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## Marin County

### Section 2.50.010 Short title.

This chapter shall be known as the county of Marin "Living Wage Ordinance." (Ord. 3333 § 1, 2002)

### Section 2.50.020 Findings and purpose.

The board of supervisors finds that the county of Marin is the principal provider of social and health services within the county, especially to persons who are compelled by economic constraints to turn to the county for such services. Employers' failure to pay a living wage to their employees may cause individuals to use such services, thereby placing a burden on the county's limited resources. To alleviate the strain on county services and to help promote within the region an acceptable living standard for working residents, the county is instituting a living wage policy as described herein. (Ord. 3333 § 1, 2002)

### Section 2.50.030 Definitions.

Whenever they appear in this chapter, the following terms shall have the meanings provided in this section, unless it is apparent from the context that a different meaning is intended:

A. "Awarding authority" means the county department, officer or agency that awards or is otherwise responsible for the administration of a service contract.

B. "Contractor" means a person or entity that enters into a "service contract" with the county.

C. "County" means the county of Marin, any county officer or body, any county department or agency head, and any county employee authorized by the board of supervisors to enter into a contract with an employer.

D. "Employee" means an individual who is permanently or temporarily employed by a county contractor or subcontractor performing direct services<sup>1</sup> during any applicable pay period on work funded (in whole or in part) pursuant to a service contract as defined under this chapter. Employee also includes a county employee, except county full or part-time employees who are in the student aide or seasonal job classifications. IHSS providers are also considered employees for the purpose of this chapter. Employee does not include an individual: (1) under the age of twenty-one and a worker classified as a student trainee or intern working through an approved state or academic program; (2) nor does it include anyone, regardless of age, who is providing services to earn academic credit or as part of a formal government approved, time-specific training program (e.g., Marin Conservation Corps trainees); and (3) employee also does not include a person providing volunteer services.

E. "Service contract" means a contract for "services" entered or to be entered into by the county with another person or entity that: (1) involves an expenditure in excess of twenty-five thousand dollars, within a twelve month period; and (2) has a term of at least three months.

Where the same person or entity has or will have two or more contracts with the county that would qualify as service contracts under this definition except that one or more of the contracts does not involve an expenditure in excess of twenty-five thousand dollars within a twelve month period, if the contracts taken cumulatively will involve such an expenditure, each such contract shall be deemed a "service contract."

A "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 chapter;

2. A contract between the county and another governmental entity.

F. "Services" means any professional, technical, or nontechnical services provided under contract with the county.

G. "Subcontractor" means any person or entity, other than an employee, that enters into a contract with a contractor to assist the contractor in the performance of a "service contract." 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 contractor for the purpose of performing the services covered by a "service contract." (Ord. 3333 § 1, 2002)

1 Direct services do not include activity not directly contracted for by the county; for example, if the contract is for providing "counseling," then only those employees providing that counseling are affected. Employees that would not be affected in that scenario would include support staff to those counselors, staff who process payroll or bill for the counselor's time, or staff who supervise or manage those counselors. In another example, if the contract is to provide janitorial services, only those employees providing the janitorial services in county facilities would be affected. Employees who order supplies or repair equipment used in the performance of those services would not be affected.

#### Section 2.50.040 Requirements.

A. Contractors and subcontractors providing services to the county pursuant to a service contract shall pay employees providing services pursuant to the service contract a wage of no less than the living wage set forth in this chapter.

B. The requirements of this section apply to subcontractors of a service contract contractor if the subcontractor employees are engaged in county funded services. (Ord. 3333 § 1, 2002)

#### Section 2.50.050 Living wage rate.

A. The county of Marin, contractors and subcontractors shall pay employees a living wage for services financed by county funds, for the time those employees are engaged in providing services to the county<sup>2</sup>. As used in this section, the "living wage" means no less than nine dollars per hour with health benefits, otherwise no less than ten dollars and twenty-five cents per hour, if the contractor or subcontractor does not provide health benefits.

1. Special living wage rate for in-home support services providers (IHSSP) shall be paid a living wage of eight dollars and fifty cents per hour with health benefits of at least one dollar and twenty-five cents per hour.

