

ORDINANCE NO. 200586

An ordinance of the City of Gainesville, Florida, amending the Code of Ordinances to create a new Article XI titled "Purchasing Requirements for Certain City Construction Projects" in Chapter 2 - Administration, for the purpose of establishing requirements for certain contractors to employ apprentices and disadvantaged workers on city construction projects; providing directions to the codifier; providing a severability clause; providing a repealing clause; and providing an effective date.

WHEREAS, to promote the public health, safety, and welfare, the city finds that there is a need to increase job opportunities within the city for disadvantaged workers and learning opportunities for apprentices; and

WHEREAS, the city's poverty rate from the years 2010 to 2017 was dramatically higher than the national level. The city rate in 2017 was 30.3 percent compared to 13.4 percent rate at the national level. The city finds that creating additional job opportunities for those identified as impoverished is in the public interest. (Source: www.welfareinfo.org/poverty-rate/florida/gainesville); and

WHEREAS, as of January 2019, Florida's estimated homeless population was 28,328 as reported by Continuums of Care to the U.S. Department of Housing and Urban Development (HUD). The city finds that creating additional job opportunities for homeless persons is in the public interest (Source: www.usich.gov/homelessness-statistics/fl); and

WHEREAS, Florida administers the Temporary Assistance for Needy Families Program. To be eligible for this program, eligible adults and minor heads of household must immediately enter into work activities. The city finds that providing additional employment opportunities and training opportunities for those individuals receiving public assistance is in the public interest. (Source: www.myflfamilies.com/service-programs/access/docs/TANF-MOE-ACF204-2020AnnualReport.pdf); and

WHEREAS, it has been found that the unemployment rate for formerly incarcerated people is nearly five times higher than the unemployment rate for the general United States population, and substantially higher than even the worst years of the Great Depression. (Source: www.prisonpolicy.org/reports/outofwork.html); and

WHEREAS, it has been found that formerly incarcerated individuals work in the most insecure and lowest-paying positions, and that the majority of employed people recently released from prison receive an income that puts them well below the poverty line. The city finds

that a requirement to use disadvantaged workers (including formerly incarcerated people) on city construction jobs would help to eliminate this barrier and reduce the unemployment rate for formerly incarcerated people. (Source:www.prisonpolicy.org/reports/outofwork.html); and

WHEREAS, while jobs exist for both higher and lower skill workers, the labor market show a higher unemployment rate for lower skill workers in the county. One possible contributing factor to this disparity is that some of the lower skill jobs in the area could employ residents without a higher level of education, but they are sometimes filled with college students who have some advantages over lower skill minority applicants in the eyes of employers. College students can be highly flexible with their schedule and usually have an advanced knowledge of technology that may reduce training costs.

(Source:www.bibr.ufl.edu/sites/default/files/Research%20Reports/ri1_baseline_report.pdf); and

WHEREAS, it is recognized that providing a high quality educational experience is projected to provide a higher lifetime income, more and better employment opportunities and reduce the likelihood of becoming involved with the criminal justice system. More jobs are needed that pay a living wage and more employers are needed who are willing to hire minorities, even those with a criminal record. Jobs are essential to lift people out of poverty, improve educational outcomes, and reduce crime.

(Source:www.bibr.ufl.edu/sites/default/files/Research%20Reprot/ri1_baseline_report.pdf); and

WHEREAS, it is in the public interest to enhance alignment and market responsiveness of workforce, education and economic development systems through improved service integration that provides businesses with skilled, productive and competitive talent and Floridians with employment, education, training and support services that reduce welfare dependence and increase opportunities for self-sufficiency, high-skill and high-wage careers and lifelong learning.

(Source:https://careersourceflorida.com/wp-content/uploads/2020/01/Workforce_Innovation_and_Opportunity_Act_Unified_State_Plan_2020-2024.pdf); and

WHEREAS, the city recognizes that organized, formal apprenticeship training programs are an effective means of providing training and experience to individuals in construction skills and safety procedures. To this end, the city has determined that city-contracted construction projects present a significant opportunity to promote and sustain employment of apprentices in the construction trades; and

77 **WHEREAS**, employment in construction and extraction occupations is projected to grow
78 four percent from 2019 to 2029, about as fast as the average for all occupations, and gain about
79 296,300 new jobs. Overall growth in the economy and population will increase demand for new
80 buildings, roads, and other structures, which will create new jobs in construction and extraction
81 occupations. (Source: <https://www.bls.gov/ooh/construction-and-extraction/home.htm>); and

82 **WHEREAS**, employment in the construction industry in Gainesville has declined from 3.2%
83 in July 2020 to 1.6% in December 2020 indicating the need for training of construction workers
84 within the city to meet the anticipated demand caused by the growing construction industry.
85 (Source: https://www.bls.gov/regions/southeast/fl_gainesville_msa.htm); and

86 **WHEREAS**, the growing construction industry has presented the city an opportunity to
87 help meet current employment needs of all the citizens including apprentices and disadvantaged
88 workers with high paying construction jobs. The city finds that this will improve the economic
89 health of the community as a whole and is in the public interest; and

90 **WHEREAS**, according to the U.S. Bureau of Labor Statistics, workers in the Gainesville, FL
91 Metropolitan Statistical Area had an average (mean) hourly wage of \$23.82 in May 2019,
92 compared to the nationwide average of \$25.72. Regional Commissioner Janet S. Rankin noted
93 that, after testing for statistical significance, 19 of the 22 major occupational groups had average
94 wages in the local area that were significantly lower than their respective national averages,
95 including computer and mathematical, business and financial operations, and architecture and
96 engineering. The city commission finds that increasing the opportunity for more high paying
97 construction jobs should have the effect of raising the average mean hourly wage closer to or
98 above the nationwide average.(Source: [https://www.bls.gov/regions/southeast/news-](https://www.bls.gov/regions/southeast/news-release/occupationalemploymentandwages_gainesvillefl.htm)
99 [release/occupationalemploymentandwages_gainesvillefl.htm](https://www.bls.gov/regions/southeast/news-release/occupationalemploymentandwages_gainesvillefl.htm)); and

100 **WHEREAS**, at least 10 days' notice has been given once by publication in a newspaper of
101 general circulation notifying the public of this proposed ordinance and of public hearings to be
102 held in the City Commission Auditorium, City Hall, City of Gainesville; and

103 **WHEREAS**, the public hearings were held pursuant to the published notice described at
104 which hearings the parties in interest and all others had an opportunity to be and were, in fact
105 heard.

106 **NOW, THEREFORE, BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF**
107 **GAINESVILLE, FLORIDA:**

108 **Section 1.** Article XI, titled "Purchasing Requirements for Certain City Construction Projects," is
109 hereby established within Chapter 2 and reads as set forth below. The remainder of Chapter 2
110 remains in full force and effect.

CHAPTER 2 - ADMINISTRATION

ARTICLE XI. – PURCHASING REQUIREMENTS FOR CERTAIN CITY CONSTRUCTION PROJECTS

Sec. 2-630 - Definitions.

The following words and phrases used in this article shall have the following meanings unless a different meaning is clearly required by the context:

Apprentice means any person who is enrolled and participating in an apprenticeship program registered with the State of Florida Department of Education and/or the United States Department of Labor.

Construction project (or “project”) means any construction contracted by the city the anticipated total bid price of which equals or exceeds \$300,000.00 for construction or \$75,000.00 for electrical work. The total bid price shall include not only the base bid price but also any adjustments to the base bid price which are a result of alternates requested by the city.

Construction means the building (verb), altering, repairing, improving, demolishing or replacing of any public structure, roadway, utility or other public improvement.

Cooperative purchasing agreement means purchases made through a public agency contract which allows the use of the contract by other agencies under the same pricing and contract terms.

Disadvantaged worker means (i) a person who has a criminal record, (ii) a disabled veteran, (iii) a person who is homeless, (iv) a person without a GED or high school diploma, (v) a person who is a custodial single parent, (vi) a person who is emancipated from the foster care system, or (vii) a person who has received public assistance benefits within the six months preceding employment by the prime contractor or subcontractor. Public assistance benefits means unemployment benefits, Medicare or Medicaid benefits, or food assistance benefits as administered by the federal government or State of Florida

Employ (or employed) means to permit a person to work for wages.

