

Ordinance No. 6139

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An Ordinance of the Board of Supervisors of the County of Sonoma, State of California, Adding Article XXVI to Chapter 2 of the Sonoma County Code to Provide for Payment of a Living Wage

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

Section I. Findings. In enacting this ordinance the Board of Supervisors makes the following findings:

- (a) The health and welfare of all Sonoma County residents is benefited and advances when Sonoma County workers are paid a living wage;
- (b) The County awards many contracts to private sector employers to provide services to the County in accordance with those contracts;
- (c) According to the U.S. Census Bureau, more than one out of every ten Sonoma County residents lives in poverty. The payment of inadequate wages to those workers tends to negatively affect the quality of services provided to the County and its residents by fostering high turnover and instability in the workplace;
- (d) In 2014, the Board of Supervisors set as a priority the development of a systematic approach to addressing income inequality and poverty in Sonoma County, including the evaluation of a living wage ordinance as one component of a balanced strategy for reducing poverty;
- (e) The payment of a living wage will increase the ability of low wage workers to attain sustenance, decrease the amount of poverty and reduce the amount of taxpayer-funded services provided in the County of Sonoma;
- (f) Some employers who provide contract services to the County do not provide health insurance benefits to their employees. This factor may negatively affect worker performance and the quality of services delivered to the County and its residents, and could result in unwarranted employee absenteeism and negatively impact local and State health programs. These problems may be favorably impacted if employers provide reasonable health insurance benefits to their employees; and
- (g) Living wage jobs will decrease poverty, increase consumer income, and invigorate neighborhood businesses. Workers of color are disproportionately low-wage workers and hence, the Living Wage Ordinance is also a racial equity issue.
- (h) It is the intent of the Board of Supervisors that the provisions of this ordinance shall apply equally to all entities who enter service contracts with or receive economic development assistance from the County, regardless of whether those entities are operated for profit or as nonprofits. However, to avoid unintended impacts to nonprofit organizations, the Board of Supervisors intends to phase in application of the living wage requirements to nonprofits.

Section II. Amendment of Sonoma County Code. Article XXVI is hereby added to Chapter 2 of the Sonoma County Code to read as follows:

Article XXVI - Living Wage.

Sec. 2-373. - Short title.

This article shall be known as the County of Sonoma Living Wage Ordinance."

Sec. 2-374. - Purpose.

The purpose of this article is to implement a policy to help low wage workers 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, and provides financial assistance to a variety of entities 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 above the poverty level. The establishment of a living wage ordinance is one component of a more comprehensive strategy to address poverty in Sonoma County. The board of supervisors finds that the use of county 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.

Sec. 2-375. - Definitions.

The following words and phrases, whenever used in this article shall have the meanings defined in this section unless the context clearly requires otherwise:

- (a) "Awarding authority" means the county department, officer, or agency that recommends or is otherwise responsible for the administration of a service contract.
- (b) "Business" means any individual, proprietorship, partnership, joint venture, corporation, limited liability company, trust, association, or other entity operated for profit that may employ individuals or enter into service contracts. "Business" does not include nonprofit organizations.
- (c) "County" means the unincorporated area of the County of Sonoma, any county officer or board, commission, committee or other body, any county department or agency head, and any county employee authorized by the board of supervisors to enter into a contract with a covered employer, as defined under this article.
- (d) "County economic development assistance recipient" means any covered employer, as defined under this article, which receives direct financial assistance from the county in the form of grants, loans, or loan guarantees, in-kind services, waivers of county fees, interests in real property, or other valuable consideration totaling one hundred thousand dollars or more in any twelve-month period.
- 2 (e) "Covered employer" means those persons and entities described in Section 2-376(a) of this article.
- (f) "Employee" means an individual employed by a service contractor or county economic development assistance recipient, as defined under this article, performing direct services during any applicable pay period on work funded-either in whole or in part-pursuant to a service contract, as defined under this article, or in connection with a county economic development assistance agreement, unless said employee spends less than twenty percent (20%) or eight (8) hours per week of his or her work time on work arising from a service contract or in connection with a county economic development assistance agreement, including subcontracts arising thereunder, during the term of the covered service contract or county economic development assistance agreement. "Employee" also includes a county employee, except full or part-time county employees who are in the student aide or seasonal job classifications and employees subject to a bona fide collective bargaining agreement as described in Section 2-376(c)(12).

(g) "Nonprofit" means an organization described in Section 501(c) of the Internal Revenue Code of 1954 or any successor statute that 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 or any successor statute.

(h) "Service contract" means a contract for services, as defined under this article, entered or to be entered into by the county with (i) a business or other for-profit entity that involves an expenditure in excess of twenty-five thousand dollars within any twelve-month period or (ii) a nonprofit entity that involves an expenditure in excess of fifty thousand dollars within any twelve-month period. Where the same nonprofit entity or business or for-profit entity has or will have one or more contract(s) with the county that, cumulatively, involve an expenditure in excess of the applicable threshold within a twelve-month period, each such contract shall be deemed a "service contract" for purposes of this article. For the purposes of this article, the term "service contract" includes franchises where the franchise holder has a franchise to provide services to the county.

The term "service contract" specifically does not include:

1. A contract subject to federal or state laws or regulations that would preclude application of the living wage requirement otherwise applicable pursuant to this article;
2. A contract between the county and another governmental entity;

~~3. A regulatory franchise or a concessions agreement;~~

~~34.~~ A public works contract wherein the prevailing wage requirements of Division 2, Part 7, of the California Labor Code apply, except as provided otherwise in Section 2-376(c)(8);

~~45.~~ Community block grant contracts where the county acts as the fiscal liaison for public entities other than the county.

(i) "Service contractor" means a nonprofit entity or a business or other for-profit entity that enters into a service contract with the county except those contractors who enter into public works contracts governed by the California Public Contracts Code and subject to the prevailing wage requirements of Division 2, Part 7, of the California Labor Code, and except as provided otherwise in Section 2-376(c)(8).

(j) "Services" means any professional, technical, or non-technical services provided under a service contract with the county.

(k) "Subcontractor" means any person or entity, other than an employee, that enters into a contract with a service contractor or a county economic development assistance recipient to assist the service contractor or county economic development assistance recipient in the performance of a service contract or county economic development assistance agreement. The term "subcontractor" specifically includes personnel leasing agencies, temporary employee agencies, and other persons or entities, other than an employee, who supply personnel to a service contractor for the purpose of performing the services covered by a service contract or county economic development assistance agreement.

Sec. 2-376. - Application of this article.

(a) **Covered employers.** The persons and entities described below shall comply with the living wage standards established by this article if they employ more than five (5) employees:

{1} The county, all its agencies, departments, and offices.

{2} For-profit service contractors that receive service contract (s) totaling \$25,000 or more from the county in a twelve-month period.

{3} Subject to the provisions set forth in Section 2-376.5, nonprofit service contractors that receive service contract (s) totaling \$50,000 or more from the county in a twelve-month period.

(4) Nonprofit entities and businesses and other for-profit entities that receive more than \$100,000 in county economic development assistance, including loans or other cash assistance in any twelve-month period.

~~(5) “Employers receiving County leases, concessions, or franchises which employ twenty-five (25) or more employees and have three hundred fifty thousand or more in annual gross receipts”~~

~~(6) Employers providing emergency disaster and prevention related services such as vegetation management and other fire and pandemic related employment.~~

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~~(75) Subcontractors of any of the persons or entities described in subparagraphs {2} through (4), above, provided that: (i) the subcontractors' employees are engaged in county funded services and (ii) the subcontractors have \$50,000 or more in annual gross receipts from all sources.~~

Notwithstanding any provision in this article to the contrary, no entity other than the county shall be deemed a covered employer until they receive a new service contract or county economic development assistance from or through the county after the effective date of this article, as more fully provided in Section 2-391 below.

