

# CITY OF SONOMA

## ORDINANCE NO. 04-2004

### AN ORDINANCE OF THE CITY OF SONOMA ADDING A CHAPTER 2.70 TO THE MUNICIPAL CODE OF THE CITY OF SONOMA, ESTABLISHING A LIVING WAGE REQUIREMENT FOR SPECIFIED CITY FUNDED CONTRACTS AND CITY EMPLOYEES

The City Council of the City of Sonoma ordains as follows:

#### **Section 1. Amendment of Title 2.**

Title 2 of the Municipal Code of the City of Sonoma is hereby amended by adding a Chapter 2.70 which reads as follows:

#### **Living Wage Sections:**

|          |   |
|----------|---|
| 2.70.010 | Title and Purpose   |
| 2.70.020 | Findings  |
| 2.70.030 | Definitions   |
| 2.70.040 | Employers Subject to the Requirement of this Chapter      |
| 2.70.050 | Waivers   |
| 2.70.060 | Compensation Required to be Paid to Specific Employees    |
| 2.70.070 | Required Contract Provisions                              |
| 2.70.080 | Exemptions  |
| 2.70.090 | Retaliation and Discrimination Prohibited                 |
| 2.70.100 | Employee Complaints to City                               |
| 2.70.110 | Private Right of Action                                   |
| 2.70.120 | Responsible Bidding and Uses of City Funds and Facilities |
| 2.70.130 | Labor Relations Neutrality                                |
| 2.70.140 | Phase-In for Non-profits                                  |

#### **2.70.010 Title and Purpose.**

The purpose of the ordinance is to improve the quality of services to beneficiaries of City contracted agencies and to assure that City employees, employees of City service contractors, subcontractors, and employees and contractors of City financial assistance earn an hourly wage that is sufficient to live with dignity and to achieve economic self-sufficiency. The City contracts with many businesses and organizations to provide services to the public, and provides financial assistance to developers for the purpose of promoting economic development and job growth. Such public expenditures should also be spent to set a community economic standard that permits workers to live out of poverty. The City Council finds that the use of City funds to provide living wage jobs will decrease poverty, increase consumer income, invigorate neighborhood businesses and reduce the need for taxpayer funded social service programs.

This chapter shall be known and may be cited as the "City of Sonoma Living Wage Ordinance." The purpose of this ordinance is to protect the public health, safety and welfare. It does this by requiring that public funds be expended in such a manner as to facilitate individual self-reliance by employees of City contractors, lessees, recipients of City financial aid and their respective subcontractors.

**2.70.020 Findings.**

The City of Sonoma awards contracts to private firms and other businesses to provide services to the public and to City Government; and

The City of Sonoma has a limited amount of taxpayer resources to expend; and

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

When City 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 City's limited resources; and

The City's use of contractors that do not provide health insurance to their employees can result in imposing the costs of their medical care on the county, state and federal governments; and

That employees are far likelier to be healthy if their employer provides reasonable health insurance to them and their dependents; and

The payment of a minimum level of compensation as required by the chapter enacted by this Ordinance benefits these interests.

**2.70.030 Definitions.**

The following words and phrases whenever used in this chapter shall be construed as defined in this section:

- a. "City" means the City of Sonoma and all City agencies.
- b. "City financial aid recipients" means all persons or entities that receive from the City direct assistance in the form of grants, loans, or loan guarantees, in-kind services, waivers of City fees, real property or other valuable consideration in the amount of more than \$100,000 in any twelve (12)-month period. This term shall not include those who enjoy an economic benefit as an incidental effect of City policies, regulations, ordinances, or charter provisions.
- c. "Service Contractor" means any person or entity that enters into a Service Contract as hereafter defined in an amount equal to or greater than ten thousand dollars (\$10, 000.00).
- d. "Employee" means any individual employed by an Employer unless he or she spends less than 20 percent of his or her work time on work arising from a Service Contract, City financial aid, or City lease, including subcontracts therefrom. No work may be reassigned in order to evade coverage under this Ordinance. For the purposes of determining whether an Employer employs more than six employees for the purpose of this Ordinance, such number shall be determined by the most recent payroll period unless the employer had less than seven employees during the preceding 8 payroll periods and will have less than

seven during the next 8 payroll periods.

- e. "Employer" means those persons identified in 2.70.040, except that no person other than the City shall be deemed an Employer until they receive a new contract, lease, concession, franchise, or financial aid from or through the City. For these purposes the term "new" includes any arrangement entered into after this Ordinance was introduced, or any amendment, extension or renewal of a preexisting arrangement, or the City allowing continued occupancy by tenants with periodic tenancies (such as month-to-month tenants). A subcontractor shall be deemed to have received a new contract through the City when the person to whom it is subcontracting receives a new City contract, lease, franchise, or financial aid.
- f. "Non-profit" shall mean a non-profit organization described in Section 501c of the Internal Revenue Code of 1954 which is exempt from taxation under Section 501(c) of that code, or any nonprofit educational organization qualified under Section 23701(d) of the Revenue and Taxation Code.
- g. "Person" means any individual, proprietorship, partnership, joint venture, corporation, limited liability company, trust, association, or other entity that may employ individuals or enter into contracts.
- h. "Service contract" means a contract given a contractor by the City for the furnishing of services to or for the City, except contracts where services are incidental to the delivery of products, equipment or commodities. Service contracts include but are not limited to security guard services, janitorial services, waste management, landscaping, parking attendant services, towing, and health care.
- i. "Credit for the amount spent providing medical health benefits to such Employee" shall be defined as follows: (1) the actual hourly contribution made by the Employer for medical health benefits; (2) if the Employer is not making an hourly contribution, then the amount spent during the preceding month by such Employer on medical health benefits for such Employee divided by the hours worked, except that the City Manager shall have discretion for good cause shown to allow an Employer to use an alternate method of determining its average hourly contribution; (3) if the amount contributed by the Employer varies between Employees (such as a greater contribution for family versus single coverage), then the Employer at its option may set the amount of the credit at the average it contributes for all Employees covered by this Ordinance receiving health benefits; (4) if the Employer is self-insured and Employees covered by this Ordinance are pooled with other workers, then if the Employer finds it impractical to determine the amount spent on health benefits just for Employees covered by this Ordinance, then the Employer may approximate this calculation on the basis of the best data reasonably available and approved by the City Manager (for example, using the average spent by the Employer for its entire workforce).

**2.70.040 Employers Subject to the Requirements of this Chapter.**

The persons and entities described below shall comply with the minimum compensation standards established by this Chapter if they employ more than six (6) employees:

- a. The City of Sonoma, including all its agencies, departments and offices.
- b. For-profit Service Contractors which receive contract(s) for \$10,000 or more from the City in a twelve-month period.
- c. Non-profit Service Contractors which receive contracts from the City of \$75,000 or more in a twelve-month period.
- d. Recipients of City leases, concessions, or franchises which employ twenty-five (25) or more employees and have \$350,000 or more in annual gross receipts.
- e. City financial aid recipients which receive more than \$100,000 in loans or other cash and/or non-cash assistance in any twelve-month period. Compliance shall be required for a period of five (5) years following receipt of this aid.
- f. Subcontractors or subtenants of any of the persons described in subparagraphs 'b' through 'e' and which have \$50,000 or more in annual gross receipts.
- g. Public agencies, which receive contract(s) for \$10,000 or more from the City in a twelve-month period.

**2.70.050 Waivers.**

- a. Any Employer which contends that it is unable to pay all or part of the living wage must provide a detailed explanation in writing to the City Manager (or the City Manager's designee) who may recommend a waiver to the City Council.
- b. The explanation must set forth the reasons for its inability to comply with the provisions of this chapter, including a complete cost accounting for the proposed work to be performed with the financial assistance sought, including wages and benefits to be paid all employees, as well as an itemization of the wage and benefits paid to the five highest paid individuals employed by the employer.
- c. The employer must also demonstrate that the waiver will further the interests of the City of Sonoma in creating training positions which will enable employees to advance into permanent living wage jobs or better and will not be used to replace or displace existing positions or employees or to lower the wages of current employees.
- d. The City Council may grant a waiver only upon a finding and determination that the employer has demonstrated economic hardship and that waiver will further the interests of the City of Sonoma in providing training positions which will enable employees to advance into permanent living wage jobs or better.
- e. However, no waiver will be granted if the effect of the waiver is to replace or displace existing positions or employees or to lower the wages of current

employees.

- f. Waivers from the chapter are disfavored and will be granted only where the balance of competing interests weighs clearly in favor of granting the waiver.
- g. If waivers are to be granted, partial waivers are favored over blanket waivers. Moreover, any waiver shall be granted for no more than one year. At the end of the year, the employer may reapply for a new waiver which may be granted subject to the same criteria for granting the initial waiver.
- h. The City Council of the City of Sonoma reserves the right to waive the requirements of this chapter upon a finding and determination of the City Council that a waiver is in the best interests of the City of Sonoma. The City Council may also waive the requirements of this Chapter during an emergency due to war or natural or human made disasters.
- i. All of the provisions of this chapter, or any part hereof, may be waived by a bona fide collective bargaining agreement, but only if the waiver is explicitly set forth in such agreement in clear and unambiguous terms.

**2.70.060 Compensation Required to be Paid to Employees.**

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

- a. Living Wages: The Employer shall pay each Employee an hourly wage of not less than \$13.20, except that the Employer shall receive credit for the amount spent providing health benefits to such Employee. (For example, if an Employer spends \$1.50 per hour on health benefits, then the Employer must pay a cash wage of only \$11.70 per hour).
- b. Time-off: Employees shall be entitled to at least 22 days off per year for sick leave, vacation, or personal necessity. Twelve (12) of the required days off shall be compensated at the same rate as regular compensation for a normal working day. Ten (10) of the required 22 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 (6) 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 12 compensated days off. Compensation for paid leave for part-time on-call employees, pro-rated as described herein above, shall be provided as premium pay twice a year to employees who worked a minimum of 520 hours in the previous six months.
- c. Additional compensation permissible. Nothing in this Chapter shall be construed to limit an employer's discretion to provide greater wages or time-off to its employees.

- d. The initial rates set forth in (a) above shall increase annually on July 1, in accordance with any increase due to a cost of living adjustment for City employees, equal to the average cost of living adjustment (excluding equity pay increases) for all City non-Safety, non-management employees as of the date of the most recent adjustment of the pay of non-Safety, non-management employees, but no more than the most recent December to December Consumer Price Index for San Francisco-Oakland-San Jose (CPI-U), published by the Bureau of Labor Statistics.

**2.70.070 Required Contract Provisions.**

Every City contract, lease, license, concession agreement, franchise agreement or agreement for financial aid with an employer described in Section 2.70.040 or amendment thereto shall contain provisions requiring it to comply with the requirements of this chapter as they exist on the date when the employer entered its agreement with the City or when such agreement is amended. Such contract provisions shall address the employer's duty to promptly provide to the City documents and information verifying its compliance with the requirements of this Ordinance, and sanctions for non-compliance. Such contract provisions shall also require the employer to notify each of its affected employees with regards to the wages that are required to be paid pursuant to this ordinance.

**2.70.080 Exemptions.**

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

- a. An employee participating in a temporary job-training program approved by the City 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. An employee who is under 21 years of age employed by a non-profit entity for after-school or summer employment or as a trainee for a period not longer than 120 days.
- c. An employee employed on a temporary project which will not exceed six months in duration.
- d. Volunteers, including part-time firefighters and part-time firefighters with EMT certification, part-time paramedics and part-time emergency medical technicians, provided there is no replacement or displacement of existing firefighter positions or employees.
- e. Employees of contractors on City public works projects subject to the requirements of Division 2, Part 7, of the California Labor Code, when said code requires compensation greater than that required by this Chapter.
- f. Employees who are standing by or on-call according to the criteria established by the Fair Labor Standards Act, 29 U.S.C. Section 201. This exemption shall apply only during the time when the employee is actually standing by or on-call.

- g. 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.
- h. An employee for whom application of the requirements of this ordinance is prohibited by state or federal law.
- i. An employee subject to a bona fide collective bargaining agreement where the waiver of the provisions of this Ordinance are set forth in clear and unambiguous terms in such an agreement.
- j. City employees during their first six months of employment which is considered a training or probationary period.

