

ORDINANCE NO. _____
ORDINANCE OF THE MARIN COUNTY BOARD OF SUPERVISORS
TO AMEND MARIN COUNTY CODE SECTION 2.50.050 TO:
1) ADJUST THE MARIN COUNTY LIVING WAGE RATE BY \$0.50 PER HOUR AND
2) INCLUDE A COST OF LIVING ADJUSTMENT (COLA) COMPONENT

WHEREAS, Chapter 2.50 of the Marin County Code was established in 2002 in recognition of the fact that employers' failure to pay a living wage to their employees may cause individuals to use County services for relief, as the County of Marin is the principal provider of social and health services within the County, thereby placing a burden on the County's limited resources; and

WHEREAS, the Marin County Board of Supervisors therefore implemented the Living Wage Ordinance, effective July 1, 2002, to alleviate strain on County services, and to help promote within the region an acceptable living standard for working residents; and

WHEREAS, the County of Marin now recognizes that a living wage that is not periodically adjusted to account for change in the cost of living does not remain a living wage in real dollar terms over time; and

WHEREAS, the County Administrator recommends an increase in the current living wage rate in the amount of \$0.50 per hour, which is commensurate with the approximate change in the Consumer Price Index for all urban consumers in the San Francisco-Oakland-San Jose area, commonly referred to as the "Bay Area CPI," since the ordinance became effective in July, 2002; and

WHEREAS, the County Administrator further recommends that a cost of living adjustment (COLA) component be included in the ordinance to automatically adjust the living wage rate annually based upon the change to the Consumer Price Index for all urban consumers in the San Francisco-Oakland-San Jose, CA area, as published in October of each year by the U.S. Department of Labor, Bureau of Labor Statistics, beginning January 1, 2007, and effective each January thereafter, rounded to the nearest 5 cent increment; and

WHEREAS, by adoption of this Ordinance, the Board of Supervisors of the County Marin hereby amends Section 2.50.050 (a) and (a)(1) of the Marin County Code to increase the living wage rate by \$0.50 per hour, and creates Section 2.50.050 (c) to include a cost of living adjustment (COLA) component to automatically adjust the living wage rate annually based upon the annual change to the Consumer Price Index in the San Francisco-Oakland-San Jose area as published in October of each year.

NOW THEREFORE, THE BOARD OF SUPERVISORS OF THE COUNTY OF MARIN HEREBY ORDAINS AS FOLLOWS:

Chapter 2.50 of the Marin County Municipal Code is hereby amended in its entirety to read as follows:

"Chapter 2.50

"LIVING WAGE" ORDINANCE

Sections:

- 2.50.010 Short Title.**
- 2.50.020 Findings And Purpose.**
- 2.50.030 Definitions.**
- 2.50.040 Requirements For Payment Of Living Wage.**
- 2.50.050 Living Wage Rate.**
- 2.50.060 Exemptions.**
- 2.50.070 Bidding Preferences.**
- 2.50.080 Contractual/Proposal Language.**
- 2.50.090 Contractor Certification & Eligibility.**
- 2.50.100 Administration Of Ordinance.**
- 2.50.110 Contract Sanctions.**
- 2.50.120 Annual Reports.**
- 2.50.130 Neutrality In Labor Relations.**
- 2.50.140 Grievances.**
- 2.50.150 Employer Retaliation Prohibited.**
- 2.50.160 Employee Remedies.**
- 2.50.170 No Criminal Penalty.**
- 2.50.180 Procedures for Implementation.**
- 2.50.190 Exceptions**
- 2.50.200 Effective Date.**

Section 2.50.010 Short Title.

This Chapter shall be known as the County of Marin “Living Wage Ordinance.”

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.

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 recommends or is otherwise responsible for the administration of a service contract.
- (b) “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.

- (c) “Contractor” means a person or 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 wherein the prevailing wage applies.
- (d) “Employee” means an individual who is permanently or temporarily employed by a County contractor or subcontractor performing direct services¹ 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 subject to this ordinance.

