

# ORDINANCE NO. 691

## AN ORDINANCE ADOPTING A LIVING WAGE FOR CONTRACTORS DOING BUSINESS WITH THE TOWN OF FAIRFAX

The Town Council of the Town of Fairfax ordains as follows:

### Section I:

Title 8 of the Fairfax Town Code Health and Safety is hereby amended by adding Chapter 8.50 thereto, said new chapter to read as follows:

### Chapter 8.50

#### PAYMENT OF LIVING WAGE

##### Sections:

Section 8.50.010, FINDINGS AND PURPOSE. In ENACTING THIS chapter the Town Council makes the following findings and articulates the following purposes for the promulgation of the living wage regulations set forth herein:

- The health and welfare of all Fairfax residents is benefited and advances when Fairfax workers are paid a living wage;
- 2. The Town awards contracts to private sector and non profit employers to provide services to the Town in accordance with those contracts;
- 3. Many workers in Fairfax and their families live at or below the poverty line. The payment of inadequate wages to those workers tends to negatively affect the quality of services provided to the Town and its residents by fostering high turnover and instability in the workplace;
- 4. The payment of a living wage will increase the ability of low wage workers to attain sustenance, decrease the amount of poverty and reduce the amount of taxpayer funded services provided in the Town of Fairfax;
- 5. Some employers who provide contract services to the Town do not provide health insurance benefits to their employees. This factor negatively affects worker performance and the quality of services delivered to the Town and its residents, results in unwarranted employee absenteeism and negatively impacts local and State health programs. These problems can be favorably impacted if employers provide reasonable health insurance benefits to their employees; and
- 6. Living wage jobs will decrease poverty, increase consumer income and invigorate downtown businesses.

#### Section 8.50.020, LIVING WAGE REQUIREMENT

- (a) Covered employees shall be paid a living wage

- (b) The “Living wage” to be paid to employees pursuant to the requirements of this Chapter shall be a minimum hourly wage of \$13.00 with employer sponsored benefits or \$14.75 without employer sponsored benefits, until adjusted by further action of the Town Council annually after consideration of the annual cost of living increase as measured by the San Francisco Bay Area Consumer Price Index. Any adjustments made to the minimum hourly wage shall become effective the following July 1<sup>st</sup>.
- (c) “Benefits” as used in this section means all of the following at a minimum, provided by employer: twelve days compensated sick and vacation leave (combined) annually for full-time employees, prorated for employees working less than full-time; payment of at least \$1.75 per hour toward health insurance for the employee. No covered employer will fund wage increases required by this Chapter, or otherwise respond to the provisions of this ordinance, by reducing the health insurance, pension, vacation, or other non-wage benefits of any of its employees.
- (d) Amendments to this Chapter concerning the definition of living wage shall apply to contracts entered into or extended following the effective date of such amendments.

Section 8.50.030, DEFINITIONS. The following words and phrases, whenever used in this chapter, shall be given the following definitions:

- A. “Contract for private sector services” shall refer to any contract for both profit and non profits between the Town and a private sector contractor for the following services:

Automotive repair and maintenance  
 Equipment maintenance service  
 Facility and building maintenance  
 Furniture moving and installation/maintenance services  
 Janitorial and custodial services  
 Landscaping services  
 Laundry services  
 Office and clerical services  
 Pest control services  
 Recreation services  
 Security services  
 Transportation and shuttle services  
 Towing services  
 Tree trimming and removal

“Contract for private sector services” does not refer to: contracts for commodities, goods, or supplies; contracts for public works; contracts for public projects subject to a prevailing wage requirements; contracts for professional services including but not limited to the services of architects, engineers, landscape architects, advisers, or consultants; nor leases.

- B.** “Contractor for private sector services” shall refer to any private sector contractor/employer who enters into a contract or contracts for private sector services with the Town, with the cumulative compensation amount in one Town fiscal year greater than \$10,000.
- C.** “Subcontractor” shall refer to any subcontractor who enters into a subcontract with a contractor for private sector services.
- D.** “Covered Employee” shall refer to any employee of a contractor for private sector services, or to any employee of a subcontractor who lives or works in the Town of Fairfax. In the foregoing context, “covered employees” are persons hired by contractors or subcontractors to work on a full-time, part-time, temporary, seasonal, or regular basis for wages or salary.

“Covered Employee” shall not include persons who are: in positions that are designated for “trainees” that are part of an employer’s bona fide time-limited training program, which training program enables the employee to advance into a permanent position; in positions of employment that require student status as a prerequisite to being employed in that position; volunteers; recipients of income support such as but not limited to Supplemental Security Income who would be ineligible for such benefits by virtue of receiving a living wage as described herein, who waive in writing their entitlement to a living wage; or workers in licensed, sheltered workshops or supported employment; recipients of public funds who have been placed in a work experience, on the job training position, summer employment position, or wage-based community service position as defined by either the Town Code, Town Personnel Rules and Regulations or Fairfax Town Administrator.

“Covered Employee” shall not include those employees who are represented by a bargaining unit or labor union pursuant to rights conferred by state or federal law and for whom a collective bargaining labor agreement is in effect governing their terms and conditions of employment.

“Employer” means the Town of Fairfax and any person who is a recipient contractor, or subcontractor and who employs employees.

“Employer” does not include other governmental agencies or quasi-governmental agencies, which have publicly elected boards or commissions.

- E.** “Town” shall refer to the Town of Fairfax including all Town departments and related Town entities governed by the Town Council.
- F.** “Public Subsidies Recipient” shall mean any person who receives financial assistance from the Town, including direct grants, loans, waiver of Town fees or other valuable consideration in an amount of more than \$15,000 in any twelve month period. This amount shall be adjusted annually, effective June 30, to reflect increases during the preceding year (January through December) in the Consumer Price Index – Urban Wage Earners, as published by the U.S. Department of Labor, Bureau of Labor Statistics. Recipient does not include a private employer with less than ten employees who receives a tax abatement or subsidy.

**Section 8.50.040, EXEMPTIONS**

- (a) The Town Council in its sole discretion, or its designee, may grant an exemption for grounds upon making a finding and determination either that compliance with the living wage will cause economic hardship, or that the exemption is necessary for the best interests of the Town and is due to unusual circumstances (e.g., following a declared natural disaster) or where the Town is required to award a contract for services to a sole source contractor for services. For all exemption requests, the exemption applicant must provide a written statement that includes complete details in support of the request for exemption and describe alternative solutions pursued. Exemptions will apply only to the contract for which they are granted.

Section 8.50.041, ASSIGNEES/SUCCESSORS IN INTEREST. The living wage requirement by this Chapter shall be binding upon the assignees and successors in interest of any contractor or subcontractor to which this Chapter applies.

Section 8.50.042, CONTRACT PROVISION. Town departments and officers shall place in contracts for services and related requests for proposals or bid documents language in substantially the following form: "This contract is subject to the provisions of Fairfax Town Code Chapter ----, requiring payment of a living wage to covered employees. Noncompliance during the term of the contract will be considered a material breach and may result in termination of the contract or pursuit of other legal or administrative remedies."

Section 8.50.043, CERTIFICATION BY CONTRACTOR. Prior to commencement of the contract's term or execution by Fairfax, Contractor will certify to the satisfaction of the Town that its employees are paid a living wage as provided by this Chapter.

Section 8.50.044, APPLICATION OF CHAPTER. The living wage requirement imposed by this Chapter shall apply to all contracts for services and related subcontracts made or entered into, or extended, on or after the effective date of the ordinance enacting this Chapter.

Section 8.50.045, NOTIFICATION OF EMPLOYEES. Contractors for services and subcontractors shall notify all employees subject to the provisions of this chapter of the requirement to pay a living wage, the current minimum living wage rates, the minimum vacation leave and sick leave that must be provided and the minimum amount paid toward health insurance to qualify for the lower minimum living wage. Contractors for services and subcontractors shall post a copy of this Chapter and the approved Complaint Procedure, in the workplace, and provide this information to employees upon request.

Section 8.50.046, MONITORING AND ENFORCEMENT. Monitoring of compliance with the requirements of this Chapter shall occur under the same monitoring program as applicable to the Town's prevailing wage requirements. An annual report shall be provided to the Town Council or its designee concerning the status of the program.

The Town Administrative Officer shall be the Compliance Officer for the purpose of enforcing the provisions of this Chapter. Complaints concerning contractors' compliance with this Chapter

shall be made to the Compliance Officer, who shall follow the complaint procedure established by the Town Council.

Any employee claiming violation of the Chapter may report such acts to the Town and may bring an action in the appropriate Court of the State of California or other appropriate administrative agency, against an employer to enforce his or her rights. Nothing in this Chapter shall preclude an employee from seeking any or all forms of relief and damages.

Contractors or subcontractors shall not discharge, reduce the compensation of, discriminate or otherwise retaliate against or intimidate any person for making a complaint to the Town concerning noncompliance with obligations under this Chapter. Contractors for services, and subcontractors shall also comply with federal, stated and all other applicable law proscribing retaliation for union organizing.

Section 8.50.047, THIRD TIER REVIEW. Prior to commencement of the contract's term or execution by Fairfax, Contractor and/or Subcontractor will certify to the satisfaction of the Town that its employees are paid a living wage as provided by this Chapter. Contractors and Sub-Contractors must include a statement of findings of any violations found against the Contractor and/or Subcontractor over the past five years and how these violations were addressed, with the National Employees Relations Board, the Occupational Safety and Health Agency, the California Labor Commission, the Equal Employment Opportunity Commission and/or the Department of Fair Housing.

Prior to final approval of contracts procured pursuant to the Town Code, pertaining to Town Council approval of services agreements, the Town would consider the history of the proposer as an employer and the working conditions of the employer's employees as deemed appropriate by the Town Council. The Town shall be authorized to access and review the employer's employee turnover, wages paid, benefits and employee grievances or complaints and consider references from entities engaged in prior contracts with the Contractor or Subcontractor. Any proprietary information, or personnel and employee information, shall be kept confidential. This information would be taken into account as part of consideration of the contract and may be used by the Council as the basis for contract denial.

Section 8.50. 048, LABOR RELATION NEUTRALITY. Contractors for services and subcontractors shall not hinder or further collective bargaining organization or other collective bargaining activities by or on behalf of an employer's employees. However, this restriction shall not apply to any expenditure made in the course of good faith collective bargaining, or to any expenditure made pursuant to obligations incurred under a bona fide collective bargaining agreement.

Section 8.50.049, EMPLOYEE RETENTION. In the event that any contract for services for an amount greater than \$10,000 is terminated by the Town prior to its expiration, any new contract with a subsequent contractor for those same services shall include the following term:

Contractor shall make best efforts to offer employment to qualified employees of the prior contractor for the performance of this contract. Such efforts shall not be required in regard to employees who are 1) exempt under the Fair Labor Standards Act, 2) family members of prior contractor, 3) employed by prior contractor for less than six months, or 4) convicted of a job-related or workplace crime. Upon request by the Town, the Contractor shall demonstrate to the Town that good faith efforts have been made to comply with this provision.

contractor, 3) employed by prior contractor for less than six months, or 4) convicted of a job-related or workplace crime. Upon request by the Town, the Contractor shall demonstrate to the Town that good faith efforts have been made to comply with this provision.

Section 8.50.050, SEVERABILITY. If any section, subdivision, paragraph, sentence, clause or phrase of this ordinance is for any reason held to be unconstitutional or invalid, such a decision shall not affect the validity of the remaining portion of the ordinance. The Town Council hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause or phrase of this ordinance irrespective of the unconstitutionality or invalidity of any section, subdivision, subsection, paragraph, sentence, clause or phrase of this ordinance.

**Section II:**

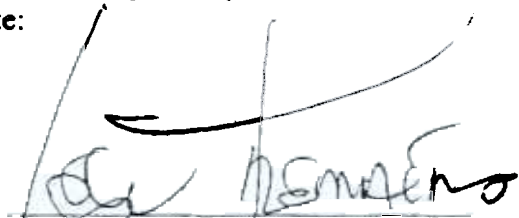
Copies of the foregoing ordinance shall within fifteen (15) days after its final passage and adoption be posted in three public places in the Town of Fairfax, to wit:

- (a) Bulletin Board, Fairfax Town Offices, Town Hall;
- (b) Bulletin Board, Fairfax Post Office; and
- (c) Bulletin Board, Fairfax Women's Club Building,

Which said places are hereby designated for that purpose, and shall be in full force and effect thirty (30) days from and after its final passage and adoption.

The foregoing ordinance was duly and regularly introduced at a regular meeting of the Town Council of the Town of Fairfax held in said town on the 9<sup>th</sup> day of July, 2002, thereafter adopted on the 6<sup>th</sup> day of August, 2002, by the following vote:

AYES: Caldararo, Egger, Tremaine  
NOES: Brandborg, Ghiringhelli



LEW TREMAINE, MAYOR

Attest:   
Judy Anderson, Town Clerk