**2.70.090 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 Chapter.

**2.70.100 Employee Complaints to the City.**

- a. A person who alleges violation of any provision of the requirements of this Chapter may report such acts to the City. The City Manager may establish a procedure for receiving and investigating such complaints and take appropriate enforcement 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.

**2.70.110 Private Right of Action.**

- a. A person claiming violation of this Ordinance 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 Chapter.
  - 2. Reinstatement, compensatory damages and punitive damages.
  - 3. Reasonable attorney's fees and costs.
- b. Notwithstanding any provision of this Ordinance or any other ordinances to the contrary, no criminal penalties shall attach for any violation of this article.
- c. No remedy set forth in this Ordinance 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 Ordinance shall not be construed to limit an employee's right to bring a common law cause of action for wrongful termination.

- d. Nothing in this Ordinance shall be interpreted to authorize a claim for damages against the City based upon another employer's failure to comply with this ordinance.

**2.70.120 Responsible Bidding and Use of City Funds and Facilities.**

Prior to commencement of the contract's term or execution by the City, each Contractor, Subcontractor, lessee of City property or other City-funded Employer will certify to the satisfaction of the City that its employees are paid a living wage as provided by the Chapter. As part of any bid, application or proposal for any contract, or other funding arrangement with the City covered by section 2.72.040, the submitter shall (1) include an acknowledgement in a form acceptable to the City of the terms of this chapter and intent to comply therewith, and (2) complete a form to be created by the City Manager indicating whether any charges, complaints, citations or findings of violation of law or regulation by any regulatory agency or court have occurred within the last ten (10) years, including but not limited to California DFEH, OSHA, Department of Industrial Relations (Labor Commissioner), EPA, and NLRB.

By seeking such contract or arrangement from the City the submitter shall be deemed to have authorized the City 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), so that the City may ascertain the submitter's ability to provide the promised services without disruption and without adverse effect on the City's proprietary interests. To the extent permitted by law, the Council shall consider such matters in deciding whether to award the contract, financial assistance, or other arrangement being sought from the City.

**2.70.130 Labor Relations Neutrality.**

No employer covered by Section 2.70.040 shall use any City funds or property to assist, promote or deter union organizing. This restriction shall be subject to the definitions and exclusions found in Government Code sections 16645, 16646, and 16647 as of January 1, 2002. City staff may enforce this Ordinance by awaiting citizen complaints. Nothing herein shall be construed as a promise by the City to actively monitor contractor compliance.

**2.70.140 Phase In for Non-Profits and for Part-time City Employees.**

- a. All 501(c) non-profit organizations subject to the provisions of this Ordinance shall be exempted from its wage requirements for the first three years following its enactment, unless they agree with the City to comply earlier.
- b. The provisions of this Ordinance shall not apply to part-time city employees for the first six months following its enactment.

**Section 2. Severability.**

If any section, subsection, 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 portions of this Ordinance. The City 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, subsection, subdivision, paragraph, sentence, clause or phrase.



**Section 3. Effective Date.**

This ordinance shall become effective thirty (30) days from and after the date of its passage.

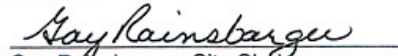
**Section 4. Publication.**

The City Clerk shall cause this ordinance or a summary of it to be published or posted as required by law.

PASSED, APPROVED AND ADOPTED by the City Council of the City of Sonoma this 21st day of July, 2004.

  
Joe Costello, Mayor

ATTEST:

  
Gay Rainsbarger, City Clerk

State of California )  
County of Sonoma )  
City of Sonoma )

I, Gay Rainsbarger, City Clerk of the City of Sonoma, do hereby certify that the foregoing Ordinance was adopted on July 21, 2004 by the following vote:

AYES: Barnett, Brown, Costello  
NOES: Ashford, McKesson  
ABSENT: None

  
Gay Rainsbarger, City Clerk

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State of California ) .  
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I, Gay Rainsbarger, City Clerk of the City of City of Sonoma, do hereby certify that the foregoing Ordinance was adopted on July 21, 2004 by the following vote: .

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