(b) Exemptions-entities or businesses. The requirements of this article shall not apply to the following entities or businesses:

(1) Government agencies, including, without limitation, cities, other counties, and state agencies;

(2) Service contractors, county economic development assistance recipients, and subcontractors with fewer than six (6) employees;

(3) Nonprofit organizations with fewer than twenty-five (25) employees;

~~(4) Leaseholders leasing property from the county;~~

~~(45) In-patient health and mental health providers, unless the county occupies seventy-five percent or more of their beds.~~

(c) Exemptions-employees. The requirements of this article shall not apply to the following employees:

(1) 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.

(2) An employee employed on a seasonal project which does not exceed ~~thirty (30) days six (6) months~~ in duration.

(3) An employee who is hired as an intern where the intern is receiving academic credit or other non-monetary job training benefits.

(4) An employee who is a student while said employee is actively enrolled in school.

(5) 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.

~~(6) Participants in the Sonoma County Youth Ecology Corps program.~~

~~(67)~~ Participants in the county's prisoner work release program pursuant to the provisions of Article VII of this chapter.

~~(78)~~ Employees of service contractors engaged on county public works projects subject to the requirements of Division 2, Part 7, of the California Labor Code, or any successor statute, when said code requires compensation greater than that required by this article.

~~(89)~~ 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, or any successor statute. This exemption shall apply only during the time when the employee is actually standing by or on-call.

~~(94)~~ Any disabled employee who (i) is covered by a current sub-minimum wage certificate issued to the employer by the U.S. Department of Labor; or (ii) 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.

~~(104)~~ An employee for whom application of the requirements of this article is prohibited by state or federal law.

~~(112)~~ An employee subject to a bona fide collective bargaining agreement where the waiver of the provisions of this article are set forth in clear and unambiguous terms in such an agreement.

(d) Waivers. Waivers may be requested by any covered employer or by the county administrator on his or her own volition.

(i) Request from covered employer. Any covered employer which contends that it is unable to pay all or part of the living wage mandated by this article must submit a written request for a waiver to the county administrator or his or her designee who may recommend a waiver to the board of supervisors. The waiver request shall provide a detailed explanation of the covered employer's particular hardship and shall do all of the following:

(1) Set forth the reasons for the covered employer's inability to comply with the provisions of this article, including a complete cost accounting for the proposed work to be performed under a service contract or in connection with the economic development 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 said covered employer.

(2) Demonstrate that the waiver will further the interests of the county 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.

(ii) Recommendation from county administrator. In addition, the county administrator may independently recommend that the board of supervisors approve waivers, either with or without

conditions, to any of the requirements and regulations set forth in this article where any of the following conditions exist:

- (1) The services to be provided are available from a single source and meeting the requirements of this article would cause that source a demonstrated economic hardship; or
- (2) The exception is necessary to provide emergency services essential to mitigate or prevent possible threats to public safety or public health for a limited period of time; or
- (3) All bidders for the service to be provided would suffer demonstrated economic hardships complying with the requirements of this article and none of the bidders propose that they can comply with those requirements; or
- (4) Any other circumstances that the board of supervisors finds advances the policy underlying the adoption of this article or to be in the public interest.

(iii) Findings. Waivers from the article are disfavored and will be granted only where the balance of competing interests weighs clearly in favor of granting the waiver. The board of supervisors may grant a waiver only upon a finding and determination that:

- (1) The covered employer seeking the waiver has demonstrated economic hardship and the requested waiver will further the interests of the county in providing training positions which will enable employees to advance into permanent living wage jobs or better; or
- (2) The covered employer has demonstrated that one of the requisite conditions set forth in subparagraph (ii) of this subsection (d) exists to justify the grant of a waiver.

No waiver shall 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.

Sec. 2-376.5. - Application of this article to nonprofits.

(a) Phased application. The requirements set forth in this article shall apply to nonprofit entities that employ twenty-five (25) or more employees and shall be phased in over a period of time in accordance with the provisions set forth in this section.

(b) Exemptions-employees. In addition to or in lieu of the exemptions set forth in Section 2-376(c), the requirements of this article shall not apply to the following employees of a nonprofit service contractor:

- (1) An employee employed on a temporary or seasonal project which does not exceed twelve (12) months in duration, including, without limitation, internships where the intern is receiving academic credit or other non-monetary job training benefits.
- (2) An employee employed by the California Conservation Corps or by community conservation corps certified by the California Conservation Corps pursuant to Section 14507.5 of the California Public Resources Code or any successor statute.
- (3) A part-time employee who voluntarily declines full time work for personal reasons (e.g. retired seniors who only want to work a few hours, full-time students, or similar).
- (4) An employee employed in an overnight position where the employee is compensated to engage in employer-authorized sleep-time at the worksite.

(5) An employee whose compensation is funded by a federal program that dictates the wages to be paid the employee.

(c) Nonprofit living wage rate schedule. Nonprofit entities shall pay employees providing services pursuant to a service contract or in connection with a county economic development assistance agreement a living wage as established by Section 2-377 in accordance with the following table:

DATE	Living Wage Without Benefits	Living Wage with Employer Contribution Toward Either Health Benefits or Retirement Benefits	Living Wage with Employer Contribution Toward Both Health Benefits and Retirement Benefits
Effective July 1, 2017	\$13.00	\$11.50	\$10.00
Effective July 1, 2018	\$14.00	\$12.50	\$11.00
Effective July 1, 2019	\$15.00	\$13.50	\$12.00

(d) Bidding preference for voluntary compliance. A five percent bidding preference shall be provided to any nonprofit service contractor who voluntarily complies with the living wage requirements of this article on the same schedule applicable to for-profit service contractors. To receive said bidding preference, the nonprofit service contractor shall submit documentation satisfactory to the purchasing officer certifying that the wages paid by the nonprofit service contractor comply with the requirements of this article. A bidding preference granted pursuant to this subsection (d) shall be applied in accordance with the procedures set forth in the county's local preference policy for services. The bidding preference provided for by this subsection (d) shall automatically expire at 11:59 p.m. on June 30, 2019.

(e) Adjustments. Effective July 1, 2019, the living wage rate paid by nonprofits shall be reviewed by the county administrator and adjusted, as necessary, in accordance with the procedure set forth in Section 2-377, subsection (d).

Sec. 2-377. - Living wage requirements.

(a) Payment of living wage. Covered employers shall pay employees providing services pursuant to a service contract or in connection with a county economic development assistance agreement no less than a living wage as set forth in this article. The living wage requirement imposed by this article shall be binding upon the assignees and successors in interest of any service contractor, county economic development assistance recipient, or subcontractor to which this article applies.

(b) Rate. Covered employers subject to this article shall pay employees no less than a living wage for services financed or supported by county funds for the time those employees are engaged in providing services to or funded by the county. As used in this section, the "living wage" means, as of the effective date of this article, no less than fifteen dollars per hour, if the covered employer does not provide health benefits. The living wage shall be reviewed annually and may be adjusted by the Board as provided in subsection (d) of this section.

(c) Time Off. Employees shall be entitled to at least 22 days off per year for sick leave, vacation, or personal necessity. 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 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 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. ~~(e) Credit for health and retirement benefits. A service contractor who contributes towards the provision of either (i) health care benefits for the employee and his/her dependents or (ii) a retirement plan for the employee and his/her dependents shall have up to one dollar and fifty cents credited toward its compliance with the living wage. A service contractor who contributes towards the provision of both (i) health care benefits for the employee and his/her dependents and (ii) a retirement plan for the employee and his/her dependents shall have up to three dollars credited toward its compliance with the minimum wage. The service contractor, county economic development assistance recipient, or subcontractor must provide written proof of the provision of such benefits to the county purchasing agent or other awarding authority during the procurement or contracting process.~~

(c) Credit for health care benefits: A service contractor or other covered employer designated in Section 376 who contributes towards the provision of health care benefits for the employee and his/her dependents to receive employer-compensated care from a licensed physician or other health care professional, shall have up to one dollar and fifty cents an hour credited toward its compliance with the living wage. The service contractor and other covered employers designated in Section 2-376 must provide written proof of the provision of such health benefits to the county purchasing agent or other awarding authority during the procurement or contracting process.

(d) Adjustments. The county administrator or designee shall annually review the living wage set forth in subsection (a) not later than December 1 to determine whether to recommend that the board of supervisors implement adjustments to the living wage. In making said recommendation, the county administrator shall consider the following fiscal and economic factors: (i) the annual cost of living increase, if any, during the preceding year in the Consumer Price Index for all urban consumers in the San Francisco-Oakland-San Jose Consolidated Metropolitan Statistical Area, as published in October of each year by the U.S. Department of Labor, Bureau of Labor Statistics; (ii) the cost of living increase, if any, granted to all county employees; and (iii) the prevailing financial conditions and general economic health of the County and the economy in general. Any adjustment made to the minimum hourly living wage shall not exceed the lesser of the annual increase in cost of living as measured by said Consumer Price Index or the cost of living increase granted to all county employees. Said increase shall: (i) be adopted by resolution of the board of supervisors, (ii) take effect on January 1 of each year, and (iii) be posted by the county administrator on the county's website for the notice of all county departments, contractors, and subcontractors.

Sec. 2-378. - Bidding preference.

A five percent bidding preference shall be provided to any service contractor who certifies that at least fifty percent of the workforce that will be used to perform the service contract will be

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Sonoma County residents. Said bidding preference shall be applied in accordance with the procedures set forth in the county's local preference policy for services.

Sec. 2-379. - Required language for all bid documents and contracts.

All bid documents, economic development assistance applications, and service contracts shall contain the following paragraph or substantially similar language:

The contractor/franchisee/economic development assistance recipient shall comply with any and all federal, state, and local laws-including, but not limited to the County of Sonoma Living Wage Ordinance-affecting the services provided by this contract/franchise agreement. Without limiting the generality of the foregoing, the contractor/franchisee/ economic development assistance recipient expressly acknowledges and agrees that this contract/franchise/economic development assistance agreement is subject to the provisions of Article XXVI of Chapter 2 of the Sonoma County Code, requiring payment of a living wage to covered employees. Noncompliance during the term of the contract/franchise/economic development assistance agreement will be considered a material breach and may result in termination of the contract/franchise/economic development assistance agreement or pursuit of other legal or administrative remedies.

Sec. 2-380. - Contractor certification and eligibility.

(a) During the term of a service contract or county economic development assistance agreement, the service contractor, county economic development assistance recipient, and any subcontractor shall certify to the county and maintain documentation demonstrating that each employee employed any percentage of time on county financed activities is: (1) being compensated at no less than the living wage rate while working in connection with services provided pursuant to the service contract or in connection with the county economic development assistance agreement, or is otherwise exempt pursuant to the provisions of this article, and (2) for those employees being compensated at the lower rate with benefits specified in Section 2-377, subsection (c), documentation must be maintained demonstrating that each such employee was provided the applicable benefits. Such documentation must be retained for at least two years following completion or termination of the contract. County representatives shall be permitted to review and make copies of such documentation at all reasonable times during performance or following completion or termination of the service contract.

(b) All service contractors, county economic development assistance recipients, and subcontractors who render services covered by the provisions of this article shall furnish to county a certification(s), under penalty of perjury, by the service contractor or county economic development assistance recipient stating that the service contractor or county economic development assistance recipient, and any subcontractor(s), is in full compliance with the provisions of this article. The certification shall be in substantially the following language:

I hereby certify under penalty of perjury, under the laws of the State of California, that the services invoiced have been rendered and that contractor and any subcontractor(s) are in full compliance with the provisions of the County of Sonoma Living Wage Ordinance (Sonoma County Code, Chapter 2, Article XXVI).