Employee does not include an individual who is (1) A worker classified as a student trainee or intern working through an approved State or academic program or working towards State Licensure or a professional accreditation sanctioned by a public entity or recognized licensure agency; (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) “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.”
- (f) “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 (\$25,000), within the County’s fiscal year (July 1st through June 30th); 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 (\$25,000) within a fiscal year, 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.

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.

- (3) A Public Works contract wherein the prevailing wage applies.
 - (4) Community Block Grant contracts where the County of Marin acts as the fiscal liaison for public entities other than the County.
- (g) “Services” means any professional, technical, or non-technical services provided under contract with the County.

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.

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 County². As used in this section, the “living wage” means no less than nine dollars and fifty cents (\$9.50) per hour with health benefits, otherwise no less than ten dollars and seventy-five cents (\$10.75) 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 nine dollars (\$9.00) per hour with health benefits, or if health benefits are not provided the IHSSP shall be paid \$10.25 per hour.
- (b) Health benefits required by this section shall consist of the payment of at least one dollar and twenty-five cents (\$1.25) 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.
- (c) The wage rates required in Section 2.50.050 (a) and (a)(1) shall be adjusted annually, effective January 1, to reflect the increase 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. The adjustment shall be rounded to the nearest 5 cent increment.

Section 2.50.060 Exemptions.

² For example if an employee for a service contractor only works on services provided per the county contract(s) 15 hours per week (of his/her 40 hour work week), the contractor shall comply with the requirements of this ordinance as it pertains to compensation and/or health benefits for those 15 hours.

- (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 75% 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 75% of the living wage to apprentices or trainees up to their first 90 days of service on the contract. This exception shall only apply to 90 days of service; it cannot be re-commenced 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.

Section 2.50.070 Bidding Preference.

There shall be a 5% bidding preference to contractors who certify that at least 50% of the workforce under the service contract will be Marin County residents.

Section 2.50.080 Contractual/Proposal Language.

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

“The contractor shall comply with any and all federal, state and local laws (including, but not limited to the County of Marin Nuclear Free Zone and Living Wage Ordinance) affecting the services provided by this contract.”

Section 2.50.090 Contractor Certification & 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 County for services rendered a certification(s), under penalty of perjury, by contractor that the contractor and any subcontractor is in full compliance with the provision of the County of Marin “Living Wage Ordinance.” 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 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.

Section 2.50.100 Administration Of Ordinance.

- (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 a procedure setting forth 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 Ordinance. 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 and any information the County Administrator's office deems necessary in order to assess the impact of this Chapter

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 (\$2,500) 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.

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.

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.

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 (90) days of the alleged violation. Grievances are to be reviewed within a sixty (60) 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 (\$2,500).

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.

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/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.

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.

Section 2.50.180 Procedures for Implementation.

The County Administrator is hereby authorized to develop procedures to implement and enforce the provisions of this ordinance.

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.

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 January 1, 2006.

SECTION II. Severance Provision. If any section, subsection, sentence, clause, phrase or portion of this Ordinance is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portion of this Ordinance or any amendments thereto. The Board of Supervisors hereby declares that it would have adopted this Ordinance, and each section, subsection, sentence, clause, phrase or portion thereof, irrespective of the fact that any one or more section, subsection, sentence, clauses phrases or portions be declared invalid or unconstitutional.

SECTION III. Effective Date. This ordinance shall be and is hereby declared to be in full force and effect as of January 1, 2006 and shall be published once before the expiration of fifteen (15) days after its passage, with the names of the supervisors voting for and against the same in the MARIN INDEPENDENT JOURNAL, a newspaper of general circulation published in the County of Marin."

THE FOREGOING ORDINANCE was first read at a regular meeting of the Marin County Board of Supervisors on the 1st day of November, 2005, and was passed and adopted at a regular

meeting of the Marin County Board of Supervisors on the 22nd day of November, 2005 by the following vote:

AYES: SUPERVISORS

NOES: NONE

ABSENT: NONE

PRESIDENT, BOARD OF SUPERVISORS

ATTEST:

CLERK