

**ORDINANCE NO. 2019-02**

**AN ORDINANCE OF THE MAYOR AND CITY COMMISSION OF THE CITY OF NORTH MIAMI BEACH, FLORIDA, AMENDING CHAPTER III “PURCHASING” OF THE CODE OF ORDINANCES OF THE CITY OF NORTH MIAMI BEACH, FLORIDA, SPECIFICALLY, SECTION 3-3 “FORMAL CONTRACT PROCEDURES”, SUBSECTION 3-3.1 “PROCEDURE REQUIREMENT” TO REFERENCE LIVING WAGE REQUIREMENTS FOR SERVICE CONTRACTS AND AMENDING CHAPTER V “HUMAN RESOURCES” TO ADD SECTION 5-3 “LIVING WAGE REQUIREMENTS FOR CITY EMPLOYEES AND SERVICE CONTRACTS” TO PROVIDE THAT COVERED CITY EMPLOYEES SHALL BE PAID A LIVING WAGE BEGINNING WITH FISCAL YEAR 2020, SEASONAL EMPLOYEES BEGINNING WITH FISCAL YEAR 2021, AND NEW SERVICE CONTRACTS AWARDED AFTER SEPTEMBER 30, 2021, AND WHICH MEET CERTAIN CRITERIA SHALL BE SUBJECT TO PAYMENT OF A LIVING WAGE; PROVIDING FOR IMPLEMENTATION, ENFORCEMENT AND PENALTIES; PROVIDING FOR REPEALER, SEVERABILITY, CODIFICATION AND AN EFFECTIVE DATE.**

**WHEREAS**, the City of North Miami Beach (“City”) has an interest in protecting the public health, safety and welfare of its residents by establishing certain compensation requirements for its own employees and employees of vendors that enter into service contracts with the City; and

**WHEREAS**, the City has a responsibility when spending public funds to set a community standard that permits its employees to live above the poverty line; and

**WHEREAS**, setting a minimum compensation level by way of a living wage should allow City employees and employees of certain City vendors to support themselves and their families with dignity; and

**WHEREAS**, sub-poverty level wages do not serve the public interest and place an undue burden on taxpayers and the community, which must further subsidize employers who pay inadequate wages by providing their employees social services such as health care, housing, nutrition, and energy assistance; and

**WHEREAS**, such compensation requirements have the potential to increase consumer income and thereby decrease the number of employees whose incomes are below the poverty level, invigorate neighborhood business, help reduce blight in the City, and reduce the need for taxpayer-funded subsidies; and

**WHEREAS**, Florida Statute 218.077(3)(a)(1)-(2) provides that a City is not limited in its ability to establish a minimum wage for employees of the City, as well as for the employees of an employer contracting to provide goods or services for the City, or for the employees of a

subcontractor of such an employer; and

**WHEREAS**, in assessing a base hourly living wage rate, the City utilized the Massachusetts Institute of Technology (MIT) Living Wage Calculator, utilizes a market-based approach that draws upon geographically specific expenditure data related to a person's minimum costs for basic necessities; and

**WHEREAS**, pursuant to the MIT Living Wage Calculator the proposed amendment establishes a living wage rate of no less than \$12.85 per hour with health care benefits and \$16.02 per hour with no health benefits offered; and

**WHEREAS**, the proposed code amendment provides that full-time and part-time City employees will be paid the living wage no later than January 1, 2020, that seasonal employees will be paid the living wage no later than January 1, 2022, that the living wage may be updated by a resolution of the City Commission based upon the U.S. Department of Labor's Bureau of Labor Statistics, that new service contracts in excess of fifty thousand dollars (\$50,000) entered into after September 30, 2021, shall be subject to the living wage requirements, and that certain contracts shall be excluded from the living wage requirements including allowing the City Commission to waive the requirement when it is in the best interests of the City; and

**WHEREAS**, the Mayor and City Commission find it to be in the best interests of the health, safety, and welfare of its residents to amend Chapter III Purchasing and Chapter V Human Resources to adopt a living wage for full-time city employees and new service contracts.

**NOW, THEREFORE, BE IT ORDAINED** by the Mayor and City Commission of the City of North Miami Beach, Florida:

**Section 1.** The foregoing recitals are true and correct.

**Section 2.** That Chapter III of the Code of the City of Ordinances of the City of North Miami Beach, Florida, titled "Purchasing" is hereby amended as follows:

### **CHAPTER III – PURCHASING**

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#### **3-3 - FORMAL CONTRACT PROCEDURES.**

##### **3-3.1 Procedure Requirement.**

All supplies, equipment, construction, and services, except as otherwise provided for herein, or except in the case of emergencies, when the estimated cost thereof shall exceed twenty-five thousand (\$25,000.00) dollars (bid limit) shall be purchased by written contract and/or purchase order to the lowest and best responsive, responsible bidder meeting specifications, after receiving competitive sealed bids or proposals.

Notwithstanding any exclusions, service contracts shall be subject to the living wage requirements as set forth in Chapter V "Human Resources", Section 5-3 "Living Wage

Requirements for City Employees and Service Contracts”.

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**Section 3.** That Chapter V of the Code of the City of Ordinances of the City of North Miami Beach, Florida, titled “Human Resources” is hereby amended as follows:

**Chapter V Human Resources**

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**Section 5-3 Reserved-Living Wage Requirements for City Employees and Service Contracts**

**Sec. 5-3.1 Definitions.**

City means the government of the City of North Miami Beach or any authorized agents, any board, agency, commission, department, or other entity thereof, or any successor thereto.

Contract means any contract to provide services to the city in which the total value of the contract exceeds \$50,000.00 per year

Contractor means any "for profit" individual, business entity, corporation, partnership, limited liability company, joint venture, or similar business entity which meets the following criteria:

- (a) The contractor is paid in whole or part from one or more of the city's general funds, capital project funds, special revenue funds, or any other funds, including, but not limited to, grants, donations, and the like, whether by competitive bid process, requests for proposals, or some other form of competitive solicitation, negotiation, or agreement, or any other decision to enter into a contract; and
- (b) The contractor is engaged in the business of or part of a contract to provide services for the benefit of the city. This section shall apply to employees of the contractor who spend the majority of their time on covered City of North Miami Beach service contracts. If the contract is for both goods and services it shall only apply to the services portion of such contract. This section shall not apply to contracts which are primarily for the sale or leasing of goods.

Covered employee means anyone employed by the city, except seasonal employees, working full or part time, with or without benefits.

Covered employer means the city.

Goods means all things (including specially manufactured goods) which are movable at the time of identification to the contract for sale other than the money in which the price is to be paid, investment securities (F.S. Chapter 678) and things in action. “Goods” also includes the unborn young of animals and growing crops and other identified things attached to realty as described in the Uniform Commercial Code on goods to be severed from realty (F.S. § 672.107).

Health benefits shall, at a minimum, mean health insurance coverage which consists of wellness and preventive care, including maternity, and that provides the services described in F.S. § 408.9091(4)(6) and (7).

Living wage means a wage that is as defined in Section 5-3.2 of this Code. The living wage may be adjusted once annually by an amount equivalent to the cost of living adjustment for Miami-Dade County as published by the United States Department of Labor, Bureau of Labor Statistics. Language so stating will be included in all request for proposals, or other competitive solicitation documents, issued by the city for the procurement of services (unless the living wage provisions are excluded as provided in section 5-3.2 herein).

New service contracts means those having contracts competitively solicited and awarded on or after October 1, 2021.

Seasonal employee means an employee of the city that is appointed to a seasonal position, who has no expectation of continued employment beyond the time period for which they are hired, and are temporary employees of the city.

Service contract means a contract to provide services to the city excluding, however, professional services as defined by the "Consultants Competitive Negotiation Act" set forth in F.S. § 287.055, and section 3-3.9 of the City Code and/or the other exclusions provided by section 5-3.2 of the City Code.