(c) Service contractors, county economic development assistance recipients, and subcontractors must provide written notice to each covered employee who is engaged in work pursuant to a service contract or in connection with a county economic development assistance agreement. The notice shall be in the form specified by the county administrator's office and shall set forth ~~specify~~ the living wage rate, minimum health benefit, if applicable, and that an employee has

grievance rights if he/she believes his/her rights under this article are being violated. A copy of the notice must be ~~made provided available~~ to all covered employees, must be posted prominently in languages spoken by at least twenty-five percent (25%) of the workforce, ~~and a copy must be submitted to the awarding agency.~~

~~(d) Service contractors and county economic development assistance recipients covered by this article acknowledge that they are subject to and will be selected in accordance with the responsible bidder provisions set forth in the county's purchasing policies and procedures for goods and services. 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.~~

Sec. 2-381. - Administration of this article.

(a) Responsibility for administration of this article will be shared among awarding authorities, the county purchasing agent, and the county administrator's office. The county administrator's office will be responsible for general oversight of this article and for developing a procedure setting forth how this article is to be applied, and describing complaint and appeal processes for determining compliance with this article.

(b) The county administrator or his/her designee shall have the right to conduct an investigation as to whether a service contractor, county economic development assistance recipient, or subcontractor is complying with the terms of this article. Such investigation shall include the right to audit the books of the service contractor or county economic development assistance recipient and/or subcontractors, if any, and the right to inspect all records of the service contractor or county economic development assistance recipient and/or subcontractor relating to the service contract or county economic development assistance agreement.

(c) The county purchasing agent and all awarding authorities are directed to incorporate appropriate language into all relevant bid documents, requests for proposals, county economic development assistance applications, and similar materials relating to service contracts or county economic development assistance agreements, and into all purchase order and other service contracts, issued, renewed, or extended on or after the effective date of this article, requiring the contractor and any subcontractors to comply with the requirements of this article.

(d) Annually, each awarding authority within the county is directed to submit information to the county purchasing agent regarding the status of service contracts and county economic development assistance agreements within its purview. Commencing on February 1, 2016, and during each subsequent February, the county purchasing agent will prepare and submit a report to the county administrator's office listing those service contracts and county economic development assistance agreements that required payment of a living wage rate pursuant to this article and any information the county administrator or his/her designee deems necessary in order to assess the impact of this article.

Sec. 2-382. - Contract sanctions.

If a service contractor or county economic development assistance recipient violates any provision of this article, the county may take one or more of the following actions:

- (a) Suspend or terminate the service contract or county economic development assistance agreement;
- (b) Require the service contractor or county economic development assistance recipient to pay: (1) any amounts underpaid in violation of this article, and (2) an administrative fee and/or penalty of up to two thousand five hundred dollars to reimburse the county administrator's office for investigation and enforcement, including county counsel's time as a condition of avoiding suspension or termination;
- (c) Recommend to the board of supervisors that a service contractor, county economic development assistance recipient, or subcontractor be barred from award of future county service contracts, county economic development assistance agreements, or subcontracts for a period of time consistent with the seriousness of the violation, not to exceed three years.

Sec. 2-383. - Annual reports.

The county administrator shall provide annual reports to the board of supervisors on the implementation and effect of this article.

Sec. 2-384. - Grievances.

An employee who believes his/her rights have been violated under this article may file a grievance with the county administrator's office within ninety days of the alleged violation. Grievances are to be reviewed within a sixty day period. If the complaint is substantiated then the county may apply any of the following administrative remedies:

- (1) Require the service contractor, county economic development assistance recipient, or subcontractor to pay restitution of the difference in wages paid and the appropriate living wage rate for the complainant and all co-workers similarly affected; the service contractor, county economic development assistance recipient, or subcontractor shall pay such restitution and provide proof to the county administrator of such payment;
- (2) Terminate the existing service contract or county economic development assistance agreement;
- (3) Disqualify the service contractor, county economic development assistance recipient, or subcontractor from contracting with county for a period of up to three years; and/or

(4) Impose an administrative fee to reimburse the county administrator for its investigation and enforcement, including county counsel's time and the imposition of a penalty. The administrative fee and/or penalty shall not exceed two thousand five hundred dollars.

Sec. 2-385. - Employer retaliation prohibited.

No employer shall take an adverse action causing a loss of any benefit of employment, of any contract benefit or any statutory benefit to any employee, who has reported a violation or perceived violation of this article to the board of supervisors, the county administrator's office, an awarding authority, or the county purchasing agent.

Sec. 2-386. - ~~Employee retention Preventing Mass Displacement of Workers During Contract Transitions.~~~~In the event that any service contractor or county economic development assistance contract for an amount greater than \$50,000 is terminated by the county prior to its expiration, any new contract with a subsequent service contractor or county economic development assistance recipient for those same services shall include the following term:~~

~~Contractor/economic development assistance recipient shall make best efforts to offer employment to qualified employees of the prior contractor/economic development assistance recipient for the performance of this contract. Such efforts shall not be required in regard to employees who are (a) exempt under the Fair Labor Standards Act, (b) family members of prior contractor/economic development assistance recipient, (c) employed by prior contractor for less than six months, or (d) convicted of a job related or workplace crime. Upon request by the county, the contractor/economic development assistance recipient shall demonstrate to the satisfaction of the county administrator or designee that contractor/economic development assistance recipient has made good faith efforts to comply with this provision.~~

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 sixty workdays of his/her employment

Sec. 2-387. – Employee remedies.

(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 all remedies available to remedy any violation including, but limited to, the following remedies:

- 1. Back pay payable to all employees who suffered from the employer's violation of this Article;
- 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.

Sec. 2-387. – Employee remedies.

~~This article shall not be construed to limit an employee's rights to bring any legal action for violation of his/her rights under the article. An employee may bring an action against a service contractor, county economic development assistance recipient, or subcontractor in the courts of the state of California for damages caused by an employer's violation of this article and/or injunctive relief, and the employee may be awarded attorneys' fees and litigation expenses if he or she prevails in said action. This article does not authorize an award of costs, expenses, or attorney's fees against the county.~~

Sec. 2-388. - No criminal penalty.

Notwithstanding any provision of this article or any other ordinance to the contrary, no criminal penalties shall attach for any violation of this article.

Sec. 2-389. - 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.

Labor neutrality.

~~Service contractors, economic development assistance recipients, and subcontractors subject to this article shall neither hinder nor further collective bargaining organization or other collective bargaining activities by or on behalf of an employer's employees. However, this restriction shall not apply to any expenditure made in the course of good faith collective bargaining, or to any expenditure made pursuant to obligations incurred under a bona fide collective bargaining agreement.~~

Sec. 2-390. - Procedures for implementation.

The county administrator or his/her designee is hereby authorized to develop procedures to implement and enforce the provisions of this article.

Sec. 2-391. - Effective date.

This article shall apply only to new contracts made after the effective date of this article that are for a term or extended term beginning on or after July 1, 2016. For purposes of this article, the term "new" includes any arrangement entered into after the effective date or the 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. A subcontractor shall be deemed to have received a new service contract through the county when the business to whom it is subcontracting receives a new service contract or economic development assistance.

Section III. Severability. 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 IV. Compliance with CEQA. Adoption and implementation of this ordinance is exempt from the California Environmental Quality Act ("CEQA") pursuant to Section 15061 {b}(3) of the State CEQA Guidelines because it can be seen with certainty that there is no possibility that this ordinance may have a significant effect on the environment. Adoption and implementation of the provisions of the ordinance will not result in any direct physical change to the environment on their own. The County Administrator's Office is directed to file a notice of exemption in accordance with CEQA and the State CEQA Guidelines.

Section V. Inclusion in the Sonoma County Code. It is the intention of the Board of Supervisors that the text in Section II of this ordinance be made a part of the Sonoma County Code and that the text may be renumbered or relettered and the word "ordinance" may be changed to "section," "article," or such other appropriate word or phrase to accomplish this intention.

Section VI. Effective Date and Publication. This Ordinance shall be and the same is hereby declared to be in full force and effect from and after September 10, 2015, and shall be published once before the expiration of fifteen (15) days after 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 introduced on the 8th day of December, 2015, and finally passed and adopted this 15th day of December, 2015, on regular roll call of the members of said Board by the following vote: