services pursuant to a service contract; or
- **(2)** The individual or entity provides covered services for the County, either directly or indirectly, as part of a contract of subcontract with a service contractor as described in Subsection 26-101(d)(1).

(e) *County service contracts* or *service contracts.* Contracts awarded by the pursuant to the County's Procurement Code or entered into after a waiver of the Procurement Code that are for covered services when a contract amount exceeds One Hundred Thousand Dollars ($100,000.00) per year.

(f) *Covered services* mean the following services purchased by the County:

- **(1)** Food preparation and/or distribution;
- **(2)** Security services;
- **(3)** Routine maintenance services, such as janitorial, cleaning, refuse removal, recycling collections, and other similar services that are needed or that are anticipated to be needed for normal upkeep of facilities during the term of the serviced contract; Construction and roofing services shall not be considered routine maintenance services;
- **(4)** Repair or refinishing services for furniture, fixtures, vehicles, machinery, or equipment, including preventative maintenance replacement of parts, and other activities needed to preserve the asset. Construction and roofing services shall not be considered repair or refinishing services;
- **(5)** Clerical or other non-supervisory office work, whether by temporary or permanent personnel. Such work includes secretarial, typing, data entry, filing, transcription, specialized billing, sorting or completion of forms, and word, data, and information processing;
- **(6)** Passenger transportation and automobile parking services. Such services, when provided by or

through government entities, other than the County, shall not be included in this category;

(7) Printing and reproduction services; or

(8) Landscaping, lawn, and/or agricultural services.

(g) *Health care benefits* shall, at a minimum, mean health insurance coverage which consists of wellness and preventative care, including maternity, and that meets the requirements of a "standard health benefit plan" as described in Subsection 627.6699(12)(b)(4), Florida Statutes, as may be amended from time to time.

(h) *Living wage* means the hourly rate of pay required by this Ordinance.

(Ord. No. 2002-45, § 2, 10-8-02; Ord. No. 2008-45, § 1, 10-7-08)

Sec. 26-102. - Living wage.

(a) *Living wage requirement.*

(1) *New contracts; renewal and extension.* All service contractors entering into, renewing or extending a contract to provide covered services to the County shall pay all of its employees providing covered services a living wage of no less than Nine Dollars Fifty-Seven Cents ($9.57) per hour, as adjusted, in addition to health care benefits as hereinafter described, or otherwise Ten Dollars Eighty-Two Cents ($10.82) per hour, as adjusted. The living wage shall not be paid as a pass-through amount by the County unless clearly disclosed to and expressly approved by the Board of County Commissioners. The living wage may be adjusted annually in accordance with Subsection 26-102(c) below.

(2) *Existing contracts.* Service contractors providing covered services to the County pursuant to a contract executed prior to the effective date of this section shall not be required to pay the living wage established in subsection (a)(1) until the contract is renewed or extended for an additional period of time. A service contractor covered under this paragraph shall be required to comply with the provisions of this section beginning the effective date of the renewal or extension period of the contract. This paragraph does not apply to existing contracts which are extended on a month-to-month basis or extended for a limited period of time while the County is soliciting or considering soliciting for a replacement contract, or is negotiating or considering negotiating with another contractor.

(3) *County employees.* For part-time or full-time benefit-eligible County employees under the County pay plan, the County will begin to pay wages consistent with this article beginning in the 2003-04 County fiscal year. Thereafter, the wages to be paid by the County to its employees shall not be subject to the indexing under subsection (c) below and instead will subject to negotiation within the collective bargaining structure.

(b) *Health care benefits.*

(1) For a covered employer or the County to comply with the living wage requirement by choosing to pay the lower wage scale when health care benefits are provided, the health care benefits shall consist of payment by the covered or the County, as applicable, of at least One Dollar Twenty-Five Cents ($1.25) per hour, as adjusted, towards the provision of health care benefits for employees and their dependents. The health care benefits amount shall be adjusted annually in accordance with Subsection 26-102(c) below.

(2) The minimum contribution by a covered employer or the County for health care benefits on a per hour basis shall be calculated based on a 40-hour work week (2,080 annual hours). Hours worked in excess of forty (40) hours per week shall not require additional payments towards the provision of health care benefits. If the covered employer or the County, as applicable, contributes less than the required amount for its covered employee's health care benefits, such covered employer or the County may comply with the living wage requirements by paying the covered employee an additional amount as an hourly wage equal to the difference between the calculated hourly contribution it makes for health care benefits for the covered employee and the minimum hourly contribution amount required by this Ordinance for health care benefits.