#### Sec. 5-3.2 Living wage.

##### (a) Living wage paid.

##### (1) Hourly Living Wage Rates are as follows:

- a. Living wage rate with health care benefits. Covered employees must be paid a living wage rate of no less than \$12.85 per hour, in addition to \$3.17 per hour towards health care benefits as described in section 5-3.2(b).
- b. Living wage rate without health care benefits. For seasonal employees, as well as for those covered employees wherein the covered employer does not offer health benefits, the seasonal and covered employee must be paid a living wage rate of no less than \$16.02 per hour.

(2) Covered city employees. For covered employees of the city, the city will begin to pay the living wage beginning with the Fiscal Year 2020 City Budget to be fully implemented by January 1, 2020. Thereafter, the living wage to be paid by the city to its employees shall be subject to adjustments as approved as part of the annual budget process, and when applicable, subject to negotiations within the collective bargaining structure.

(3) Seasonal employees. For seasonal employees of the city, the city will begin to pay the living wage beginning with the Fiscal Year 2021 City Budget to be fully implemented by January 1, 2022. Thereafter, the living wage to be paid by the city to its employees shall be subject to adjustments as approved as part of the annual budget process, and when applicable, subject to negotiations within the collective bargaining structure.

(4) *New service contractors.* All new service contracts shall pay to all its employees who provide covered services a living wage as defined in this section unless otherwise excluded pursuant to this article.

(5) *Existing service contracts.* Service contracts awarded and effective or competitively solicited prior to September 30, 2021, shall not be subject to the payment of the living wage set forth in this section and shall continue to be governed by the terms and conditions of the respective solicitation and resulting contractual documents, when applicable.

(6) The living wage provisions shall apply to all contracts covered by this section unless specifically excluded by one or more subsections below:

- a. The living wage provision is disallowed by a federal or state law or regulation, grant requirements, or by a contract the city is accessing by "piggybacking", and which contract does not include a living wage provision; or
- b. Funding sources for the contract disallow the living wage provision or provide contradictory funding requirements, or are contained in a contract awarded or solicited prior to the effective date of October 1, 2019, and which contract includes renewals or extensions; or
- c. Professional service contracts awarded under the "Consultants Competitive Negotiation Act", F.S. § 287.055, for the professional services within the scope of the practice of architecture, professional engineering, landscape architecture, registered surveying, and/or mapping; or
- d. The living wage provision is waived by the city commission by resolution, prior to issuance of the competitive solicitation document, upon written recommendation of the city manager or authorized designee, when the city commission finds it is in the best interest(s) of the city to approve such waiver, in which case the living wage provision shall not apply in the competitive solicitation document.

(b) *Health benefits; eligibility period.* For a covered employer to comply with this article by choosing to pay the lower wage scale available when a covered employer also provides a standard health benefit plan, such health benefit plan shall consist of a payment of at least \$3.17 per hour toward the provision of health benefits for covered and seasonal employees and their dependents and shall be approved by the city. The minimum amount of payment for the provision of a health benefit plan on a per-hour basis will be calculated on a maximum of a 40-hour work week.

If the health benefit plan of the covered employer requires an initial period of employment for a new employee to be eligible for health benefits (the "eligibility period"), a covered employer may qualify to pay the living wage rate with healthcare benefits established in section 5-3.2(a)(1)a. for a term not to exceed the new employee's eligibility period, provided the new employee will be paid health benefits upon completion of the eligibility period, which period shall not exceed 90 days.