B. Health benefits required by this section shall consist of the payment of at least one dollar and twenty-five cents per hour towards the provision of health care benefits for the employee and his/her dependents. The contractor 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. (Ord. 3333 § 1, 2002)

<sup>2</sup> For example if an employee for a service contractor only works on services provided per the county contract(s) fifteen hours per week (of his/her forty hour work week), the contractor shall comply with the requirements of this chapter as it pertains to compensation and/or health benefits for those fifteen hours.

#### Section 2.50.060 Exemptions.

A. Government Entities. This chapter shall not apply to contracts with governmental agencies, including, without limitation, cities, counties and state agencies.

B. In-Patient Health and Mental Health Providers. This chapter shall not apply to in-patient health and mental health providers unless the county of Marin occupies seventy-five percent or more of their beds.

C. Where a contractor or subcontractor is otherwise required to comply with these living wage provisions, the contractor or subcontractor may pay seventy-five percent of the living wage to apprentices or trainees up to their first ninety days of service on the contract. This exception shall only apply to ninety days of service; it cannot be recommenced on subsequent contracts with the same apprentices or trainees. Additionally, where the contractor or subcontractor claims this exemption, it must agree to employ the apprentice or trainee for one year unless the employee is dismissed for good cause. (Ord. 3333 § 1, 2002)

#### Section 2.50.070 Bidding preference.

There shall be a five percent bidding preference to contractors who certify that at least fifty percent of the workforce under the service contract will be Marin County residents. (Ord. 3333 § 1, 2002)

#### Section 2.50.080 Contractual--Proposal language.

All bid documents and service contracts for services, as defined in subsection 2.50.030(F) are to contain the following paragraph or substantially similar language:

This contract is subject to the County of Marin Living Wage Ordinance. The Ordinance requires the payment of a living wage to all covered employees engaged in providing services pursuant to a service contract as defined in Section. 2.50.030 (F). Contractor specifically agrees that should the County of Marin investigate allegations of non-compliance with the Living Wage Ordinance, Contractor shall make available for audits its books and records relating to the service contract, as well as the books and records of its subcontractors and Contractor will make available employees so that the County can interview such employees in furtherance of its investigation.

Misrepresentation during the procurement or contracting process in order to secure the contract will disqualify a bidder or contractor from further consideration in the procurement or contracting process. Failure to comply once a contract has been awarded will constitute a material breach of the contract and may result, among other things, in the suspension or termination of the affected contract and debarment from future County contracting opportunities for a period not to exceed three years.

(Ord. 3333 § 1, 2002)

#### Section 2.50.090 Contractor certification and eligibility.

A. During the term of a service contract, the contractor 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 the living wage rate while working in connection with services provided pursuant to the service contract and (2) for those employees being compensated at the lower rate with health benefits specified in Section 2.50.050, documentation must be maintained demonstrating that each such employee was provided health 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. Contractors shall furnish to the county with each invoice for services rendered a certification(s), under penalty of perjury, by the contractor that the contractor and any subcontractor is in full compliance with the "Living Wage Ordinance" codified in this chapter. 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 Marin "Living Wage Ordinance."

C. Contractors and subcontractors must provide written notice to each covered employee who is engaged in work pursuant to a service contract. The notice shall 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 the Living Wage Ordinance, codified in this chapter, are being violated. A copy of the notice must be made available to all covered employees, must be posted prominently in languages spoken by a large percentage of the workforce, and a copy must be submitted to the awarding agency. (Ord. 3333 § 1, 2002)

#### Section 2.50.100 Administration.

A. Responsibility for administration of this chapter will be shared among awarding authorities, the county purchasing agent, and county administrator's office. The administrator's office will be responsible for general oversight of this chapter and for developing an administrative procedures manual detailing how this chapter is to be applied, and describing complaint and appeal processes for determining compliance with this chapter.

B. The county administrator shall have the right to conduct an investigation as to whether a contractor or subcontractor is complying with the terms of this chapter. Such investigation shall include the right to audit the books of contractor and/or subcontractors and the right to inspect all records of the contractor and/or subcontractor relating to the service contract.

C. The county purchasing agent and all county departments and agencies are directed to incorporate appropriate language into all relevant bid documents, requests for proposals and similar materials relating to "service contracts," and into all purchase order and other service contracts, issued, renewed, or extended on or after the effective date of this chapter, requiring the contractor and any subcontractors to comply with the requirements of this chapter.

D. Annually, each awarding authority within the county is directed to submit information to the county purchasing agent regarding the status of service contracts within its purview. Commencing February 2003, and during each subsequent February, the county purchasing agent will prepare and submit a report to the administrator's office listing those contracts, which required payment of a living wage rate pursuant to this chapter. In order to assess the impact of this chapter the report will include information on the number of employees affected, whether affected employees received health benefits and the cost attributable to the required wage increase. The report will also list any contract, which was exempted, and the reason for the exemption. (Ord. 3333 § 1, 2002)

#### Section 2.50.110 Contract sanctions.

If a contractor violates any provision of this chapter, the county may take one or more of the following actions:

1. Suspend or terminate the contract;
2. Require the contractor to pay: (a) any amounts underpaid in violation of this chapter, and (b) 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;
3. Recommend to the board of supervisors that a contractor or subcontractor be barred from award of future county contracts or subcontracts for a period of time consistent with the seriousness of the violation, not to exceed three years. (Ord. 3333 § 1, 2002)

#### Section 2.50.120 Annual reports.

County administrator will provide annual reports to the board of supervisors on the implementation and effect of the Living Wage Ordinance, codified in this chapter. (Ord. 3333 § 1, 2002)

#### Section 2.50.130 Neutrality in labor relations.

An employer shall not use any consideration received under a service contract to hinder, or to further, organization of, or collective bargaining activities by or on behalf of an employer's

employees, except that this restriction shall not apply to any expenditure made in the course of good faith collective bargaining, or to any expenditure pursuant to obligations incurred under a collective bargaining agreement, or which would otherwise be permitted under the provisions of the National Labor Relations Act. (Ord. 3333 § 1, 2002)

#### Section 2.50.140 Grievances.

An employee who believes his/her rights have been violated under this chapter 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 a number of administrative remedies may be applied including: (a) restitution of the difference in wages paid and the appropriate living wage rate may be required for complainant and all co-workers similarly affected; the contractor or subcontractor shall pay such restitution and provide proof of such payment; (b) termination of existing contract; (c) disqualify contractor from contracting with county for a period of three years; and/or (d) the imposition of 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. (Ord. 3333 § 1, 2002)

#### Section 2.50.150 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 chapter to the board of supervisors, the county administrator's office, an awarding authority, or the county purchasing agent. (Ord. 3333 § 1, 2002)

#### Section 2.50.160 Employee remedies.

This chapter shall not be construed to limit an employee's rights to bring any legal action for violation of his or her rights under the chapter. An employee may bring an action against a contractor or subcontractor in the courts of the state of California for damages caused by an employer's violation of this chapter. This chapter does not authorize an award of costs, expenses, or attorney's fees against the county of Marin. (Ord. 3333 § 1, 2002)

#### Section 2.50.170 No criminal penalty.

Notwithstanding any provision of this chapter or any other ordinance to the contrary, no criminal penalties shall attach for any violation of this chapter. (Ord. 3333 § 1, 2002)

#### Section 2.50.180 Procedures for implementation.

The county administrator is hereby authorized to develop procedures to implement and enforce the provisions of this chapter. (Ord. 3333 § 1, 2002)

#### Section 2.50.190 Exceptions.

Following a review and recommendation by the county administrator, the board of supervisors may approve exceptions with or without conditions to any of the requirements and regulations set forth in this ordinance based upon the following findings:

- A. The services to be provided are available from a single source and that source has significant barriers to meeting the requirements of the ordinance; or
  - B. 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
  - C. All bidders for the service to be provided have significant barriers to meeting the requirements of the ordinance and none of the bidders propose that they can comply with the requirements of the ordinance; or
  - D. Any other circumstances that the board of supervisors finds to be in the public interest.
- (Ord. 3333 § 1, 2002)

#### Section 2.50.200 Effective date.

This chapter shall apply only to new contracts or contract extensions or renewals made after the effective date of this chapter that are for a term or extended term beginning on or after July 1, 2002. (Ord. 3333 § 1, 2002)