Labor hours means the actual time that is spent working on the site of a construction project by workers who are employed by the prime contractor or subcontractor, or who are performing offsite fabrication in direct support of the construction project. Labor hours excludes hours worked by forepersons, superintendents, owners, professionals (such as architects, engineers or surveyors), or administrative/office staff.

Manager means the city manager and/or the general manager for utilities, as applicable, or their designees.

Prime contractor means the party or parties to a contract with the city for a construction project.

Subcontractor means any party or parties that, through a secondary contract with the prime contractor, performs some or all of the obligations of the prime contractor on a construction project.

Section 2-631. – Apprentice and Disadvantaged Worker Requirements.

(a) At least ten percent (10%) of all labor hours performed on a construction project shall be performed by apprentices and at least ten percent (10%) of all labor hours performed on a construction project shall be performed by disadvantaged workers. Labor hours worked by a person who is both an apprentice and a disadvantaged worker shall count toward meeting both requirements. The apprentices and disadvantaged workers may be employed by the prime contractor and/or subcontractor.

(b) The prime contractor must make, and require any subcontractor to make, good faith efforts to replace any apprentice or disadvantaged worker who ceases working on the construction project with another apprentice or disadvantaged worker.

(c) When responding to a solicitation for a construction project, the prime contractor must demonstrate that at least ten percent (10%) of all labor hours on that project will be performed by apprentices. The response must include, at a minimum:

(1) the estimated total labor hours for the construction project;

(2) a description of the type of labor and estimated labor hours to be performed by apprentices; and

(3) identification of the apprenticeship program(s) and the agency or entity who is responsible for overseeing the apprenticeship program which the prime contractor and/or subcontractor anticipate utilizing.

(d) When responding to a solicitation for a construction project, the prime contractor must demonstrate that at least ten percent (10%) of all labor hours on that project will be performed by disadvantaged workers. The response must include, at a minimum:

(1) the estimated total labor hours for the construction project;

174 (3) a description of the type of labor and estimated labor hours to be performed by
175 disadvantaged workers; and

176 (3) a list of the resources that will be used to recruit disadvantaged workers.

177 **Sec. 2-632. – Compliance; Corrective Action; Enforcement.**

178 (a) The contract for a construction project between the city and a prime contractor shall include
179 a provision requiring the prime contractor to comply with the requirements of this article, unless
180 the requirements were waived by the manager pursuant to sec. 2-633 or the construction project
181 is exempt pursuant to sec. 2-635, and a provision advising that failure of the prime contractor to
182 comply with the requirements of this article may result in termination of the contract.

183 (b) If the prime contractor is unable to achieve the required percentage of labor hours
184 performed by apprentices and disadvantaged workers, the prime contractor must submit
185 documentation to the manager evidencing the prime contractor made good faith efforts to
186 comply. Good faith efforts documentation includes, but is not limited to, proof the prime
187 contractor: (i) conducted at least one monthly outreach event; (ii) placed at least two monthly
188 advertisements in two different community targeted local publications to promote prime
189 contractor's monthly outreach event and to inform the public of apprenticeship and
190 disadvantaged worker employment opportunities; (iii) worked with workforce development
191 organizations to recruit apprentice and disadvantaged worker applicants; and (iv) registered job
192 openings, and required subcontractors to register job openings, with social service organizations
193 that offer same. Upon receipt and review of the documentation, the manager may waive or
194 lower the required percentage as set forth in sec. 2-633.

195 (c) The prime contractor shall keep, and require subcontractors to keep, records that document:

196 (1) the total labor hours for the construction project;
197

198 (2) the total labor hours performed by apprentice and disadvantaged workers;
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200 (3) the apprentice and/or disadvantaged worker status for each such person;
201

202 (4) the name, address, work classification and hours worked each pay period for each
203 apprentice and disadvantaged worker on the construction project.

204 The prime contractor shall submit these records to the manager each quarter and upon
205 completion of the work and at any time upon request of the manager. The records shall be
206 cumulative for the duration of the construction project.

