

Work Session

Agenda Item #	5
Meeting Date	May 28, 2013
Prepared By	Jessie Carpenter City Clerk
Approved By	Suzanne Ludlow Acting City Manager

Discussion Item	Review of the Living Wage Ordinance
Background	<p>The City Council adopted the Living Wage Ordinance on October 22, 2007. The ordinance requires that every City contract for the provision of services, awarded after a competitive bid or proposal process, shall require the contractor and any subcontractor to pay each employee assigned to perform services under the City contract a living wage. It became effective on January 1, 2008.</p> <p>The ordinance was modeled after the Montgomery County law which, at the time, exempted contractors or subcontractors who employ fewer than 10 employees. Montgomery County repealed this exemption effective April 1, 2010.</p> <p>The City's Living Wage Ordinance calls for a review of the living wage requirement and its exemptions every three years, after which the City Council shall determine whether to continue or modify the ordinance.</p> <p>Councilmember Grimes has proposed a review of the ordinance and a modification to eliminate the exemption for contractors or subcontractors having fewer than 10 employees. He has prepared a draft ordinance.</p>
Policy	Living Wage Ordinance, Takoma Park Code, Chapter 7.08
Fiscal Impact	N/A
Attachments	<ul style="list-style-type: none"> • Ordinance 2007-55 • Draft ordinance modifying the Living Wage Ordinance.
Recommendation	Review and discuss the Living Wage Ordinance.
Special Consideration	The current living wage rate is \$13.65 per hour. Beginning July 1, 2013, the rate will be \$13.95 per hour.

CITY OF TAKOMA PARK, MARYLAND

ORDINANCE NO. 2007-55

**An Ordinance Amending Chapter 7.08
of the *Takoma Park Code*
to Require the Payment of a
Living Wage by City Contractors**

WHEREAS, the wages of many workers nationwide and in the Washington, D.C. metropolitan area have not kept pace with the cost of providing for themselves and their families; and,

WHEREAS, the City of Takoma Park supports the payment of a wage level that enables workers to support themselves and their families, often referred to as a living wage; and,

WHEREAS, the City Council wishes to ensure that entities that receive substantial compensation by reason of a contract with the City of Takoma Park pay their employees a living wage; and,

WHEREAS, the City Council wishes to amend the City's purchasing and procurement law to require the payment of a living wage by certain contractors.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF TAKOMA PARK, MARYLAND, THAT:

SECTION 1. Title 7, Purchasing and Taxation, Chapter 7.08, Source Selection and Contract Formation, of the *Takoma Park Code* is amended to add a new Article 5, Living Wage Requirement, as follows:

Article 5. Living Wage Requirement

7.08.180. Scope

Every City contract for the provision of services, awarded after a competitive bid or proposal process, shall require the contractor and any subcontractor to pay each employee assigned to perform services under the City contract a living wage. As used in this Article, "covered employer" refers to any contractor or subcontractor who is subject to the City's living wage requirement.

7.08.190 Exemptions

The provisions of this Article do not apply to the following:

- A. A contractor or subcontractor who employs fewer than ten (10) employees.
- B. A contract for services valued at less than \$20,000.00.

C. A contract:

1. With a public entity.
2. With a nonprofit organization that has qualified for an exemption from federal income taxes under Section 501(c) (3) of the Internal Revenue Code.
3. Procured through an emergency procurement, sole source procurement, or cooperative purchase procurement.
4. For electricity, telephone, cable television, water, sewer, or similar service delivered by a regulated public utility.
5. For the purchase or lease of goods, equipment or vehicles.

D. If the City Manager makes a written determination that application of this Article would conflict with an applicable federal, state or county program, contract, or grant requirement, then the living wage requirements of this Article shall not apply to the contract or program.

7.08.200 Solicitation Requirements

A. The City's living wage requirement shall be identified and set forth in all non-exempt procurement solicitations for the contract.

B. Each response to a bid or proposal to provide services to the City and each City contract for services must include a certification that the contractor and each subcontractor shall comply with the City's living wage requirements or a certification by the contractor or subcontractor setting forth the applicable exemption from the living wage requirement, along with supporting documentation for the exemption. Any contractor or subcontractor who knowingly makes a false statement in such certification, or who fails to comply with the living wage requirement during performance of a City contract for services, shall be subject to loss of the contract and disqualification from future City contracts.

C. A contractor must not split or subdivide a contract, pay an employee through a third party, or treat an employee as a subcontractor or independent contractor, to avoid the imposition of any requirement under this Article.

D. If a contractor or subcontractor commits in its bid or proposal to provide health insurance to any employee who provides services to the City under a City contract, the contractor or subcontractor may:

1. Certify in its bid or proposal the per-employee hourly cost of the employer's share of the premium for that insurance; and
2. Reduce the wage paid under Section 7.08.210 to any employee covered by the health insurance by all or part of the per-employee hourly cost of the employer's share of the health insurance premium.

7.08.210 Living Wage Requirement

A. Except as permitted under Section 7.08.200.D, each covered employer must pay each employee who is not exempt under subsection F of this section no less than the City's Living Wage Rate.

B. The City's living wage rate shall be equal to the Montgomery County living wage rate established and published by Montgomery County pursuant to Section 11B-33A of the *Montgomery County Code* and any applicable regulations, as amended and in effect from time-to-time.

C. The City's living wage rate shall be adjusted as of July 1 of each year to reflect the most current Montgomery County living wage rate and shall be applicable to any contract awarded thereafter until the date of the next adjustment; provided, however, that the wage rates in effect at the time a contract is awarded to a covered employer by the City shall remain in effect under such contract during its original term. At the time of the exercise of any renewal option under a City contract with a covered employer, the required wage rate shall be adjusted as provided above, and as adjusted, shall remain in effect during the renewal term.

D. The City Manager shall establish the applicable living wage rate by April 1 of each year and cause such rate to be published in English and Spanish on the City's web site. Notice of the required living wage rate also shall be stated in procurement solicitations, as required by Section 7.08.200.A.

E. Each covered employer must include the living wage requirements of this Article in every subcontract so that the provisions of this Article will be binding upon each subcontractor.

F. The living wage requirements of this Section do not apply to any employee:

1. Who performs no measurable work related to any contract with the City;
2. Who participates in a government-operated or government-sponsored program that restricts the earnings of or wages paid to employees to a level below the wage required under this section;
3. Who participates for no longer than 120 days in any calendar year in a government operated or government-sponsored summer youth employment program; or,
4. For whom a lower wage rate is expressly set in a bona fide collective bargaining agreement.

G. If any federal, state, or City law or regulation requires payment of a higher wage, that law or regulation controls. If any applicable collective bargaining agreement requires payment of a higher wage, that agreement controls.

7.08.220 Notices

A. Each covered employer shall conspicuously post notice of the required City living wage rate, in English and Spanish, on such form as shall be provided by the City.

B. Within three (3) days of an employee's request, a covered employer shall provide to such employee a written statement in English and Spanish, on such form as shall be provided by the City, of the then required living wage rate.

7.08.230 Enforcement

A. During the term of the City contract and for a period of three (3) years after the expiration or earlier termination of the City contract, each contractor and subcontractor subject to the provisions of this Article, shall keep and preserve records which show the wages provided by such contractor and its subcontractors to each employee who provided services under the City

contract. The City Manager, or designee, shall have the power to examine such records at reasonable times during normal business hours for the purpose of administering and enforcing the provisions of this Article, and to make copies of all or any parts thereof.

B. As an additional term of the City contract, no covered employer shall discharge, reduce the compensation of, or otherwise retaliate against an employee for asserting any right under this Article, filing a complaint of violation, or taking any other action to enforce the requirements of this Article. Any retaliation is subject to all sanctions for noncompliance with this Article.

C. City contracts may specify that liquidated damages for any noncompliance with this Article include the amount of any unpaid wages, with interest at the judgment rate from the date originally due and less any deductions required or permitted by law, and that the contractor is jointly and severally liable for any noncompliance by a subcontractor.

D. Any contractor or subcontractor which fails to pay an employee the living wage required by this Article shall be liable to the employee in the amount of the unpaid wages, plus interest at the judgment rate from the date originally due and less any deductions required or permitted by law, reasonable attorney's fees, and damages for any retaliation for asserting any right under this Article. Any aggrieved employee of a covered employer under a City contract shall be deemed a third-party beneficiary of the City contract and of the provisions mandated by this Article in the City contract

7.08.240 Review of Living Wage Requirement

The City Council shall review the living wage requirement, including the exemptions set forth in 7.08.190, every three (3) years following the effective date of this Article. Subsequent to such review, the City Council shall determine whether to continue or modify the City's living wage requirement. The Council's failure to conduct such review shall have no effect on the validity of the living wage requirement set forth in this Article.

SECTION 2. This Ordinance shall be effective on January 1, 2008.

Adopted by the Council of the City of Takoma Park, Maryland, this 22nd day of October, 2007 by roll-call vote as follows:

AYE:	Porter, Austin-Lane, Barry, Clay, Seamens, Snipper, Williams
NAY:	None
ABSTAIN:	None
ABSENT:	None

CITY OF TAKOMA PARK, MARYLAND

ORDINANCE NUMBER 2013-

**Amending the Takoma Park Code by
Repeal of 7.08.190-A, an Exemption to the City Living Wage Ordinance**

WHEREAS, the Takoma Park City Council enacted Ordinance Number 2007-55, "Amending Chapter 7.08 of the Takoma Park Code to Require the Payment of a Living Wage by City Contractors," on October 22, 2007; and

WHEREAS, the Takoma Park ordinance was modeled on a 2002 Montgomery County Wage Law, Bill 5-02, relating to Living Wage Requirements on Service Contracts; and

WHEREAS, the 2007 Takoma Park ordinance included an exemption, for "A contractor or subcontractor who employs fewer than ten (10) employees" (7.08.190-A), that mirrored a Montgomery County exemption in effect at the time; and

WHEREAS, Montgomery County repealed, effective April 1, 2010, its exemption for contractors and subcontractors having fewer than 10 employees; and

WHEREAS, the City of Takoma Park wishes to extend living wage benefits to small-business contractor employees.

THEREFORE BE IT ORDAINED BY THE COUNCIL OF THE CITY OF TAKOMA PARK, MARYLAND THAT:

Title 7, Purchasing and Taxation, Chapter 7.08, Source Selection and Contract Formation, Section 7.08.090 Exemptions, of the Takoma Park Code is amended to eliminate paragraph A.

Adopted by roll-call vote this ____ day of _____, _____:

AYE:

NAY:

ABSENT:

ABSTAIN: