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(ITEM) A resolution/ordinance by Supervisors Bowen, Rainey, and Johnson, Jr., enacting a minimum living wage ordinance for service, concession, lease and financial assistance agreements publicly funded by Milwaukee County and amending Chapter 32.09(17) of the Milwaukee County Code of General Ordinances, by recommending adoption of the following:

AN AMENDED RESOLUTION/ORDINANCE

WHEREAS, living and minimum wage ordinances have been established in the United States for over two decades with the City of Baltimore taking the lead in 1994; and

WHEREAS, more than 140 municipalities have adopted living or minimum wage ordinances in the United States including Dane County, the City of Madison, and the City of Milwaukee; and

WHEREAS, a 2010 study by Ken Jacobs and T. Williams Lester suggests that raising job standards does not reduce jobs in a city; the study compared 15 cities that impose such ordinances against similar cities that did not and found no direct negative effects on job demand; and

WHEREAS, Milwaukee County is the most populated county in the State of Wisconsin with the largest ethnically diverse population in the State; and

WHEREAS, the Census Bureau in 2011 indicates that 41% of African Americans and 35% of Latinos living in Milwaukee are impoverished; and

WHEREAS, the Internal Revenue Service (IRS) reports in 2012 that single parent tax filers with dependents in inner city Milwaukee had a 26% decrease in state earned income tax credits in 2011 as a result of state legislation lowering the credit for "working poor" families with 2 or more children; and

WHEREAS, as of April 2012, 275,058 Milwaukee County residents and 558,158 residents in the balance of Wisconsin were enrolled in the Food Share program; and

WHEREAS, in 2005, Wisconsin Chapter 104, Minimum Wage Law, was created and repealed any city, village, town, or county living wage ordinances in place before June 16 of that year; and

WHEREAS, Wisconsin Chapter 104 excludes from its provisions, public works projects governed by prevailing wage rates, service contracts, and any work funded by financial assistance from a city, village, town, or county; and

46 WHEREAS, the rates of impoverished population, cost of living, and the
47 increased number of working poor in Milwaukee County are a matter of local concern;
48 now, therefore,
49

50 BE IT RESOLVED, that the Milwaukee County Board of Supervisors hereby
51 requires all service, leases, and economic development financial assistance
52 agreements funded by Milwaukee County to follow the procedures established by this
53 ordinance:
54

55 **AN ORDINANCE**
56

57 The Milwaukee County Board of Supervisors ordains as follows:
58

59 **Section 1. Chapter 111 of the Milwaukee County General Ordinances is hereby created**
60 **as follows:**
61

62 **111.01. Policy.**
63

64 It shall be the policy of Milwaukee County that certain contractors,
65 subcontractors, lessees and recipients of financial assistance doing business
66 with the County shall be subject to the requirements of this chapter, a minimum
67 wage ordinance, as below. This minimum wage ordinance shall apply to all
68 contractors, subcontractors, and recipients of financial assistance as defined
69 herein party to an agreement covered under this chapter with any Milwaukee
70 County unit, division, office, department, or sub-unit thereof, and Milwaukee
71 County quasi-public entity including:

- 72 (a) A service contract as defined in MCGO 32.20(17), or an agreement to
73 provide personal care and supportive home care to persons with
74 disabilities or the frail elderly provided by agencies that exclusively
75 contract with Milwaukee County, involving an amount greater than or
76 equal to \$20,000; and,
- 77 (b) A lease agreement involving County funding or a public asset involving
78 an amount greater than or equal to \$20,000; and,
- 79 (c) A concession agreement involving an amount greater than or equal to
80 \$20,000; and,
- 81 (d) Economic development financial assistance involving an amount of
82 financial assistance from the County greater than or equal to \$1,000,000.
83

84 **111.02. Definitions.**
85

86 For all agreements covered under this chapter, the following definitions
87 shall apply:

- 88 (a) *Service Contract* means an agreement between the County or related
89 entity and another party that provides a set of services defined in MCGO
90 32.20(17), as well as personal care, or supportive home care provided to
91 persons with disabilities or the frail elderly by preferred provider.

