

**ORDINANCE NO.**

**AN ORDINANCE OF THE BOARD OF SUPERVISORS OF THE COUNTY OF SONOMA, STATE OF CALIFORNIA, AMENDING CHAPTER 2 OF THE SONOMA COUNTY CODE TO ADD ARTICLE XXVI REQUIRING PROVISION OF LIVING WAGES AND OTHER EMPLOYMENT CONDITIONS FOR SPECIFIED COUNTY CONTRACTORS.**

The Board of Supervisors of the County of Sonoma, State of California, ordains as follows:

**SECTION I.** Chapter 2 of the Sonoma County Code is hereby amended to add the following Article:

**ARTICLE XXVI  
LIVING WAGE**

**2-373 Title and purposes.**

This Article shall be known and may be cited as the "County of Sonoma Living Wage Ordinance." The purpose of this Article is to protect the public health, safety and welfare and the public treasury. It seeks to improve the quality of services to beneficiaries of County-contracted services and to assure that employees of the County and its service contractors, subcontractors, tenants, franchisees and recipients of economic development subsidies earn an hourly wage that is sufficient to live with dignity and to achieve economic self-sufficiency. The County contracts with many businesses and organizations to provide services to the public. Such public expenditures should also be spent to set a community economic standard that permits workers to live above the poverty level.

**2-374 Findings.**

The County has the legal right to set compensation and terms of employment for its employees and contractors as an exercise of its municipal proprietary and police powers; and

The County awards contracts to private firms and other businesses to provide services to the public and to County government; and

The use of County funds to promote sustenance and creation of stable living wage jobs will increase consumer income, decrease levels of poverty and reduce the need for taxpayer-funded social programs; and

When County funds are used to contract for services, such contracts should demonstrate an effort to promote an employment environment that enhances the general quality of life within the community and maximizes the productive effect of the County's limited resources; and

The payment of a minimum level of hourly wages and preventing discrimination against existing part-time employees and preventing displacement of employees by new contractors will benefit the County's interests; and

Service interruptions and revenue interruptions to the County from strikes, pickets or boycotts of these private employers can only be avoided by requiring such employers to obtain binding contractual waivers from the relevant labor organizations of their rights to strike, picket and boycott.

**2-375 Definitions.**

- a. "Wages" for these purposes includes salaries, wages, bonuses, and commissions. . The County Administrator is authorized to adopt regulations after providing notice and comment to all parties requesting notice to assist employers, employees and employee organizations in determining the hourly value of types of payments not provided on an hourly basis.
- b. "County" means the County of Sonoma and all County agencies.
- c. "County financial aid recipients" means all Employers which receive from the County direct assistance in the form of grants, loans, or loan guarantees, in-kind services, waivers of County fees, interests in real property or other valuable consideration in the amount of more than one hundred thousand dollars in any twelve-month period. This term shall not include those who enjoy an economic benefit as an incidental effect of County policies, regulations, ordinances, or charter provisions.
- d. "Employee" means any individual employed by an employer on work arising from a County service contract (including the County's In Home Supportive Services agency), County financial aid, or County concession, franchise or lease, including subcontracts or tenancies therefrom, if totaling at least two hours per week. No work may be reassigned in order to evade coverage under this Article.
- e. "Employer" means those persons identified in Section 2-376 except that no business other than the County shall be deemed an Employer until they receive a new service contract, lease, concession, franchise, or financial aid from or through the County. For these purposes, the term "new" includes any extension or renewal of a preexisting agreement or arrangement which involves newly-negotiated or modified terms other than adjustment of terms pursuant to a formula or pre-set schedule, such as a Consumer Price Index, or the County allowing continued occupancy by tenants with periodic tenancies (such as month-to-month tenants). A subcontractor shall be deemed to have received a new service contract through the County when the person to whom it is subcontracting receives a new County service contract, lease, franchise, or financial aid. Exercise by a lessee of a lease option does not constitute a new lease for these purposes.
- f. "Service contract" means a contract given to a contracting business by the County for the furnishing of services to or for the County or its residents, except contracts where services are incidental to the delivery of products, equipment or commodities. Service contracts include but are not limited to, security guard, janitorial, waste management, pest control, landscaping, transportation and shuttle services, and healthcare including in home supportive services and mental health services.
- g. "Service contractor" means any business that enters into a service contract as herein defined in an amount equal to or greater than twenty thousand dollars.

**2-376. Employers covered by compensation standards of this Article.**

The employers described below shall comply with the minimum compensation standards established by this Article if they employ more than five employees (or in the case of nonprofit organizations, more than 24 employees):

- a. The County of Sonoma, including all its agencies, departments and offices. The County's In Home Supportive Services shall be included under this Article if the governing body thereof has adopted a resolution approving such inclusion.
- b. Service contractors that receive contract(s) for \$20,000 or more from the County in a twelve-month period (or for nonprofits, over \$50,000).
- c. Employers receiving County leases, concessions, or franchises which have three hundred fifty thousand or more in annual gross receipts, except that lessees must employ at least 25 persons in order to be covered by this Article.
- d. For-profit businesses which receive more than one hundred thousand dollars in County financial aid, including loans or other cash and/or noncash assistance in any twelve-month period. Compliance shall be required for a period of five years following receipt of this aid.
- e. Regular contractors, subcontractors, lessees or sublessees of any of the businesses described in subsections (b) through (d) of this section and which have fifty thousand or more in annual gross receipts.

For the purposes of determining whether an employer employs more than the minimum number of employees for the purpose of this Article, such number shall be determined by (1) the number during the most recent payroll period unless the employer had less than the minimum employees during the preceding eight payroll periods and will have less than the minimum during the next eight payroll periods; and (2) aggregating the workforces of all employers within the same common business enterprise as defined under the Fair Labor Standards Act.

**2-377. Compensation required to be paid to employees.**

Except as otherwise provided in this Article, an Employer subject to this Article shall provide its covered employees the following minimum compensation:

- a. Living Wages. The Employer shall pay employees an hourly rate of not less than fifteen dollars.
- b. Time Off. Employees shall be entitled to at least twenty-two days off per year for sick leave, vacation, or personal necessity. At least twelve of the required days off shall be compensated at the same rate as regular compensation for a normal working day. Ten of the required twenty-two days may be uncompensated days off. Employees who work part-time shall be entitled to accrue compensated days off in increments proportional to that accrued by full-time employees. Employees shall be eligible to use accrued days off after the first six months of satisfactory employment or consistent with employer policy,

whichever is sooner. Paid holidays, consistent with established employer policy, may be counted toward provision of the required twelve compensated days off. Compensation for paid leave for part-time on-call employees, prorated as described hereinabove, may be provided as a lump sum payment twice a year to such employees.

c. Additional Compensation Permissible. Nothing in this Article shall be construed to limit an employer's discretion to provide greater wages or time off to its employees.

d. Inflation Adjustments. The initial rate set forth in subsection (a) of this section shall increase annually on July 1st, in accordance with any increase the most recent December-to-December Consumer Price Index for Urban Consumers (CPI-U) for the San Francisco-Oakland-San Jose area published by the Bureau of Labor Statistics, or any successor index thereto.

### **2-378. Preventing Discrimination in Hours Against Part-Time Employees.**

If an Employer has additional hours of work to provide in job positions covered by this ordinance, then it shall offer those hours of work first to existing qualified part-time employees before hiring additional part-time employees or subcontractors. The foregoing shall not be construed to require any Employer to offer overtime work paid at a premium rate nor to constrain any Employer from offering such work.

An Employer shall seek to maximize the number of full-time job positions relative to part-time or subcontracted positions except as precluded by business necessity. "Full-time" shall mean at least 32 hours per week. The Employer shall be rebuttably presumed in violation of this requirement if more than half of the Employer's workforce is comprised of part-time or subcontracted workers. The Employer shall be rebuttably presumed in compliance with this requirement if over 90% of its workforce is comprised of full-time employees.

Nothing herein shall be construed as encouraging or requiring any employer to discharge part-timers hired prior to public notice being given of the pendency of the ordinance giving rise to this Article. Any actions by an Employer after such notice to reduce the number of full-time positions available after this Article goes into effect shall be deemed invalid and disregarded in determining the availability of additional hours of work for persons employed by the Employer prior to such notice.

### **2-379. Preventing Mass Displacement of Workers During Contract Transitions.**

#### a. Definitions

(1) "*Predecessor Employer*" means an Employer that provided substantially-similar services to the County or on County property or a County franchise prior to the Successor Employer.

(2) "*Successor Employer*" means the new Employer that succeeds the Predecessor Employer in the provision of substantially-similar services.

(3) “*Retention Employee*” means any employee who was employed by a Predecessor Employer for at least 30 workdays, and was either (a) laid off or discharged for lack of work due to the closure or reduction of this employer’s operation during the preceding two years, or (b) is reasonably identifiable as a worker who is going to lose his/her job due to the closure or reduction of this employer’s operation within the next 9 months.

b. Retention Offer. Except as otherwise provided herein, a Successor Employer shall offer employment to all qualified Retention Employees. If the Successor Employer does not have enough positions available for all qualified Retention Employees, the Successor Employer shall hire the Retention Employees by seniority within each job classification. For any additional positions which become available during the initial year of the new contract, the Successor Employer will hire qualified Retention Employees by seniority within each job classification. An employee is “qualified” within the meaning of this subsection if he/she has performed similar work in the past and was not discharged for incompetence, or can reasonably be trained for the duties of a position through an amount of training equivalent to that which has been provided by the employer to workers hired off the street.

c. Retention Period. A Successor Employer shall not discharge a Retention Employee without just cause during the initial ninety workdays of his/her employment.

**2-380. Required contract provisions.**

Every County service contract, lease, license, concession agreement, franchise agreement or agreement for financial aid with an Employer, or amendment thereto, shall contain provisions requiring the employer to comply with the requirements of this Article as they exist on the date when the employer entered its agreement with the County or when such agreement is amended. Such contract provisions shall address the employer’s duty to promptly provide to the County documents and information verifying its compliance with the requirements of this Article, and sanctions for noncompliance. Such contract provisions shall also require the employer to notify each of its affected employees as to the requirements of this Article.

**2-381. Exemptions.**

The requirements of this Article shall not be applicable to the following employees:

a. An employee participating in a temporary job-training program approved by the County in which a significant component of the employee’s training consists of acquiring specialized knowledge, abilities, skills or job readiness (e.g., the importance of proper work attire, punctuality and workplace demeanor).

b. Volunteers.

c. Any disabled employee who (1) is covered by a current sub-minimum wage certificate issued to the employer by the U.S. Department of Labor; or (2) would be covered by such a certificate but for the fact that the employer is paying a wage equal to or higher than the minimum wage.

- d. Any employee under the age of 19 employed in a seasonal position in a summer camp or for the County Parks Administration.
- e. Any employee for whom application of the requirements of this Article is prohibited by state or federal law such as employees of joint powers authorities and school districts or their contractors.
- f. An employee subject to a bona fide collective bargaining agreement where the waiver of the provisions of this Article is set forth in clear and unambiguous terms in such an agreement.

**2-382. Retaliation and discrimination prohibited.**

It shall be unlawful to retaliate or discriminate against any person on account of his having claimed a violation of this Article. No employee shall have any part of his or her compensation reduced in response to the requirements of this Article. If any part of his or her compensation is reduced during the pendency of the ordinance giving rise to this Article, then upon the effective date of this Article the employer shall restore the status quo ante.

**2-383. Employee complaints to the County.**

- a. A person who alleges violation of any provision of this Article may report such acts to the County. The County Administrator may establish a procedure for receiving and investigating such complaints and take appropriate enforcement action under the contract, by taking legal action.
- b. Any complaints received shall be treated as confidential matters, to the extent permitted by law. Any complaints received and all investigation documents related thereto shall be deemed exempt from disclosure pursuant to California Government Codes Sections 6254 and 6255 to the extent permitted by law.
- c. Nothing contained in this Article shall be construed as a promise or enforceable obligation on the part of the County to actively monitor employer compliance.

**2-384. Private right of action.**

- a. A person claiming injury from a violation of this Article may bring an action in the Superior Court of the State of California against an employer and obtain the following remedies:
  - 1. Back pay for each day during which the employer failed to pay the compensation required by this Article, payable to all employees who suffered from the employer's violation thereof;
  - 2. Reinstatement, compensatory damages and punitive damages;
  - 3. Reasonable attorney's fees, expert witness fees and costs;
  - 4. Such other equitable relief as the court shall find proper.

b. Notwithstanding any provision of this Article or any other ordinances to the contrary, no criminal penalties shall attach for any violation of this section.

c. No remedy set forth in this Article is intended to be exclusive or a prerequisite for asserting a claim for relief to enforce any rights hereunder in a court of law. This Article shall not be construed to limit an employee's right to bring a common law cause of action for wrongful termination, nor to preclude any existing civil remedy for enforcement of ordinances generally.

d. Nothing in this Article shall be interpreted to authorize a claim for damages against the County based upon another employer's failure to comply with this Article or the County's failure to enforce its provisions.

e. To the extent otherwise permitted by law, the employer shall provide reasonable access to employee-assistance organizations for the sole purpose of communicating with employees about their rights under this Article, including rights of enforcement. Such access shall be limited to non-work time and to areas where employees enter or exit the workplace or take breaks. Access shall not be exercised in any manner which disrupts work.

**2-385. Responsible bidding.**

Prior to commencement of the execution by the County of a contract covered by this Article including lease or franchise contract, each contractor and regular subcontractor thereof will demonstrate to the satisfaction of the County that it will conform to the requirements of this Article. As part of any bid, application or proposal for any contract or other arrangement with the County covered by this Article, the submitter shall (1) include an acknowledgement in a form acceptable to the County of the terms of this Article and intent to comply therewith, and (2) complete a form to be created by the County manager indicating whether it has received any wage, hour, workplace safety, environmental or consumer protection charges, complaints, citations or findings of violation of law or regulation by any regulatory agency or court within the last ten years, including but not limited to California DFEH, OSHA, Department of Industrial Relations (Labor Commissioner), and EPA. By seeking such contract or arrangement from the County the submitter shall be deemed to have authorized the County to obtain additional information upon request about the submitter's history as an employer, including but not limited to information about employee turnover and complaints lodged by employees (unless disclosure is prohibited by their legal right of privacy or other applicable law), so that the County may ascertain the submitter's ability to provide the promised services without disruption and without adverse effect on the County's proprietary interests. To the extent permitted by law, the board shall consider such matters in deciding whether to award the contract, financial assistance, or other arrangement being sought from the County.

**2-386. Labor harmony.**

Prior to the granting of any contract for any operation in which the County has a proprietary interest in receiving revenues or services from an employer, the bidder or proposer shall present written proof that it has entered into a labor harmony agreement with each labor organization which represents or will seek to represent the employer's employees. Such agreement must contain a binding commitment on behalf of

the organization in which waives on behalf of itself and its members their rights to strike, picket, or boycott such operation for the duration of the County's interest. If the employer is unable to obtain such agreement without consenting to conditions which it can show by clear and convincing evidence to be unreasonable and contrary to the County's proprietary interest, then it shall offer to proceed at its expense with the labor organization and County to expedited arbitration over such dispute and to set the terms of a labor harmony agreement prior to the contract award. If the parties cannot agree on an arbitrator then said arbitrator shall be selected by them striking from the list of Northern California members of the National Academy of Arbitrators. This requirement shall apply prior to the hiring of five employees by the employer. Nothing herein requires the employer to already be unionized nor requires employees to be union members.

**SECTION II.** If any section, subsection, sentence, clause or phrase of this ordinance is for any reason held to be unconstitutional and invalid, such decision shall not affect the validity of the remaining portion of this ordinance. The Board of Supervisors hereby declares that it would have passed this ordinance and every section, subsection, sentence, clause or phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared unconstitutional or invalid.

**SECTION III.** This ordinance shall be and the same is hereby declared to be in full force and effect from and after thirty (30) days after the date of its passage and shall be published once before the expiration of fifteen (15) days after said passage, with the names of the Supervisors voting for or against the same, in *The Press Democrat*, a newspaper of general circulation published in the County of Sonoma, State of California.

In regular session of the Board of Supervisors of the County of Sonoma, passed and adopted this day of , 2014, on regular roll call of the members of said Board by the following vote:

**SUPERVISORS VOTE:**

<b>Gorin:</b>	<b>Rabbitt:</b>	<b>Zane:</b>	<b>McGuire:</b>	<b>Carrillo:</b>
<b>Ayes:</b>	<b>Noes:</b>	<b>Absent:</b>	<b>Abstain:</b>	

**SO ORDERED.**

**WHEREUPON,** the Chair declared the above and foregoing ordinance duly adopted and

**SO ORDERED.**

---

Chair, Board of Supervisors  
County of Sonoma

ATTEST:

Michelle Arellano

Clerk of the Board of Supervisors