temporary workers or 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 County service contract. This term is subject to the exemptions set forth in §12-122.

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 1965, 226 U.S.C. §501(c)(3) shall be exempted as to all employees other than child care workers.

Health benefits mean comprehensive family medical coverage in which the Employer contributes a minimum of fifty percent of the employee health benefits costs.

Living Wage means either:

a. One hundred and four percent of the federal poverty level for a family of four, divided by 52 weeks per year x 40 hours of work per week. In 2007 the wage level equals $10.02 per hour; or

b. One hundred and twenty percent of the federal poverty level for a family of four without health benefits, divided by 52 weeks per year x 40 hours of work per week. In 2007 the wage level without benefits equals $12.01 per hour.

RFP means any proposal and/or sealed bid requested by the County.

Service Contract means a contract awarded to a contractor by the County primarily for the furnishing of services to or for the County (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 primarily 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 the government.

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

Section 12-114. Living Wage Applicable to Employees of Shelby County Government, Service Contracts and Service Contractors

All employees shall receive a Living Wage as defined in this article.

All persons/entities engaged in service contracts, including but not limited to both prime and subcontractors, with the County shall pay a Living Wage for all work done pursuant to the service contract.

Section 12-115. Annual Adjustment of Living Wage

a. The Living Wage rate shall be modified annually as of July 1 to incorporate the adjustments, if any, made to the federal poverty level

Section 12-116. Monitoring and Enforcement.

a. The Director 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 the Director.

c. The Director shall submit an annual report to the Mayor and the County Board of Commissioners summarizing and assessing the implementation of and compliance with this new law during the preceding year.

d. Any contractor/service provider subject to the terms of this Ordinance shall, within five business days, make available upon request by the Director any and all payroll records, including hourly wages of individual employees, as needed to verify compliance with the terms and conditions contained herein.

e. Upon receipt of any complaint of non-compliance, whether complaint is made by the Administration and/or affected employee(s), the Director shall request from the contractor/service provider documentation to verify compliance with the terms of this Ordinance contained herein. The contractor/service provider shall submit a statement of compliance certified by penalty of perjury.

f. Service contracts under $25,000.00 are not required to be monitored for compliance, however violations reported will be investigated and upon the validation of the complaint will be subject to the penalties as defined in Section 12-120.

Section 12-117. Required records

(a) Contractor to submit.

For each service contract, the service contractor shall submit appropriate documents verifying compliance with this Ordinance, as set out in the RFP. Each RFP shall specify the necessary documentation and verification procedures.

(b) Contents.

The verifying documents shall include the following information, only as it pertains to the county service contract:

(1) The name of the prime service contractor and any subcontractor:

(2) A designation of the project and location; and

(3) Such other data as may be required by the Director from time to time.

(c) Prime contractor responsible for subcontractors

(2) that the wage rates contained therein are not less than those established by this ordinance as set forth in the contract; and

(3) that the service contractor has complied with the provisions of this article.

Section 12-118. Article to be applicable to new service contracts.

The provisions of this article pertaining to service contacts shall ONLY apply to service contracts with Shelby County Government for which the RFP is issued after the effective date of this article.

Section 12-119. Retaliation and Discrimination Barred.

It shall be unlawful for any employer to retaliate, discharge, demote, suspend, or 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 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 abovementioned activities shall raise a rebuttable presumption of having done so in retaliation for those activities. A covered employee subjected to any action that violates a subsection may pursue administrative remedies or bring a civil action against the offending party in a court of competent jurisdiction.

Section 12-120. Penalties.

(a) Debarment (or ineligibility) for three years.

In the event the Director determines that any service contractor has failed to pay the Living Wage rate or has otherwise violated the provisions of this article, he or she shall notify the service contractor of the violation and give the contractor ninety days to get into compliance, including the payment of restitution to all affected employees in the form of back pay owed. If the service contractor does not comply with these requirements, the Director shall then cancel the contract and debar the contractor for a period of three (3) years.

(b) Civil remedies.

i. If the Director determines that the violation was willful, the Director shall cancel the contract, require the contractor to pay affected employees restitution in the form of back pay owed within ninety days and debar the contractor for a period of no less than three years. In the event that the service contractor, who has willfully violated the provisions of this article, fails to pay restitution to its affected employees, Shelby County Government reserves the right

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

Section 12-122. Exemptions

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

(1) A person who provides solely volunteer services that are uncompensated, or otherwise compensated by a nominal fee, except for reimbursement of expenses such as meals, parking, or transportation, and election day officers assigned to precincts on election day which include Officers of Election, Judges, Inspectors, Precinct Registrars, Assistant Precinct Registrars and Machine Operations; and

(2) A person employed in construction work that is subject to the provisions pursuant to any legally recognized Prevailing Wage standard; 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.

(4) Any person employed pursuant to an emergency contract. For purposes of this Ordinance, the term emergency contract will be defined in the same manner in which it is defined by the provisions outlined in the Shelby County Government Purchasing Policy, as it may be amended from time to time.

(5) Any and all employees who hold a professional license issued by the State of Tennessee, in medicine, law, engineering, architecture, landscape architecture, and accounting;

(6) A person employed by or as a financial or swap advisor, underwriter, counsel, securities broker or dealer, transfer agent, trustee, paying agent, rating agency, bond insurance company, dealer, escrow agent, liquidity facility provider, information or securities repository, remarketing agent, swap counterparty or tender agent in connection with the issuance of debt by the county, including bonds, commercial paper, swaps and notes.

(7) Any person under the age of 18; and

(8) Any person participating in any Student Internship.

(9) Any Locally Owned Small Business (LOSB) as defined by the LOSB Ordinance of Shelby County, Tennessee, with ten employees or less.

Sections 12-123 --- 125. Reserved.

SECTION 2. BE IT FURTHER ORDAINED, That the provisions of this Ordinance are hereby severable. If any of these sections, provisions, or sentences