(c) *Indexing.* The living wage rate may, by resolution of the city commission, be indexed annually for inflation using the Miami PMSA Consumer Price Index for all Urban Consumers

(CPI-U) Miami/Ft. Lauderdale, issued by the U.S. Department of Labor's Bureau of Labor Statistics. Commencing on January 1, 2021, the supplemental health care benefits rate (the per hour rate towards health benefits) may, by resolution of the city commission, be separately indexed annually for inflation using the Miami PMSA Consumer Price Index for all Urban Consumers (CPI-U) for the Miami/Ft. Lauderdale area, for medical care only, as issued by the U.S. Department of Labor's Bureau of Labor Statistics. Notwithstanding the preceding, no annual index shall exceed three percent; nor shall an annual increase exceed the corresponding annual compensation increase (if any) provided to unrepresented (i.e., unclassified) city employees. The city commission may also, by resolution, elect not to index the living wage rate in any particular year, if it determines it would not be fiscally sound to implement same (in a particular year). The determination to index (or not index) the living wage rate shall be considered annually during the city commission's review and approval of the city's annual operating budget or with a budget amendment.

In the event that the city commission has determined, in any particular fiscal year (or years), to not index the living wage rate, and thereafter determines that making up all or any part of the prior year's (or years') unindexed percentage would not have an adverse fiscal impact upon the city, then the city commission shall also have the right, but not the obligation, to cumulatively index the living wage rate to "make-up" for any deficiencies in the prior year (or years) where there was (were) no increase(s) (the "catch up" election). The "catch-up" election must be approved by resolution, and may only be considered during the city commission's review and approval of the city's annual operating budget.

(d) *Collective bargaining.* Nothing in this article shall be read to require or authorize the City, to reduce wages set by a collective bargaining agreement or as required under any prevailing wage law.

(e) *Certification required before payment.* Any and all service contracts subject to this article shall be void, and no funds may be released, unless prior to entering any such contract with the city, the service contractor certifies to the city that it will pay each of its covered employees no less than the living wage. A copy of this certificate must be made available to the public upon request. The certificate, at a minimum, must include the following:

- (1) The name, address, and phone number of the employer, a contact person, and the specific project for which the service contract is sought;
- (2) The amount of the service contract and the city 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 covered employees the living wage.

(f) *Posting.* A copy of the living wage rate shall be kept posted by the service contractor subject to this article, at the site of the work in a prominent place where it can easily be seen and read by the covered employees and shall be supplied to such employees within a reasonable time after a request to do so. Additionally, service contractors subject to this article, shall furnish a copy of the requirements of this article to any entity submitting a bid for a subcontract on any service contract subject to this article.

Posting requirements will not be required where the service contractor subject to this article, prints the following statements on the front of the covered employee's first paycheck and every six months thereafter. "You are required by the City of North Miami Beach Living Wage Ordinance to be paid a living wage. If you do not believe you are being paid at the living wage rate, contact your employer, an attorney, or the City of North Miami Beach." All notices will be printed in English, Spanish and Creole.

**Sec. 5-3.3 Implementation.**

(a) Maintenance of payroll records. Each service contractor to which living wage requirements apply, as described in this article, shall maintain payroll record for all covered employees and basic records relating thereto and shall preserve them for a period of three years from the date of termination or expiration of the 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 social security returns and evidence of payment thereof;
- (7) A record of fringe benefit payments including contributions to approved plans; and
- (8) Any other data or information the city shall require from time to time.

(b) Reporting payroll. Every six months, the service contractor to which living wage requirements apply, as described in this article, shall file with the city's Chief Procurement Officer a listing of all covered employees together with a certification of compliance with this article. Upon request from the city, the service contractor shall produce for inspection and copying its payroll records for any or all of its covered employees for any period covered by the service contract. The city may examine payroll records as needed to ensure compliance.

**Sec. 5-3.4 Compliance and Enforcement.**

(a) Service contractor to cooperate. The service contractor shall permit city 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 city representatives may examine the books and records of the service contractor relating to the employment and payroll of covered employees and may survey covered employees to determine if the service contractor is in compliance with the provisions of this article.

(b) Complaint procedures and sanctions. An employee who believes that he/she is a covered employee of a service contractor and that the service contractor is or was not complying with the requirements of this article has a right to file a complaint with the city's Chief Procurement Officer. Such complaints may be made at any time and shall be investigated within a reasonable period of time by the city. Written and oral statements by any such employee shall be treated as confidential and shall not be disclosed without the written consent of the employee to the extent allowed by the Florida Statutes.

- (c) Private right of action against service contractor. Any covered employee or former covered employee of a service contractor may, instead of utilizing the city administrative procedure set forth in this article, but not in addition to such procedure, bring an action by filing suit against the service contractor in any 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 years as provided in F.S. § 95.11(4)(c) as may be amended from time to time for an action for payment of wages. The court may also impose sanctions on the service contractor, including those persons or entities aiding or abetting the service contractor, to include wage restitution to the affected covered employee and damages payable to the covered employee in the sum of up to \$500.00 for each week the service contractor is found to have violated this article.
- (d) Sanctions against service contractors. For violations of this article, the city shall sanction a service contractor by requiring the service contractor to pay wage restitution at its expense for each affected employee. The city may also sanction the service contractor in at least one of the following additional ways:
- (1) The city may impose damages in the sum of \$500.00 for each week for each covered employee found to have not been paid in accordance with this article;
  - (2) The city may suspend or terminate payment under the service contract or terminate the contract with the service contractor; and
  - (3) The city may declare the service contractor ineligible for future service contracts for three years or until all penalties and restitution have been paid in full, whichever is longer. In addition, any employer shall be ineligible for a service contract where principal officers of such employer were principal officers of a service contractor who has been declared ineligible under this article.
  - (4) If the contract has been awarded under the city procurement ordinance, the city may debar or suspend the contractor as provided therein.
- (e) Public record of sanctions. All such sanctions recommended or imposed shall be a matter of public record.
- (f) Sanctions for aiding and abetting. The sanctions contained in this article shall also apply to any party or parties aiding and abetting in any violation of this article.
- (g) Retaliation and discrimination barred. A service contractor shall not discharge, reduce the compensation, or otherwise discriminate against any covered employee for making a complaint to the city, or otherwise asserting his or her rights under this article, participating in any of its proceedings or using any civil remedies to enforce his or her rights under this article. Allegations of retaliation or discrimination, if found true in a city administrative proceeding or by a court of competent jurisdiction, shall result in an order of restitution and reinstatement of a discharged covered employee with back pay to the date of the violation or such other relief as deemed appropriate.
- (h) Remedies herein non-exclusive. No remedy set forth in this article is intended to be exclusive or a prerequisite for asserting a claim for relief to enforce the rights under this article or in a court of law. This article shall not be construed to limit an employee's right to bring a common law cause of action for wrongful termination.

**Section 4.** The provisions of this Ordinance are declared to be severable and if any section, sentence, clause or phrase of this Ordinance shall be held invalid by a court of competent jurisdiction, the remainder shall not be affected by such invalidity.



**Section 5.** All other City ordinances and resolutions or parts thereof in conflict with the provisions of this Ordinance are hereby superseded and repealed.

**Section 6.** It is the intention of the City Commission of the City of North Miami Beach and it is hereby ordained that the provisions of this Ordinance shall become and be made a part of the Code of Ordinances of the City of North Miami Beach, Florida. The Sections of this Ordinance may be renumbered or re-lettered to accomplish this intention and the word "Ordinance" may be changed to "Section," "Article," or other word as the codifier may deem appropriate.

**Section 7.** This Ordinance shall be effective ten (10) days after adoption on second reading.

**APPROVED** on first reading this 28<sup>th</sup> day of March, 2019.

**APPROVED AND ADOPTED** on second reading this 18<sup>th</sup> day of June, 2019.

**ATTEST:**

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ANDRISE BERNARD, CMC  
INTERIM CITY CLERK

\_\_\_\_\_  
ANTHONY F. DEFILLIPO  
MAYOR

(CITY SEAL)

APPROVED AS TO FORM &  
& LANGUAGE & FOR EXECUTION

  
\_\_\_\_\_  
SARAH JOHNSTON  
CITY ATTORNEY

Sponsored by: Vice-Mayor Michael Joseph

Note: Proposed additions to existing City Code text are indicated by underline and deletions are indicated by ~~strikethrough~~.