

ORDINANCE NO. .

BOARD OF SUPERVISORS, COUNTY OF SAN MATEO STATE OF CALIFORNIA

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ORDINANCE AMENDING AND RESTATING CHAPTER 2.88 OF TITLE 2 OF THE SAN MATEO COUNTY ORDINANCE CODE ENACTING A LIVING WAGE ORDINANCE

The Board of Supervisors of the County of San Mateo, State of California, **ORDAINS** as follows:

Chapter 2.88 of Title 2 of the San Mateo County Ordinance Code, “Living Wage Ordinance Pilot Program,” is amended and restated in its entirety as follows:

Chapter 2.88 – LIVING WAGE ORDINANCE

2.88.010 Findings and purpose

The Board of Supervisors finds and determines:

- (a) The San Francisco Bay Area, including San Mateo County, has a higher relative cost of living than reflected in the national and state minimum wage standards;
- (b) San Mateo County awards contracts to employers to provide services to the public and the County government;
- (c) On January 1, 2017, the Board adopted Ordinance No. 4764 establishing a five-year Living Wage Pilot Program, which was extended through June 30, 2022, to require a living wage for contracts issued by San Mateo County.
- (d) After consultation with nonprofit agencies and other appropriate stakeholders, this Board has determined that the use of San Mateo County funds to promote a living wage improves the quality of services to the County and the public by ensuring contractors have access to qualified employees and are able to retain qualified employees, and improves the quality of life for residents of the County and employees of County contractors;
- (e) A permanent policy requiring payment of a living wage is consistent with other San Mateo County programs designed to meet the employment and economic development needs of lower- income workers;
- (f) This Board does, accordingly, find and declare a need for the Living Wage ordinance establishing a permanent living wage requirement for contracts issued by San Mateo County.

2.88.020 Definitions

- (a) **“Contract Awarding Authority”** means the Board of Supervisors or the head of the department or agency authorized by the Board of Supervisors to enter into contracts on behalf of the County.
- (b) **“Contractor”** means a party that enters into a Covered Contract with the County.
Contractor does not mean:
 - 1. Government entities, including cities, counties, and state agencies.
- (c) **“County”** means the County of San Mateo.
- (d) **“Covered Contract”** means a legal agreement between the County and a Contractor for the provision of Services entered into on or after April 1, 2017.
 - 1. Where one entity has multiple contracts with the County, only those contracts that are Covered Contracts are subject to this chapter.
 - 2. Legal agreements for the exclusive use of real property owned by the County, including, without limitation, any lease, concession, franchise, or easement agreement, are not Covered Contracts.
- (e) **“Covered Employee”** means any employee permanently or temporarily employed by a Contractor or Subcontractor to provide Services under a Covered Contract. Covered Employee does not mean:
 - 1. Any person providing services to earn academic credit;
 - 2. Any person providing uncompensated volunteer services;
 - 3. Any person working toward state licensure or professional accreditation sanctioned by a public entity or a recognized licensure agency;
 - 4. Any person working as an election day worker;
 - 5. Any disabled person covered by a current sub-minimum wage certificate issued to the Contractor or Subcontractor by the United States Department of Labor, or any person who would be covered by such certificate but for the fact the Contractor or Subcontractor is paying a wage equal to or higher than the minimum wage;
 - 6. Any person employed to provide In-Home Supportive Services;
 - 7. The County Executive’s Office shall have discretion to exclude certain additional categories of employees from the definition of Covered Employee when in the best interest of the County to do so.

- (f) **“CPI-U”** means the consumer price index for urban consumers for the San Francisco-Oakland-Hayward, CA metropolitan statistical area, as determined by the United States Department of Labor, Bureau of Labor Statistics.
- (g) **“Living Wage”** means the wage rate specified by this chapter.
- (h) **“Nonprofit Organization”** refers to a nonprofit corporation, duly organized, validly existing, and in good standing under the laws of the jurisdiction of its incorporation and (if a foreign corporation) in good standing under the laws of the State of California, which corporation has established and maintains a valid nonprofit status under Section 501(c)(3) of the United States Internal Revenue Code of 1986, as amended, and all rules and regulations promulgated under such Section.
- (i) **“Services”** mean any professional, technical, or non-technical services specified in a legal agreement with the County. Services do not include the provision of goods, products, information technology programs and systems, chattels, or real estate.
- (j) **“Sole Source”** means only one entity has been identified as capable of providing and willing to provide the services sought by the County.
- (k) **“Subcontractor”** means a party, other than an Employee, that agrees to assist a Contractor in providing Services under a Covered Contract.
- (l) **“Wage”** means a Covered Employee’s hourly wage or hourly wage equivalent. For a full-time employee, hourly wage equivalent is determined by dividing two weeks of salary by eighty (80).

2.88.030 Covered Contract Requirements and Certification

Every Covered Contract shall provide as follows:

- (a) Contractors and Subcontractors providing Services to the County shall pay Covered Employees no less than the Living Wage.
- (b) Failure of a Contractor or Subcontractor to comply with the foregoing requirement shall constitute a material breach of the terms of the Covered Contract.
- (c) If the Contractor or Subcontractor fails to cure such breach within thirty (30) days after receiving written notice from the County, the County shall have the right to pursue any rights or remedies available under the terms of the Covered Contract or under applicable law.
- (d) Contractor shall include a certification in the Covered Contract stating Contractor and all of its Subcontractors are and will remain in full compliance with the

requirements of the Living Wage ordinance. The certification shall be in substantially the following language:

As required by Chapter 2.88 of the San Mateo County Ordinance Code, Contractor certifies all contractor(s) and subcontractor(s) obligated under this contract shall fully comply with the provisions of the County of San Mateo Living Wage Ordinance ("LWO"), including, but not limited to, paying all Covered Employees the current Living Wage and providing notice to all Covered Employees and Subcontractors as required under the Program.

- (e) During the term of a Covered Contract, the Contractor or Subcontractor shall maintain documentation demonstrating every Covered Employee is being paid the Living Wage while providing Services pursuant to the Covered Contract. Such documentation must be retained for at least two (2) years following completion or termination of the Covered 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 Covered Contract.
- (f) The County may conduct audits of Contractors and Subcontractors to ensure compliance with this Ordinance. For purposes of this Ordinance, audits shall be:
 - 1. Noticed in advance in writing and limited in scope to ascertain whether Covered Employees are paid the required Living Wage;
 - 2. Accomplished by examination of pertinent records within a reasonable period of time after such written notice; and
 - 3. Limited to one audit per Contractor or Subcontractor every year for the duration of a Covered Contract.
- (g) Contractor shall provide the County access to pertinent records after receiving a written request to do so and being provided at least five (5) business days to respond.
- (h) Contractor shall promptly notify the Contract Awarding Authority of any Subcontractors performing Services and shall certify to the Contract Awarding Authority that Subcontractors have been notified of obligations under this chapter.
- (i) Contractor shall keep itself informed of the current Living Wage and must provide written notice to Covered Employees of the current Living Wage Rate. The notice shall specify the Living Wage and state that Covered Employees have grievance rights if they believe a Contractor or Subcontractor is failing to comply with the Living Wage Ordinance. Contractors and Subcontractors must provide such notice in writing to all

Covered Employees, in all languages necessary to reasonably ensure all Covered Employees receive effective written notice pursuant to Section 2.88.030. A copy of such notice must be submitted to the Contract Awarding Authority in the manner directed by the Contract Awarding Authority.

- (j) Nothing in this section shall be construed to interfere with the authority of the County to investigate any report of an alleged breach of contract.

2.88.040 Living Wage Rate

The Living Wage shall be set and adjusted as follows:

- (a) As of July 1, 2022, the Living Wage shall be \$18.61.
- (b) The Living Wage shall increase annually at the same rate as the CPI-U for San Francisco-Oakland-Hayward, CA then in effect.
- (c) A change in Living Wage based on CPI-U shall not be negative and shall not exceed three-and-one-half percent (3.5%).

2.88.050 Exclusions and Exemptions from Covered Contracts

- (a) The term Covered Contract shall exclude:
 - 1. Contracts for “public works” as defined under California Labor Code Sections 1720 and 1720.2 and subject to the payment of prevailing wages under the California Labor Code.
 - 2. Any agreement in which the County serves only as a fiscal agent and the contract is a 100% pass-through of state or federal funds.
- (b) The Contract Awarding Authority may exempt from the requirements of this Chapter 2.88 an agreement that would otherwise be a Covered Contract, when it is in the best interest of the County to do so, including for the following reasons:
 - 1. Upon review and approval of an exemption request by the Contractor or Subcontractor. Exemption requests are to be submitted by the Contractor or Subcontractor to the Contract Awarding Authority;
 - 2. A contract amendment or award of a contract is necessary to respond to an emergency;
 - 3. The Contractor is a Sole Source;
 - 4. No contractors willing or able to comply with the Living Wage Ordinance are capable of providing services that respond to the County’s requirements;
 - 5. Compliance with the Living Wage Ordinance would be inconsistent with the terms of a grant, subvention, or agreement with a public agency; or
 - 6. The County is purchasing services through a cooperative or joint purchasing agreement.

2.88.060 Employee Remedies

- (a) This chapter shall not be construed to limit a Covered Employee's rights to bring any legal action for violation of the Covered Employee's rights under this chapter or any other applicable law. A Covered Employee may bring an action against a Contractor or Subcontractor in the courts of the State of California for damages caused by a Contractor's or Subcontractor's violation of this chapter. The Court shall award reasonable attorneys' fees and costs to an employee who prevails in any such action.
- (b) This chapter does not authorize an award of costs, expenses, or attorney's fees against the County.
- (c) This chapter does not confer any rights upon any party other than the Board of Supervisors or its designees to bring an action seeking the cancellation or suspension of a County contract.
- (d) Covered Employee Complaint Process: In addition to judicial remedies available to Covered Employees, individuals may submit a complaint regarding alleged violations of the Living Wage Ordinance by submitting a completed complaint form, including copies of all documents supporting the allegation, to the Purchasing and Procurement Division of the County Human Resources Department. The County shall provide complaint forms in English and Spanish.

2.88.070 Employer Retaliation Prohibited

Contractors and Subcontractors shall not discharge, reduce compensation to, or otherwise retaliate against any employee for:

- (a) Complaining to the County with regard to the Contractor's or Subcontractor's compliance or anticipated compliance with this Chapter;
- (b) Opposing any practice proscribed by this Chapter;
- (c) Participating in proceedings related to this Chapter; or
- (d) Seeking to assert or enforce any rights under this Chapter by lawful means.

2.88.080 Suspension of the Living Wage Ordinance

The Board of Supervisors may suspend the Living Wage Ordinance if it determines it is in the best interests of the County for reasons including, but not limited to, suspension by the State of California of the statewide minimum wage phase-in process.

2.88.090 Powers and duties of the County Executive

The County Executive's Office shall have the authority to:

- (a) Adopt policies and procedures to effectively implement this Chapter;
- (b) Determine and recommend to the Board of Supervisors for final decision the imposition of appropriate sanctions for violation of this Chapter including but not limited to:

1. Disqualification of the Contractors or Subcontractors from bidding on or being awarded a County contract for a period of up to five (5) years;
 2. Contractual and civil remedies, including but not limited to termination of contract.
- (c) Allow for remedial action after a finding of noncompliance, as specified by rule;
- (d) As soon as practicable after July 1, 2024, and every two years thereafter, the County Executive or the County Executive's designee(s) shall report to the Board of Supervisors regarding the implementation and the operation of the Living Wage Ordinance. Prior to providing such report, the County Executive or the County Executive's designee(s) shall consult with nonprofit agencies and other appropriate stakeholders impacted by the Living Wage Ordinance set forth in Chapter 2.88 of the San Mateo County Ordinance Code; and
- (e) Perform such other duties as may be required or necessary to implement the purposes of this chapter.

SECTION 2. SEVERABILITY. If any provision(s) of this ordinance is declared invalid by a court of competent jurisdiction, it is the intent of the Board of Supervisors that such invalid provision(s) be severed from the remaining provisions of the ordinance and that those remaining provisions continue in effect.

SECTION 3. EFFECTIVE DATE. This Ordinance shall be effective on July 1, 2022.

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