

Item # 77

ADDITIONAL MATERIAL

Regular Meeting

NOVEMBER 13, 2018

SUBMITTED AT THE REQUEST OF

COMMISSIONER STEVE GELLER

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ORDINANCE NO. 2018-

AN ORDINANCE OF THE BOARD OF COUNTY COMMISSIONERS OF BROWARD COUNTY, FLORIDA, PERTAINING TO THE BROWARD COUNTY LIVING WAGE ORDINANCE; REPEALING AND REPLACING IN THEIR ENTIRETY SECTIONS 26-100 THROUGH 26-102 OF THE BROWARD COUNTY CODE OF ORDINANCES ("CODE") TO ESTABLISH A LIVING WAGE AND CORRESPONDING HEALTH CARE BENEFIT AMOUNT; PROVIDING FOR DEFINITIONS; PROVIDING THAT THE LIVING WAGE APPLIES TO ALL NEW AND EXISTING CONTRACTS; PROVIDING FOR THE METHOD TO ADJUST THE LIVING WAGE AND HEALTH CARE BENEFIT AMOUNT; AND PROVIDING FOR SEVERABILITY, INCLUSION IN THE CODE, AND AN EFFECTIVE DATE.

WHEREAS, for reasons including impacts caused by the recession that began in December 2007, the Broward County Living Wage Ordinance, as currently codified, does not ensure that covered employees receive a living wage; and

WHEREAS, the Board of County Commissioners desires, effective January 1, 2019, to increase the living wage hourly rate,

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

Section 1. Sections 26-100 through 26-102 of Article VII of Chapter 26, Broward County Code of Ordinances, are hereby repealed in their entirety and new Sections 26-100 through 26-102 are hereby created as follows:

[Underlining omitted]

Sec. 26-100. Title and Legislative Findings.

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1 (a) *Title.*

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

5 (b) *Legislative findings.*

6 The County awards contracts and leases County property to private companies to
7 provide services to the County and the public. The County has a proprietary interest in
8 the work performed by employees of County service contractors, airline service providers,
9 subcontractors, and County lessees. The wages paid to these employees are often not
10 enough for them to support and care for their families, thereby inhibiting employee
11 retention and negatively impacting the quantity and quality of services rendered by these
12 employees to the County and the public.

13 **Sec. 26-101. Definitions.**

14 As used in the Living Wage Ordinance, reference to one gender shall include the
15 other; use of the plural shall include the singular; and use of the singular shall include the
16 plural. The following definitions apply unless the context in which the word or phrase is
17 used requires a different meaning:

18 (a) *Airport* means the Fort Lauderdale-Hollywood International Airport.

19 (b) *Airport Terminal Complex* means all passenger terminal buildings located
20 at the Airport, whether now existing or developed in the future.

21 (c) *Air Carrier* means a certificated commercial air carrier that has authority
22 from the appropriate regulatory department of the United States of America, or any other
23 competent authority, to operate in and out of the Airport.

24
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1 (d) *Airline service provider* means any for profit individual, corporation,
2 partnership, limited liability company, joint venture, or similar entity that provides covered
3 airport services as authorized by an airline service provider agreement, and any
4 subcontractor of any such individual or entity regarding the subcontractor's provision of
5 covered airport services.

6 (e) *Car Rental Center* means the facility located within the Airport terminal
7 roadway system designated for rental car concession operations and for pick-up and
8 delivery of customers by nonconcessionaire rental car companies and by Airport users,
9 including any future modifications to this facility.

10 (f) *Concessionaire* means a service contractor awarded a County contract at
11 the Airport Terminal Complex or Car Rental Center for the Duty Free Shop, Food and
12 Beverage, News-General Merchandise-Book Store, and Specialty Retail Shops.

13 (g) *County* means Broward County, a political subdivision of the state of
14 Florida.

15 (h) *Covered employee* means:

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

21 (2) Each individual employed by an airline service provider who, during the
22 employment, is or was involved in providing covered airport services
23 pursuant to Section 26-101(l). Individuals employed by an airline service
24 provider whose primary compensation is composed of gratuities are not

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1 covered employees, except for wheelchair attendants as described
2 in Section 26-101(l)(6); and

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

5 (i) *Covered employer* means all service contractors and all airline service
6 providers.

7 (j) *County service contracts or service contracts* means:

8 (1) Contracts awarded by the County pursuant to the County's Procurement
9 Code or entered into after a waiver of the Procurement Code that are for
10 covered services and where the average annual contract amount exceeds
11 One Hundred Thousand Dollars (\$100,000.00) based on the applicable
12 procurement solicitation document;

13 (2) Contracts, regardless of value, at the Airport Terminal Complex or Car
14 Rental Center, awarded to concessionaires, pursuant to Chapter 26,
15 "Operational Policy, Aviation," Parts I and II, of the Broward County
16 Administrative Code, or pursuant to a waiver of the Operational Policy; and

17 (3) Contracts entered into by airline service providers to perform covered
18 airport services.

19 (k) *Covered services* means the following services purchased by the County:

20 (1) Food preparation or distribution;

21 (2) Security services;

22 (3) Routine maintenance services, such as janitorial, cleaning, refuse removal,
23 recycling collections, and other similar services that are needed or that are
24 anticipated to be needed for normal upkeep of facilities during the term of

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1 the service contract. Construction and roofing services shall not be
2 considered routine maintenance services;

3 (4) Repair or refinishing services for furniture, fixtures, vehicles, machinery, or
4 equipment, including preventative maintenance replacement of parts, and
5 other activities needed to preserve the asset. Construction and roofing
6 services shall not be considered repair or refinishing services;

7 (5) Clerical or other nonsupervisory office work, whether by temporary or
8 permanent personnel. Such work includes secretarial, typing, data entry,
9 filing, transcription, specialized billing, sorting or completion of forms, and
10 word, data, and information processing;

11 (6) Passenger transportation and automobile parking services. Such services,
12 when provided by or through government entities other than the County,
13 shall not be included in this category;

14 (7) Printing and reproduction services; and

15 (8) Landscaping, lawn, or agricultural services.

16 (l) *Covered airport services* means the following services:

17 (1) *Ground Handling or Ramp Services for Air Carrier*. To guide aircraft to a
18 parking position for purposes of loading and unloading passengers,
19 baggage, mail, or cargo from aircraft with required equipment to designated
20 locations on the Airport; accept and process inbound and outbound
21 shipments at designated cargo handling building; and provide lavatory
22 waste services and provisioning of water service for aircraft;

23 (2) *Ground Equipment Provisioning and Maintenance for Air Carrier*. To repair,
24 maintain, and refuel all ground equipment whether owned or leased that is

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1 used by an airline service provider or Air Carrier, including, but not limited to,
2 tugs, carts, belt-loaders, aircraft starters, aircraft loading stairs, and air-
3 conditioning units. Such ground equipment shall not include automobiles,
4 trucks, or other vehicles designed for use on public streets, either on or off
5 of the Airport;

6 (3) *Maintenance for Air Carrier.* To provide maintenance to an Air Carrier on
7 the aircraft parking aprons located at the terminal buildings;

8 (4) *In-To-Plane Fuel Service for Air Carrier.* To transfer fuel from the Airport's
9 fuel farm to an Air Carrier, and to uplift fuel into the proper locations on the
10 aircraft;

11 (5) *Passenger Service for Air Carrier.* To provide all documents for Air Carrier
12 passengers, cargo, and baggage as may be required by applicable
13 governmental agencies; to provide and handle passenger ticketing and
14 baggage check-in; to furnish linguists for the assistance of passengers
15 speaking a foreign language; to provide assistance for mishandled luggage;
16 and to provide passenger assistance functions in concourses and customs
17 facilities, including, but not limited to, unaccompanied minor services;

18 (6) *Porter Service for Air Carrier.* To handle and transport passenger baggage
19 and other articles of personal property through the terminal buildings and
20 areas, including the United States Federal Inspections areas and
21 Transportation Security Administration areas. Such service includes, but is
22 not limited to, skycaps, wheelchair attendants, luggage runners, and electric
23 cart drivers. An airline service provider is not required to pay a living wage
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1 to a skycap who handles luggage, performs curb side check-in, and works
2 primarily for gratuities;

3 (7) *Janitorial Service for Air Carrier.* To provide personnel, equipment, and
4 material to clean the interior areas of the terminal buildings;

5 (8) *Security Service for Air Carrier.* Security service includes document
6 checkers at security check points, aircraft security, catering security, and
7 private screening of goods and passengers. Security service does not
8 include service provided by the federal government or pursuant to a federal
9 government contract;

10 (9) *Baggage Delivery Service for Air Carrier.* To handle and transport from the
11 Airport misplaced or misrouted baggage or other articles belonging to
12 passengers;

13 (10) *Aircraft Cleaning For Air Carrier.* To clean aircraft interiors and
14 exteriors; and

15 (11) *Operating Private Club for Air Carrier.* To operate a private club in a
16 terminal building exclusively for an Air Carrier's passengers which may
17 serve snacks and beverages and provide other related services.

18 (m) *Health care benefits* means health insurance coverage.

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

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

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

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

4 (3) Is a concessionaire.

5 **Sec. 26-102. Living wage.**

6 (a) *Living wage requirement.*

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

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

14 b. *Living wage rate without health care benefits.* If a covered employer
15 does not offer a covered employee health care benefits, a living wage
16 of no less than Twelve Dollars and Thirty-eight Cents (\$12.38) per
17 hour, plus an additional wage rate of One Dollar and Sixty-one Cents
18 (\$1.61) per hour.

19 (2) *Living Wage Obligation Effective January 1, 2019, for New Contracts and*
20 *Renewals Entered Into on or after January 1, 2019.* Each covered employer
21 entering into a new service contract or renewing a service contract on or
22 after January 1, 2019, shall pay each of its covered employees the amount
23 listed in paragraph a. or b. immediately below:
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- 1 a. *Living wage rate with health care benefits.* A living wage of no less than
 2 Thirteen Dollars Twenty-seven Cents (\$13.27) per hour, adjusted as
 3 provided below, in addition to health care benefits as described in
 4 Section 26-102(d) below.
- 5 b. *Living wage rate without health care benefits.* If a covered employer
 6 does not offer a covered employee health care benefits, a living wage of
 7 no less than Thirteen Dollars Twenty-seven Cents (\$13.27) per hour
 8 plus an additional wage rate of One Dollar Sixty-three Cents (\$1.63) per
 9 hour, adjusted as provided below.
- 10 c. Renewals. Any service contract that is renewed must comply with
 11 Section 26-102(a)(2) a. and b. immediately above. Any prior delegation
 12 of authority to County staff by the County Commission to renew a service
 13 contract is rescinded unless the renewal complies with Section 26-
 14 102(a)(2).

- 15 (3) *Living Wage Obligation Effective January 1, 2019, for Contracts Entered*
 16 *Into Prior to January 1, 2019, Including ~~Renewals and Extensions~~ Thereof.*
 17 Commencing January 1, 2019, each covered employer with a service
 18 contract entered into prior to January 1, 2019, shall pay each of its covered
 19 employees the amount listed in paragraph a. or b. immediately below,
 20 ~~subject to the timing contingency stated in paragraph c. immediately below:~~
- 21 a. *Living wage rate with health care benefits.* A living wage of no less
 22 than ~~Thirteen Dollars and Twenty-seven Cents (\$13.27)~~ Thirteen
 23 Dollars (\$13.00) per hour, adjusted as provided below, in addition to
 24 health care benefits as described in Section 26-102(d) below.

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1 b. *Living wage rate without health care benefits.* If a covered employer
2 does not offer a covered employee health care benefits, a living wage
3 of no less than ~~Thirteen Dollars and Twenty-seven Cents (\$13.27)~~
4 Thirteen Dollars (\$13.00) per hour, plus an additional wage rate of
5 One Dollar and Sixty-three Cents (\$1.63) per hour, adjusted as
6 provided below.

7 c. ~~*Timing Contingency.* Each covered employer shall continue to pay~~
8 ~~the living wage rate established in Section 26-102(a)(1), which on~~
9 ~~January 1, 2019, is adjusted to the following amounts: (a) Twelve~~
10 ~~Dollars and Sixty Cents (\$12.60) per hour with health care benefits,~~
11 ~~or (b) Twelve Dollars and Sixty Cents (\$12.60) per hour without~~
12 ~~health benefits, plus an additional One Dollar and Sixty-three Cents~~
13 ~~(\$1.63) per hour. The amount shall continue to be paid through the~~
14 ~~earlier of July 1, 2019, or the date the County and the covered~~
15 ~~employer enter into a written amendment providing for the County to~~
16 ~~reasonably mitigate increased labor costs resulting from the~~
17 ~~December 2018 enactment of the Living Wage Ordinance. Effective~~
18 ~~July 1, 2019, or such earlier date on which the County and the~~
19 ~~covered employer enter into the above-referenced written~~
20 ~~amendment, the covered employer shall pay the living wage rate~~
21 ~~established in Section 26-102(a)(2) above. Each covered employer~~
22 ~~shall also, by no later than July 1, 2019, pay to each covered~~
23 ~~employee additional wages equaling the differential between the~~
24 ~~amount the covered employee would have received commencing~~

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1 ~~January 1, 2019, under Section 26-102(a)(2) and the actual amount~~
2 ~~of wages paid to the covered employee through June 30, 2019.~~

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

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

12 (d) *Health care benefits.*

13 (1) *Health care benefit amount.* The health care benefit amount required by
14 the Living Wage Ordinance shall, commencing January 1, 2019, consist of
15 payment by a covered employer, or by the County for its employees, of at
16 least One Dollar and Sixty-three Cents (\$1.63) per hour, adjusted as
17 provided below ("health care benefit amount"), towards the provision of
18 health care benefits for a covered employee and dependents.

