

ORDINANCE NO: 5257

AN ORDINANCE TO AMEND CHAPTER 2, ARTICLE XI, CODE OF ORDINANCES, CITY OF MEMPHIS, SO AS TO ADD AN ANNUAL ADJUSTMENT TO THE LIVING WAGE

WHEREAS, the Memphis City Council along with the Administration recognizes that the living wage should be adjusted annually in accordance with the Poverty Level Index.

NOW, THEREFORE,

SECTION 1. BE IT ORDAINED BY THE COUNCIL OF THE CITY OF MEMPHIS, That Chapter 2, Article XI, Code of Ordinances, City of Memphis be amended as follows:

Sec. 2-416. Annual adjustment of living wage.

- (a) The living wage rate shall be modified July 1, 2008 to incorporate the update, if any, made to the federal poverty level income for a household size of four (4) by the Secretary of the Department of Health and Human Services.
- (b) The living wage rate for employees of service contractors shall be modified in accordance with the date the RFP is issued, and such RFP will contain the actual rate (in dollars per hour, with and without benefits) which applies for that RFP.
- (c) In the case of contract renewals, the living wage rate applicable as of the date of the renewal shall be the effective living wage rate.
- (d) The Director of the Division of Finance shall report to the Memphis City Council no later than the first meeting in April 2009 the impact, if any, to the City's FY 2009 O&M budget.

SECTION 2. BE IT FURTHER ORDAINED, That the provisions of this Ordinance are hereby severable. If any of these sections, provisions, sentences, clauses, phrases or parts are held unconstitutional or void, the remainder of this Ordinance shall continue in full force and effect.

SECTION 3. BE IT FURTHER ORDAINED, That this Ordinance shall take effect from and after the date it shall have been passed by the council, signed by the chairman of the council, certified and delivered to the office of the mayor in writing by the comptroller and become effective as otherwise provided by law.

BILL MORRISON

JANIS FULLILOVE
MYRON LOWERY
Council Members

SCOTT MCCORMICK
Chairman of the Council

Attest:

Patrice Thomas, Comptroller.

THE FOREGOING ORDINANCE
5257 PASSED
1st Reading 3-18-08
2nd Reading 4-1-08
3rd Reading 4-15-08

Approved: *Scott McCormick*
Chairman of Council

Date Signed: 05-06-2008

Approved: *[Signature]*
Mayor, City of Memphis

Date Signed: 5/14/08

I hereby certify that the foregoing is a true copy, and said document was adopted by the Council of the City of Memphis as above indicated and approved by the Mayor.

Valerie C. Snipes
Comptroller

AN ORDINANCE TO AMEND CHAPTER 2, CODE OF ORDINANCES, CITY OF MEMPHIS, SO AS TO ESTABLISH A LIVING WAGE

WHEREAS, under the leadership of Councilman Joe Brown the Living Wage issue was introduced to the Memphis City Council and as it is important to the health and welfare of all residents of the City of Memphis that working people are paid a wage that enables them to lift their families out of poverty; and

WHEREAS, the City awards taxpayer-funded contracts to businesses to provide services to the public and to City government; and

WHEREAS, the purpose of this ordinance is to ensure that businesses receiving service contracts from the City pay a living wage.

NOW, THEREFORE,

SECTION 1. BE IT ORDAINED BY THE COUNCIL OF THE CITY OF MEMPHIS, That Chapter 2, Code of Ordinances, City of Memphis, be amended so as to create the following:

**Chapter 2
Administration**

Art. XI Living Wage

2-407 --- 2-425

ARTICLE XI – Living Wage

Section 2-407. Definitions:

For purposes of this article, the following words and phrases shall have the meanings respectively ascribed to them by this section:

City - means the City of Memphis, including those city departments which exercise independent control over their expenditure of funds.

Contractor - means any person that enters into a service contract with the city.

Employee - means any person who is employed full-time, part-time or on a temporary basis as a service employee of a contractor or subcontractor on a city service contract.

Employer - means any person, company or corporation that employs two or more employees at any one time within a calendar year and who is a contractor or subcontractor provided, however, that corporations organized under Section 501 (C)(3) of the Internal Revenue Code of 1954, 226 U.S.C. 501 (C)(3) shall be exempted as to all employees other than child care workers.

Person – means any individual, business entity, corporation, partnership or joint venture.

Service Contract - means a contract awarded to a contractor by the city primarily for the furnishing of services to or for the city (as opposed to the purchase of goods or other property or the leasing of property). Service contract includes subcontracts but does not include any contract, whether or not a subcontract, which: (1) involves only the purchase of goods; (2) involves services provided by student interns; (3) is a contract in existence prior to the effective date of this article; or (4) is a contract with a school district, municipality or other unit of government.

Subcontractor – means any person not an employee that enters into a contract (and that employs employees for such purpose) with a contractor to assist the contractor in performing service contracts.

Section 2-408. Payment of minimum compensation to employees.

All employees employed and work performed as part of a service contract with the city shall receive an hourly wage no less than that set under the authority of this article. The minimum hourly wage shall be as defined by the University of Memphis Fogleman College of Business for the Memphis area, which today is at least \$10 per hour with health benefits for employees and their dependents or \$12 per hour without health benefits.

Section 2-409. Monitoring and Enforcement.

a. The comptroller shall monitor compliance with this law and may contract with non-governmental agencies to investigate possible violations.

b. The Mayor or his or her designee may promulgate rules to implement the provisions of this law and may delegate such authority to the comptroller.

c. The comptroller shall submit an annual report to the Mayor and the City Council summarizing and assessing the implementation of and compliance with this new law during the preceding year.

Section 2-410. Required records – payroll reports.

(a) Contractor to submit.

The service contractor shall submit 2 complete copies of the payroll reports and the payrolls of each subcontractor, consecutively numbered, not later than 14 days from the end of their respective payroll periods, 1 copy to be sent to the contracting agency, the other to the Comptroller where the same will be available for public inspection during regular business hours.

(b) Contents.

The payrolls shall contain:

- (1) the name of the prime service contractor and any subcontractor, if any;
- (2) a designation of the project and location;
- (3) the name, Social Security Number, and occupation of each employee;
- (4) the classification in accordance with the classification fixed in the contract;
- (5) the number of hours worked daily by the service worker at straight time and overtime and the hourly wage rate for each;
- (6) the gross wages paid to the service worker per pay period; and
- (7) such other data as may be required by the Comptroller from time to time.

- (c) Prime contractor responsible for subcontractors.

The prime service contractor shall be responsible for the submission of all subcontractors' payrolls covering work performed.

- (d) Signed statement of compliance.

Each copy of the payroll shall be accompanied by a statement signed by the contractor or the subcontractor, as the case may be, indicating:

- (1) that the payroll is correct;
- (2) that the wage rates contained therein are not less than those established by this ordinance as set forth in the contract;
- (3) that the classification set forth for each service worker conforms with the work that the service worker performed; and
- (4) that the service contractor has complied with the provisions of this article.

Section 2-411. Article applicable to new service contracts.

The provisions of this article shall apply to:

- (1) A service contract consummated after the effective date of this article.
- (2) A service contract amendment consummated after the effective date of this article.

Section 2-412. Retaliation and Discrimination Barred.

It shall be unlawful for any employer to retaliate, discharge, demote, suspend, take adverse employment action in the terms and conditions of employment or otherwise discriminate against any employee for reporting or asserting a violation of this law, for seeking or communicating information regarding rights conferred by this law, for exercising any other rights protected under this law, or for participating in any investigatory or court proceeding relating to this law. This protection shall also apply to any employee or his or her representative who in good faith alleges a violation of this law, or who seeks or communicates information regarding rights conferred by this law in circumstances where he or she in good faith believes this law applies. Taking adverse employment action against a covered employee(s) or his or her representative within sixty days of the covered employee engaging in any of the aforementioned activities shall raise a rebuttable presumption of having done so in retaliation for those activities. Any covered employee subjected to any action that violates the subsection may pursue administrative remedies or bring a civil action in a court of competent jurisdiction.

Section 2-413. Penalties.

- (a) Debarment for 2 years.

In the event the Comptroller determines, with approval from the full Council, that any service contractor has failed to pay the living wage rate or has otherwise violated the provisions of this article and that such failure was intentional, no contract shall be awarded to such service contractor, or to any person in which such service contractor has an interest until 2 years have elapsed from the date of such determination.

Section 2-414. Collective Bargaining.

Parties subject to this article may, by collective bargaining agreement, provide that such agreements shall supersede the requirements of this article.

Section 2-415. Exemptions.

The following are not covered employees for purposes of this article:

- (1) A person who provides solely volunteer services that are uncompensated except for reimbursement of expenses such as meals, parking or transportation; and
- (2) A person employed in construction work that is subject to the provisions pursuant to the Prevailing Wage ordinance; and
- (3) Any and all Employees in the Hospitality industry, including, but not limited to, any and all employees working for restaurants and limited and full-service hotels and lodging establishments within the city limits of Memphis and Shelby County.

Sections 2-416 – 2-425. Reserved.

SECTION 2. BE IT FURTHER ORDAINED, That the provisions of this Ordinance are hereby severable. If any of these sections, provisions, sentences, clauses, phrases or parts are held unconstitutional or void, the remainder of this Ordinance shall continue in full force and effect.

SECTION 3. BE IT FURTHER ORDAINED, That this Ordinance shall take effect from and after the date it shall have been passed by the council, signed by the chairman of the council, certified and delivered to the office of the mayor in writing by the comptroller, and become effective as otherwise provided by law.

TAJUAN STOUT MITCHELL
Chairman of the Council

Attest:
Patrice Thomas, Comptroller.

THE FOREGOING ORDINANCE

5185 **PASSED**
 1st Reading 10-03-2006
 2nd Reading 11-01-2006
 3rd Reading 11-21-2006

Approved *Tajuan Mitchell*
Chairman of Council

Date Signed: 12-15-06

Approved: *[Signature]*
Mayor, City of Memphis

Date Signed: 12-11-06

I hereby certify that the foregoing is a true copy, and said document was adopted by the Council of the City of Memphis as above indicated and approved by the Mayor.

[Signature]
Comptroller