

PROPOSED

ORDINANCE NO.

AN ORDINANCE OF THE BOARD OF COUNTY COMMISSIONERS OF BROWARD COUNTY, FLORIDA, PERTAINING TO THE LIVING WAGE; AMENDING SECTIONS 26-101 THROUGH 26-103 OF THE BROWARD COUNTY CODE OF ORDINANCES ("CODE"); INCREASING THE LIVING WAGE AND REQUIRING PAID TIME OFF; PROVIDING FOR DEFINITIONS AND OTHER LIVING WAGE REQUIREMENTS; AND PROVIDING FOR SEVERABILITY, INCLUSION IN THE CODE, AND AN EFFECTIVE DATE.

(Sponsored by the Board of County Commissioners)

WHEREAS, due to the cost of living and other expenses in Broward County ("County"), the Broward County Living Wage Ordinance should be amended to better ensure that covered employees receive a living wage;

WHEREAS, requiring County service contractors to provide paid time off for their employees who work on County service contracts will improve the health and performance of those employees; and

WHEREAS, the Board of County Commissioners desires to increase the living wage hourly rate and to provide a requirement for paid time off,

BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF BROWARD COUNTY, FLORIDA:

Section 1. Section 26-101 of the Broward County Code of Ordinances is hereby amended to read as follows:

Sec. 26-101. Definitions.

As used in the Living Wage Ordinance, reference to one gender shall include all others; 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:

...

(h) *Covered employee* means:

(1) Each individual employed by a service contractor for a minimum of twenty (20) hours per week who, during the employment, is or was involved in providing services pursuant to the service contractor's contract with the County, except where the individual's primary compensation is composed of tips;

(2) Each individual employed by an airline service provider who, during the employment, is or was involved in providing covered airport services pursuant to Section 26-101(l). Individuals employed by an airline service provider whose primary compensation is composed of tips are not covered employees, except for wheelchair attendants, skycaps, and employees performing porter assistance services, including curbside check-in, as described in Section 26-101(l)(6); and

(3) Each County employee who is in a part-time benefit-eligible or full-time benefit-eligible position, as determined by the County.

...

(o) Security services officer means a covered employee employed by a service contractor that provides security services pursuant to a service contract awarded by the County. For purposes of this definition, security services officer also means security guard.

(p) *Service contractor* means any for profit individual, corporation, partnership, limited liability company, joint venture, or similar entity that:

(1) Is paid, whether directly or indirectly, from one (1) or more of the County's general fund, enterprise funds, capital project funds, or any other funds to provide covered services to the County pursuant to a service contract;

(2) Contracts with a service contractor as described in Section ~~26-101(o)(1)~~ 26-101(p)(1) to provide some of the covered services included in the service contract between that service contractor and the County; or

(3) Is a concessionaire.

(q) Written declaration means a document that is verified in accordance with Section 92.525, Florida Statutes.

Section 2. Section 26-102 of the Broward County Code of Ordinances is hereby amended to read as follows:

Sec. 26-102. Living wage.

(a) *Living wage requirement.*

~~(1) Living Wage Obligation through December 31, 2018. Through December 31, 2018, each covered employer shall pay each of its covered employees the amount listed in paragraph a. or b. immediately below:~~

a. ~~Living wage rate with health care benefits.~~ A living wage of no less than Twelve Dollars and Thirty-eight Cents (\$12.38) per hour, in addition to health care benefits as described in Section 26-102(d) below.

b. ~~Living wage rate without health care benefits.~~ If a covered employer does not offer a covered employee health care benefits, a living wage of no less than Twelve Dollars and Thirty-eight Cents (\$12.38) per hour, plus an additional wage rate of One Dollar and Sixty-one Cents (\$1.61) per hour.

(2) (1) ~~Living Wage Obligation Effective January 1, 2019, for New Contracts Entered Into on or after January 1, 2019~~ 2023. Each covered employer entering into a new service contract on or after January 1, ~~2019~~ 2023, shall pay each of its covered employees the amount listed in paragraph a. or b. immediately below:

a. ~~Living wage rate with health care benefits.~~ A living wage of no less than ~~Thirteen Dollars and Twenty-seven Cents (\$13.27)~~ Fifteen Dollars (\$15.00) per hour for covered employees other than security services officers, or Seventeen Dollars and Seventeen Cents (\$17.17) per hour for security services officers, adjusted as provided below, in addition to health care benefits as described in Section 26-102(d) below.

b. ~~Living wage rate without health care benefits.~~ If a covered employer does not offer a covered employee health care benefits, a living wage

of no less than ~~Thirteen Dollars and Twenty-seven Cents (\$13.27)~~
Fifteen Dollars (\$15.00) per hour for covered employees other than
security services officers, or Seventeen Dollars and Seventeen
Cents (\$17.17) per hour for security services officers, plus the health
care benefit amount, as defined below in Section 26-102(d)(1),
adjusted as provided below.

~~(3)~~ (2) *Living Wage Obligation Effective January 1, 2019, for Contracts Entered
Into Prior to January 1, 2019 2023, Including Renewals, Amendments, and
Extensions Thereof.* Commencing January 1, ~~2019~~ 2023, each covered
employer with a service contract entered into prior to January 1, ~~2019~~ 2023,
shall pay each of its covered employees the amount listed in paragraph a.
or b. immediately below (a)(1) above, subject to the following conditions
precedent stated in paragraph c. immediately below:

a. ~~Living wage rate with health care benefits.~~ A living wage of no less
than ~~Thirteen Dollars and Twenty-seven Cents (\$13.27)~~ per hour,
adjusted as provided below, in addition to health care benefits as
described in Section 26-102(d) below.

b. ~~Living wage rate without health care benefits.~~ If a covered employer
does not offer a covered employee health care benefits, a living wage
of no less than ~~Thirteen Dollars and Twenty-seven Cents (\$13.27)~~
per hour, plus the health care benefit amount, as defined below in
Section 26-102(d)(1), adjusted as provided below.

112 ~~e.~~ ~~*Conditions Precedent.*~~

113 Notwithstanding anything to the contrary stated in Section 26-102, each
114 covered employer shall continue to pay the living wage rate with health care
115 benefits or the living wage rate without health care benefits, as applicable,
116 that would otherwise be in effect immediately prior to the ~~adoption~~ effective
117 date of this amendment to the Living Wage Ordinance, adjusted as provided
118 in Section ~~26-102(e)~~ 26-102(f), unless and until the condition established in
119 either paragraph 4 a or paragraph 2 b immediately below occurs:

- 120 4. a. The County and the covered employer enter into a written
121 amendment expressly applying to the underlying service contract the
122 higher living wage and health care benefit amount, and any
123 applicable paid time off requirement, established by this amendment
124 to the Living Wage Ordinance. The amendment may provide funding
125 by the County to reasonably mitigate increased costs, if any,
126 resulting from this amendment to the Living Wage Ordinance
127 provided (i) the covered employer certifies in writing that any such
128 funding provided by the County equals or is less than the amount of
129 such increased costs; (ii) the County's contract administrator certifies
130 in writing that, after diligent review of applicable documentation, the
131 contract administrator concurs with the covered employer's
132 certification; and (iii) the County's payment of any such mitigation
133 costs is funded through the same funding source used for payments
134 under the underlying contract (e.g., general fund dollars may only be

used to pay mitigation costs in connection with those contracts funded through general fund dollars); or

2. b. The covered employer provides written consent and express waiver of any objection or defense to the application of the higher living wage established by this amendment to the Living Wage Ordinance, in form and substance approved by the Office of the County Attorney.

On or before ~~April 1, 2019~~ March 1, 2023, the County Administrator, through applicable staff, shall present to the County Commission each affected service contract entered into prior to January 1, ~~2019~~ 2023, as to which neither the condition stated in paragraph 4 a nor the condition stated in paragraph 2 b has been met, and shall concurrently recommend in writing whether each such contract should be terminated for convenience (if and as permitted under the contract) or continued. For each contract as to which staff is recommending a continuation, staff's recommendation shall state the operational justification for such continuation. The County Commission, after considering staff's recommendations, shall determine the appropriate action to take regarding each contract.

With regard to service contracts entered into prior to January 1, ~~2019~~ 2023, as to which neither the condition stated in paragraph 4 a nor the condition stated in paragraph 2 b has been met, staff may not approve any amendment, renewal, or extension thereof unless the amendment, renewal, or extension includes a commitment by the covered employer to pay, upon the commencement of the amendment, renewal, or extension, the higher

living wage established by this amendment to the Living Wage Ordinance and to provide any required paid time off. Any amendment, renewal, or extension that does not include this commitment may be approved only by the County Commission, and any contrary prior delegation of authority to staff is hereby rescinded.

(b) *No pass through.* Any increased living wage ~~or~~, health care benefit, or paid time off costs resulting from the Living Wage Ordinance shall not be passed through to the County unless clearly disclosed to and expressly approved by the ~~Board of County Commissioners~~.

(c) *County employees.* Commencing with the first full pay period after January 1, ~~2019~~ 2023, for part-time benefit-eligible or full-time benefit-eligible County employees under the County pay plan, the County will pay a living wage of no less than ~~Thirteen Dollars and Twenty-seven Cents (\$13.27)~~ Fifteen Dollars (\$15.00) per hour, adjusted as provided below, in addition to health care benefits as hereinafter described.

(d) *Health care benefits.*

(1) *Health care benefit amount.* The health care benefit amount required by the Living Wage Ordinance shall consist of payment by a covered employer, or by the County for its employees, of an amount ("health care benefit amount") toward the provision of health care benefits for a covered employee and dependents, as follows:

a. Effective January 1, 2019, a health care benefit amount of at least One Dollar and Sixty-three Cents (\$1.63) per hour, adjusted as provided below on January 1, 2020.

b. Effective January 1, 2021, a health care benefit amount of at least Three Dollars and Forty-four Cents (\$3.44) per hour, adjusted as provided below beginning on January 1, 2022.

(2) *Proof of health care benefits.* A covered employer must submit a ~~notarized affidavit~~ written declaration of compliance as proof of the provision of health care benefits to qualify to pay the living wage rate for covered employees with health care benefits.

...

(e) *Paid time off.*

(1) *Amount of paid time off.* A service contractor shall provide paid time off to its covered employees under either the accrual method or the lump sum method, as described below.

a. *Accrual method.* Under the accrual method, each covered employee of a service contractor shall earn at least one (1) hour of paid time off for every thirty (30) hours worked, provided that nothing in this section requires that total accrued paid time off, on an annual basis, exceed forty (40) hours. The covered employee shall begin to accrue paid time off upon the effective date of hire or January 1, 2023, whichever is later.

b. *Lump sum method.* Under the lump sum method, the service contractor shall award each covered employee no less than forty (40) hours of paid time off at the beginning of each twelve-month period of employment, which award must occur by ninety (90) days after the

covered employee's effective date of hire or January 1, 2023,
whichever is later.

c. Limit on paid time off. A covered employer may not set a limit on the
total accrual or award of paid time off at less than forty (40) hours on
an annual basis.

(2) Regular wage rate. Paid time off shall be paid at a covered employee's
regular wage rate at the time the paid time off is used.

(3) Use of paid time off. A covered employee may use paid time off for vacation,
personal necessity, or sick leave upon accrual or upon lump sum award, as
applicable.

(4) Effective date for paid time off. Section 26-102(e) shall only apply to
(i) service contracts for covered services or concessionaires resulting from
solicitations for which the advertisement period includes any date on or after
January 1, 2023; (ii) service contracts for covered services or
concessionaires in effect on January 1, 2023, including renewals,
amendments, and extensions thereof, subject to the requirements and
conditions precedent stated in Section 26-102(a)(2); and (iii) new service
contracts for covered services or concessionaires entered into after January
1, 2023.

~~(e)~~ (f) Adjusting the living wage and health care benefit amount. Beginning on
January 1, 2020 ~~(or beginning on January 1, 2019, for those service contracts entered~~
~~into prior to January 1, 2019, as to which the new, higher living wage rate established by~~
~~this amendment to the Living Wage Ordinance is not in effect as of January 1, 2019)~~

2023, for the health care benefit amount, and beginning on January 1, 2024, for the living wage amount, and thereafter on January 1 of each year, the living wage and the health care benefit amount shall each be adjusted annually by the lowest of the following three (3) percentages:

(1) The percentage increase in the Consumer Price Index for All Urban Consumers (CPI-U), All Items, Miami-Ft. Fort Lauderdale-West Palm Beach, FL, calculated by the United States Department of Labor, for the immediately preceding period of November 1 through October 31;

(2) Three percent (3%); or

(3) The percentage across-the-board compensation increase provided by the County to unrepresented County employees.

~~(f) (g) Certification~~ Written declaration ~~required before payment award. Any and all contracts for covered services shall be void, and no funds may be released unless, prior to~~ Before entering into any contract with the County for a service contract, the covered employer ~~certifies~~ must submit a written declaration to the County that it will pay each of its covered employees no less than the living wage described in the applicable section above. The ~~certificate~~ written declaration, at a minimum, must include the following:

(1) The name, address, and telephone number of the covered 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 covered employees a living wage, as described in ~~sub~~Section 26-102(a); and

- (6) A commitment to provide paid time off to all covered employees of the service contractor in accordance with Section 26-102(e).

~~(g)~~ (h) *Observance of other laws.* Every covered employee shall be paid at least biweekly, and without subsequent deduction or rebate of any amount (except for such payroll deductions as are directed or permitted by law or a collective bargaining agreement). The covered employer shall, at a minimum, pay covered employees the living wage rates required by the Living Wage Ordinance and shall also comply with federal and all other applicable laws and ordinances, such as overtime and other wage laws and ordinances.

~~(h)~~ (i) *Posting.* A copy of the living wage rate shall be posted by the covered employer at the workplace in a prominent place where it can easily be seen by covered employees and shall be furnished to a covered 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~~ each subcontractor's premises where paychecks are distributed and shall also be furnished to a covered employee upon request within a reasonable time after the request is made. Additionally, service contractors shall forward a copy of the requirements of the Living Wage Ordinance 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 the Living Wage Ordinance] dollars an hour. If you are not paid this hourly rate, contact your supervisor or a lawyer." A service contractor shall also provide the following statement to each covered employee with the employee's first paycheck and every six (6) months thereafter: "By Broward County ordinance, you are entitled to accrue paid time off or be awarded forty (40) hours of paid time off on an annual basis." 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:

...

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

...

Section 3. Section 26-103 of the Broward County Code of Ordinances is hereby amended to read as follows:

Sec. 26-103. Implementation.

- (a) *Procurement specifications.*

- (1) Payment of the living wage and providing paid time off 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, prior to the time the subcontractor offers its price to such firm, of its obligation to pay a living wage and to provide paid time off to its covered employees. 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.

...

(d) *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 covered employee and covered employer contributions to employer-approved plans; ~~and~~
- (8) A record of the number of hours of paid time off each covered employee accrued or was awarded each year; and
- (9) Any other data or information the County Administrator may require from time to time.

...

(f) *Exemption.* A covered employer who routinely pays the living wage to all of its covered employees that work a minimum of twenty (20) hours per week in a covered services category or for covered airport services may obtain an exemption from the requirement under Section 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~~ written declaration 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:

...

341 Section 4. Severability.

342 If any portion of this Ordinance is determined by any court to be invalid, the invalid
343 portion will be stricken, and such striking will not affect the validity of the remainder of this
344 Ordinance. If any court determines that this Ordinance, in whole or in part, cannot be
345 legally applied to any individual, group, entity, property, or circumstance, such
346 determination will not affect the applicability of this Ordinance to any other individual,
347 group, entity, property, or circumstance.

348 Section 5. Inclusion in the Broward County Code of Ordinances.

349 It is the intention of the Board of County Commissioners that the provisions of this
350 Ordinance become part of the Broward County Code of Ordinances as of the effective
351 date. The sections of this Ordinance may be renumbered or relettered and the word
352 "ordinance" may be changed to "section," "article," or such other appropriate word or
353 phrase to the extent necessary in order to accomplish such intention.

354 Section 6. Effective Date.

355 This Ordinance is effective on December 31, 2022.

ENACTED

PROPOSED

FILED WITH THE DEPARTMENT OF STATE

EFFECTIVE

Approved as to form and legal sufficiency:
Andrew J. Meyers, County Attorney

By: /s/ Adam M. Katzman 09/28/2022
Adam M. Katzman (date)
Senior Assistant County Attorney

By: /s/ René D. Harrod 09/28/2022
René D. Harrod (date)
Chief Deputy County Attorney

AMK/jl
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Coding: Words ~~stricken~~ are deletions from existing text. Words underlined are additions to existing text.