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

23 (3) The minimum contribution by a covered employer (or the County for its
24 employees) for health care benefits on a per-hour basis shall be calculated

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1 based on a forty (40) hour work week. Hours worked by a covered
2 employee in excess of forty (40) hours per week shall not require additional
3 payments towards the provision of health care benefits.

4 (4) If a covered employer or the County, as applicable, contributes less than
5 the required amount for its covered employee's health care benefits, the
6 difference shall be paid to the covered employee as an additional hourly
7 wage amount.

8 (5) If the health care benefits plan provided requires an initial period of
9 employment before a new covered employee becomes eligible for the
10 health care benefits ("eligibility period"), the covered employer or the
11 County, as applicable, shall pay the living wage amount and the additional
12 health care benefit amount during a new covered employee's eligibility
13 period. When the new covered employee is provided health care benefits,
14 the covered employee may qualify to pay the living wage rate applicable for
15 covered employees that are provided health care benefits.

16 (6) If the covered employee declines health care benefits, the covered
17 employer may qualify to pay the living wage rate applicable for covered
18 employees that are provided health benefits, provided the covered
19 employer provides to the County written proof of the covered employee's
20 declination.

21 (7) Within sixty (60) days after enactment of this Ordinance, the Office of the
22 County Administrator shall provide to the County Commission a
23 recommendation for a one-time adjustment to the health care benefits
24 amount based on the condition of both the labor market and health

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1 insurance market. Thereafter, adjustments to the health care benefits
2 amount will be addressed as provided in paragraph (e) immediately below.

3 (e) *Adjusting the living wage and health care benefit amount.*

4 Beginning on January 1, 2020, and thereafter on January 1 of each year, the living
5 wage and health care benefits amount shall be adjusted annually by the lowest of the
6 following three (3) percentages:

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

11 (2) Three percent (3%); or

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

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

19 (1) The name, address, and telephone number of the covered employer, a local
20 contact person, and the specific project for which the service contract is
21 sought;

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

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

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

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

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

11 (h) *Posting.* A copy of the living wage rate shall be posted by the covered
12 employer at the workplace in a prominent place where it can easily be seen by covered
13 employees and shall be furnished to a covered employee within a reasonable time after
14 a request to do so. A copy of the living wage rate shall be posted by the covered
15 employer's subcontractors in a prominent place at the subcontractor's premises where
16 paychecks are distributed and shall also be furnished to a covered employee upon
17 request within a reasonable time after the request is made. Additionally, service
18 contractors shall forward a copy of the requirements of the Living Wage Ordinance to any
19 individual and any entity submitting a bid for a subcontract on any County service contract
20 covered by this article. A covered employer shall also provide the following statement to
21 each covered employee with the employee's first paycheck and every six (6) months
22 thereafter: "You are required by Broward County ordinance to be paid at least [insert
23 applicable rate pursuant to the Living Wage Ordinance] dollars an hour. If you are not
24 paid this hourly rate, contact your supervisor or a lawyer." All notices required by this

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1 paragraph shall be printed in English, Spanish, and Creole. The statements shall be
2 provided in the manner set forth below:

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

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

12 (i) *Inconsistency with Applicable Law or Collective Bargaining Agreement.*

13 The provisions of the Living Wage Ordinance shall not be applicable to the extent they
14 conflict with federal or state law. Additionally, nothing in the Living Wage Ordinance shall
15 require the payment of any wage where the applicable covered employee is a member of
16 a collective bargaining unit that has collectively bargained for a higher wage.

17
18 Section 2. Severability.

19 If any portion of this Ordinance is determined by any court to be invalid, the invalid
20 portion will be stricken, and such striking will not affect the validity of the remainder of this
21 Ordinance. If any court determines that this Ordinance, in whole or in part, cannot be
22 legally applied to any individual, group, entity, property, or circumstance, such
23 determination will not affect the applicability of this Ordinance to any other individual,
24 group, entity, property, or circumstance.

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Section 3. Inclusion in the Broward County Code of Ordinances.

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

Section 4. Effective Date.

This Ordinance is effective as of the date provided by law.

ENACTED
FILED WITH THE DEPARTMENT OF STATE
EFFECTIVE

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

By /s/ Adam Katzman 11/8/18
Adam Katzman (date)
Senior Assistant County Attorney

By /s/ Andrew J. Meyers 11/8/18
Andrew J. Meyers (date)
County Attorney

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