(d) If the prime contractor has not met the requirements of this article and they have not been waived or lowered pursuant to Sec. 2-633, the manager will provide written notice of violation to the prime contractor. The prime contractor must take action to correct the violation within thirty (30) days of receipt of the written notice, unless the manager determines that a longer time period is necessary and in the best interest of the city. Failure of the prime contractor to correct the violation within the time period specified by the city may result in the city terminating the contract and/or seeking other remedies, including damages.

Sec. 2-633 – Manager Authority

(a) The manager is authorized to prepare administrative policies and procedures to implement, monitor and enforce the requirements of this article.

(b) The manager is authorized to waive or lower the apprentice and/or disadvantaged worker requirements in the solicitation documents if the manager determines that the construction project involves a high proportion of equipment and/or material costs compared to the anticipated labor hours, or in the case of the apprentice requirements, that there is an insufficient number of apprentices available for the type of labor in the project. The manager shall document in writing their reasoning for the waiver or lowering of the requirements.

(c) After bid opening and prior to award of a contract, the manager is authorized to waive the apprentice and/or disadvantaged worker requirements or reject all bids and re-solicit, if none of the responses meet the requirements of sec. 2-631(c) and (d).

(d) During the performance of a construction contract, the manager is authorized to waive or lower the apprentice and/or disadvantaged worker requirements during the performance of a construction project, upon finding that despite documented good faith efforts, as described in sec. 2- 632(b), the prime contractor is unable to meet the requirements. The manager shall document in writing their reasoning for the waiver or lowering of the requirements and the waiver or lower requirement shall be documented in an amendment to the contract with the prime contractor.

(e) The manager shall annually provide a report to the city commission regarding the employment of apprentices and disadvantaged workers in construction projects. At a minimum, the report must include the total dollar value of awards of construction projects, the number of apprentices and disadvantaged workers who worked on such projects, the total number of labor hours worked on such projects and the number of labor hours worked by apprentices and disadvantaged workers on such projects.

Sec. 2-634. – Living Wage Exception for Apprentices.

If a wage is set by the registered apprenticeship program in which the apprentice is enrolled, the prime contractor or subcontractor shall pay that wage to the apprentice. If a wage is not set by the apprenticeship program, the city's living wage requirements as set forth in article IX of this chapter shall apply.

Sec. 2-635. – Exemptions.

The requirements set forth in this article shall not apply to any of the following:

- (a) Construction projects where application of the apprentice or disadvantaged worker requirement is prohibited or in conflict with federal or state law or the terms of a federal or state grant applicable to the construction project;
- (b) Construction projects that are awarded under a cooperative purchasing agreement;
- (c) Construction projects awarded through another public agency's procurement process when the city's involvement is limited as set forth in an interlocal agreement, or other document; or
- (d) Construction projects necessary to address an emergency situation.

Section 2. It is the intention of the City Commission that the provisions of Section 1 of this Ordinance shall become and be made a part of the Code of Ordinances of the City of Gainesville, Florida, and that the sections and paragraphs of this Ordinance may be renumbered or re-lettered in order to accomplish such intentions.

Section 3. If any word, phrase, clause, paragraph, section or provision of this ordinance or the application hereof to any person or circumstance is held invalid or unconstitutional, such finding shall not affect the other provisions or application of the ordinance which can be given effect without the invalid or unconstitutional provisions or application, and to this end the provisions of this ordinance are declared severable.

Section 4. All ordinances or parts of ordinances, in conflict herewith are to the extent of such conflict hereby repealed.

Section 5. This ordinance shall become effective immediately; however to allow time for education and implementation, it shall apply to solicitations for construction projects issued by the City on or after July 1, 2021.

PASSED AND ADOPTED THIS 1st DAY OF April, 2021.



LAUREN POE

MAYOR

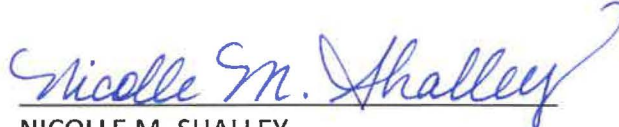
Approved as to form and legality

ATTEST:



OMICHELE D. GAINNEY

CITY CLERK



NICOLLE M. SHALLEY

CITY ATTORNEY

This ordinance passed on first reading this 4th day of March, 2021.

This ordinance passed on second reading this 1st day of April, 2021.