(3) If the health care benefits plan provided by a covered employer or the County requires an initial period of employment before a new employee becomes eligible for the health care benefits (eligibility period), the covered employer or the County shall pay the Ten Dollars Eighty-two Cents ($10.82) per hour wage scale, as adjusted, during a new employee's initial eligibility period. When the new employee is provided health care benefits upon completion of the eligibility period, the covered employer or the County may qualify to pay the living wage rate applicable for employees that are provided health care benefits. If the covered employee declines the health care benefits the covered employer may qualify to pay the living wage rate applicable for employees that are provided health benefits if the covered employer provides to the County written proof of the covered employee's declination.

(4) A notarized compliance affidavit shall serve as proof of the provision of health care benefits and must be submitted by the covered employer to the County to qualify for the living wage rate for employees with health care benefits.

(c) *Indexing.* The living wage and health care benefits payment shall be annually indexed to inflation using the Miami PMSA Consumer Price Index for all Urban Consumers (CPI-U), calculated by the United States Department of Commerce; however, any increase shall not exceed three percent (3%) and in no event shall the increase exceed the compensation increase provided to unrepresented County employees.

(d) *Certification required before payment.* Any and all contracts for covered services shall be void, and no funds may be released unless, prior to entering any contract with the County for a service contract, the covered employer certifies to the County that it will pay each of its covered employees no less than the living wage described in subsection (a). The certificate, at a minimum, must include the following:

(1) The name, address and telephone number of the employer, a local contact person, and the specific project

for which the service contract is sought;

(2) The amount of the contract and the applicable County department the contract will serve;

(3) A brief description of the project or service provided;

(4) A statement of the wage levels for all covered employees; and

(5) A commitment to pay all employees a living wage, as described in subsection (a).

(e) *Observance of other laws.* Every covered employee shall be paid at least bi-weekly, and without subsequent deduction or rebate of any account (except for such payroll deductions as are directed or permitted by law or a collective bargaining agreement). The employer shall, at a minimum, pay covered employees the living wage rates required by this article and shall also comply with federal and all other applicable laws and ordinances, such as overtime and other wage laws and ordinances.

(f) *Posting.* A copy of the living wage rate shall be posted by the covered employer at the site of the work in a prominent place where it can easily be seen by employees and shall be furnished to an employee within a reasonable time after a request to do so. A copy of the living wage rate shall be posted by the covered employer's subcontractors in a prominent place at the subcontractor's premises where paychecks are distributed and shall also be furnished to an employee upon request within a reasonable time after the request is made. Additionally, service contractors shall forward a copy of the requirements of this article to any individual and any entity submitting a bid for a subcontract on any County service contract covered by this article. A covered employer shall also provide the following statement to each covered employee with the employee's first paycheck and every six (6) months thereafter: "You are required by Broward County ordinance to be paid at least [insert applicable rate pursuant to this article] dollars an hour. If you are not paid this hourly rate, contact your supervisor or a lawyer." All notices required by this paragraph shall be printed in English, Spanish, and Creole. The statements shall be provided in the manner set forth below:

(1) By printing or stamping the statements on the front of the employee's first paycheck or, if the employee has direct deposit of his or her pay, the covered employer may print or stamp the statements on the inside or outside of the employee's first direct receipt; or

(2) By attaching or endorsing the printed or stamped statements with the employee's first paycheck or direct deposit receipt and subsequently providing a notarized compliance affidavit from the employer to the County acknowledging that the statements were provided to the covered employee with his or her first paycheck.

(g) *Collective bargaining.* Nothing in this article shall be construed to require or authorize any covered employer to reduce wages set by a collective bargaining agreement or as required under any prevailing wage law.

(Ord. No. 2002-45, § 3, 10-8-02; Ord. No. 2008-45, § 1, 10-7-08)

Sec. 26-103. - Implementation.

(a) *Procurement specifications.*

(1) Payment of the living wage shall be required by the procurement specifications for all County service contracts for covered services on which bids or proposals shall be solicited on or after the effective date of this article. Such procurement specifications shall also require each firm that utilizes a subcontractor to inform each subcontractor of its obligation to pay a living wage to its covered employees prior to the time the subcontractor offers its price to such firm. The procurement specifications for applicable contracts shall include a requirement that service contractors agree to produce all documents and records relating to payroll and that service contractors agree to comply with the obligation to maintain payroll records for covered employees for at least three (3) years from the date of termination of the service contract and to produce such records for inspection and copying upon request from the applicable contract administrator ("contract administrator" shall have the same meaning as set forth in the Broward County Procurement Code) or the County Administrator.

(2) By submitting a bid or proposal in response to a County Procurement solicitation and accepting a contract that requires compliance with this article, each service contract agrees to and shall be bound by the determinations made in accordance with the rules and procedures established pursuant to Section 26-104 hereof if a person or subcontractor submits a dispute for determination in accordance with such section. Each such service contractor expressly agrees to be bound by the provisions and procedures set forth and by any sanctions and remedies imposed pursuant to this article

(b) *Information distributed.* All requests for bids, requests for proposals, or requests for letters of interest for service contracts, whether advertised or informally solicited, shall include appropriate information about the requirements of this article and a form which vendors may request an exemption from reporting requirements pursuant to Subsection 26-103(e) of this article.

(c) *Maintenance of payroll records.* Each covered employer shall maintain payroll records for all covered employees and shall preserve them for a period of three (3) years from the date of termination of any County service contract. The records shall contain:

(1) The name and address of each covered employee;

(2) The job title and classification;

(3) The number of hours worked each day;

(4) The gross wages earned and deductions made;

(5) Annual wages paid;

(6) A copy of the covered employer's social security returns and evidence of payment thereof;

(7) A record of fringe benefit payments, including employee and employer contributions to employer-approved plans; and

(8) Any other data or information the County Administrator may require from time to time.

(d) *Reporting payroll.* Every six (6) months, the covered employer shall file with the contract administrator a complete payroll showing the covered employer's payroll records for each covered employee working on the contract(s) for covered services for at least one (1) payroll period. Upon request, the employer shall produce for inspection and copying its payroll records for any or all of its covered employees for the prior three (3) year period. A covered employer is exempt from this reporting requirement if the term of the contract is six (6) months or less.

(e) *Exemption.* A covered employer who routinely pays the living wage to all of its employees that work a minimum of twenty (20) hours per week in a covered services category may obtain an exemption from the requirement under Subsection 26-103(d) to report and file payroll records every six (6) months in the manner set forth below. If requested by a covered employer on a form available from the County's Purchasing Division and if the covered employer provides a notarized compliance affidavit attesting that its wages for covered employees are at least equal to the amount of the living wage, the County's Purchasing Division Director is authorized to grant, in writing, a whole or partial exemption from the requirement to report and file payroll records every six (6) months with the contract administrator as follows:

(1) An exemption shall be granted where the covered employer demonstrates that its covered employees have been continuously paid the applicable living wage or a higher wage for at least one (1) year prior to entering into the service contract. The covered employer may demonstrate that its covered employees have been paid the applicable living wage by submitting payroll records or pay scale records (by job classification); or

(2) An exemption shall be granted where the covered employer demonstrates to the satisfaction of the County's Purchasing Division Director that the amounts paid to its covered employees are required by law or are required pursuant to a contractual obligation, such as a collective bargaining agreement.

(3) When granted, the covered employer shall not acquire a property right or property interest in continuing the exception, and the County shall have the absolute right to cancel the exemption at any time upon notice to the covered employer. An exemption may be canceled at any time by the County Purchasing Division Director by giving the covered employer written notice of such cancellation.

(4) If an exemption is granted under this subsection, the exemption shall not affect the covered employer's obligation to produce its payroll records for any or all of its covered employees for inspection and copying for any three-year period permitted by Subsection 26-103(d) when requested by the County's authorized employees, agents, and representatives.

(5) By requesting and receiving an exemption, a covered employer acknowledges and agrees that its failure to pay its covered employees the living wage or its failure to otherwise comply with any remaining non-exempt obligation to its service contract or this article shall constitute a default under, and a breach of, the service contract for which the exemption was granted.

(Ord. No. 2002-45, § 4, 10-8-02; Ord. No. 2008-45, § 1, 10-7-08)

Sec. 26-104. - Compliance and enforcement.

(a) *Service contractor to cooperate.* A service contractor shall permit County employees, agents, or representatives to observe work being performed at, in, or on the project or matter for which the service contractor has a contract. The County employees, agents, or representatives may examine the books and records of the service contractor relating to employment and payroll to determine whether the service contractor is in compliance with the provisions of this article.

(b) *Complaint procedures and sanctions.* A covered employee or subcontractor of a service contractor who believes that this article applies or applied to him, her, or it, and who also believes the responsible service contractor is not or was not complying with requirements of this article that would benefit him, her, or it, has a right to complain by filing a written complaint. The County Administrator shall establish by Administrative Rule the procedures and requirements for filing a complaint and for the processing and resolution of complaints under this section, including the sanctions to be imposed for violations of this section.

(c) *Private right of action against service contractors.* Any covered employee or subcontractor of a service contractor, or any person or subcontractor who was formerly a covered employee or subcontractor of a service contractor, may, instead of the County procedure set forth in subsection (b), but not in addition to such procedure, bring an action by filing suit against the covered employer in a court of competent jurisdiction to enforce the provisions of this article, and may be awarded back pay, benefits, attorney's fees, and costs. The applicable statute of limitations for such a claim will be two (2) years as provided in Subsection 95.11(4)(c), Florida Statutes, as may be amended from time to time, in an action for payment of wages. The court may also impose sanctions on the covered employer, including those persons or entities aiding or abetting the covered employer, to include wage restitution to the affected employee and damages payable to the affected employee in the sum of up to Five Hundred Dollars ($500.00) a day but not to exceed One Thousand Dollars ($1,000.00) for each week each covered employer is found to have violated this article.

(d) *Sanctions against service contractors.* For violations of this article as determined by the procedures set forth by Administrative Rule, the County may sanction a service contractor by requiring the service contractor to pay wage restitution to the affected employee or subcontractor. The County may also sanction the service contractor in at least one (1) of the following additional ways:

(1) Damages payable to the County in the sum of up to Five Hundred Dollars ($500.00) a day but not exceed

One Thousand Dollars ($1,000.00) for each week for each covered employee or subcontractor found to have not been paid in accordance with this article;

(2) The County may suspend or terminate payment under the subject contract or terminate the contract with the service contractor;

(3) The County may declare the service contractor ineligible for future service contracts for five (5) years or until all damages and restitution have been paid in full, whichever is longer. In addition, any employer shall be ineligible for County service contracts where a principal officer of such employer was a principal officer of a service contractor who has been declared ineligible under this article; and

(4) All such sanctions recommended or imposed shall be a matter of public record.

(e) *Retaliation and discrimination barred.* An employer shall not discharge, reduce the compensation of, or otherwise discriminate against any employee or subcontractor for filing a complaint in accordance with this article or for otherwise asserting his, her, or its rights under this article. Allegations of retaliation or discrimination, if found to be true by the County Administrator, pursuant to the procedures established by Administrative Rule, or by a court of competent jurisdiction under subsection (c), shall result in an order of restitution and reinstatement of a discharged employee with back pay to the date of the violation, or such other relief as deemed appropriate. In addition, the County Administrator or the court may impose an additional sanction of up to Five Hundred Dollars ($500.00) a day but not to exceed One Thousand Dollars ($1,000.00) for each week since the covered employee or subcontractor was discharged or terminated, the compensation was reduced, or other discrimination occurred as a result of retaliation prohibited by this article.

(f) *Remedies herein non-exclusive.* Except as provided in Subsection 26-104(c) no remedy set forth in this article is intended to be exclusive or a prerequisite for asserting a claim for relief to enforce any right under this article in a court of law.

(Ord. No. 2002-45, § 5, 10-8-02; Ord. No. 2008-45, § 1, 10-7-08)

Section 26-105. - Living wage advisory board created; composition, terms; duties; and organization.

(a) There is hereby created the Living Wage Advisory Board which shall be composed of nine (9) members appointed by the Board of County Commissioners.

(b) Each County Commissioner shall nominate one (1) member to the Living Wage Advisory Board, provided that no more than four (4) members are representatives of the business community. Two (2) members shall be representatives of service contractors, with at least one being a covered employee, and shall count against the maximum of four (4) members allowed as representatives of the business community. For purposes of this subsection, "business community" shall not include a non-profit entity that is recognized by the Federal Internal Revenue Service as exempt from payment of federal income taxes.

(c) The provisions of Section 1-233, Broward County Code of Ordinances, shall apply to the Living Wage Advisory Board.

(d) The Living Wage Advisory Board shall review the implementation and effectiveness of this article and advise the Board of County Commissioners of the same, together with any recommendations for amendments hereto.

(e) The Living Wage Advisory Board shall elect a Chair and Vice-Chair and promulgate rules necessary to conduct the business of the Living Wage Advisory Board.

(Ord. No. 2002-45, § 6, 10-8-02; Ord. No. 2008-45, § 1, 10-7-08)

Secs. 25-106—26-120. - Reserved.