- 92 (1) Service contracts do not include:
93 i. Purchase of goods or commodities or its delivery
94 ii. Equipment lease and maintenance
95 iii. Professional services contracts
96 iv. Contracts with any school district, municipality, or any
97 other governmental unit
98 v. Contracts in which State or Federal funder has a prevailing
99 wage requirement
100 vi. Contracts for Family Care *other than* preferred provider
101 agencies that exclusively contract with Milwaukee County to
102 provide personal care and supportive home care.
103 vii. Contracts procured under Milwaukee County Ordinance
104 Chapter 46.

105 (b) *Concession Agreement* means an agreement between the County or
106 related entity and another party to allow the organization exclusive or semi-
107 exclusive right to operate a particular enterprise usually making use of
108 some resource of the County or related entity requiring payment to the
109 County or related entity fees, rent, or percentage of revenues derived from
110 the particular enterprise; airport concessions are included as defined by
111 Milwaukee County Ordinance 42.02(1)(c). Airport concessionaires are
112 exempted from the provisions of this chapter for any contracts executed
113 prior to January 1, 2017.
114
115

116 (c) *Lease* means an agreement between the County or related entity as
117 lessor and another party as lessee to provide exclusive use of real
118 property, a particular asset or resource in exchange for rental payments or
119 a fee, and which involves financial assistance consistent with Wisconsin
120 Chapter 104.001(3). The following leases are exempted:

121 (1) *Cultural institutions*: Leases with institutions including the Fund
122 for the Arts/CAMPAC, Milwaukee County Historical Society,
123 Milwaukee County Federated Library System, Marcus Center,
124 Milwaukee Public Museum, Charles Allis and Villa Terrace Museums,
125 War Memorial Center, Milwaukee Art Museum, and any other cultural
126 organization that receives contributions from Milwaukee County.
127

128 (2) *Non Profit*: Leases with nonprofit corporations, unless the nonprofit
129 corporation passes through to a for-profit entity an amount greater than or
130 equal to \$1,000,000 in which case the for-profit entity shall be subject to
131 this chapter as a subcontractor as in 111.03(1)(b).
132

133 (3) *Other Local Units of Government*: Leases with any school
134 district, municipality or any other governmental or quasi-
135 governmental unit.
136

137 (d) *Economic Development Financial Assistance* means any form of
138 assistance, consistent with Wisconsin Chapter 104.001(3), of an
139 amount greater than or equal to \$1,000,000, provided to a recipient
140 directly by the County in the form of loan rates below those
141 commercially available, loan forgiveness or guarantees, bond
142 financing or forgiveness, leases of land or real property or other
143 assets for an amount below fair market value, or grants of
144 land or real property, or other valuable consideration, or any other
145 assets provided to develop real property, to foster economic
146 development or to create or retain jobs or for other similar purposes
147 which inure to the benefit of the recipient. The following are
148 exempted:

149
150 (a) *Non-Profit Corporations*: Economic Development Financial
151 Assistance provided to nonprofit corporations, unless the nonprofit
152 corporation passes through to a for-profit entity an amount greater
153 than or equal to \$1,000,000 in which case the for-profit entity shall
154 be subject to this chapter as a subcontractor as in 111.03(1)(b).
155

156 (b) *Cultural Institutions*: Economic Development Financial Assistance
157 to the Fund for the Arts/CAMPAC, Milwaukee County Historical
158 Society, Milwaukee County Federated Library System, Marcus
159 Center, Milwaukee Public Museum, Charles Allis and Villa Terrace
160 Museums, War Memorial Center, Milwaukee Art Museum, and any
161 other cultural organization that receives contributions from
162 Milwaukee County.
163

164 (c) *Other Units of Government*: Economic Development Financial
165 Assistance provided to any school district, municipality or any
166 other governmental or quasi-governmental unit.
167

168 (d) *Sale of land/assets*: Sales of land or real property assets.
169

170 (e) *Living wage means* a minimum hourly wage rate equal to 100%
171 of the poverty income level set forth annually by the U.S.
172 Department of Health and Human Services for a family of four (4)
173 divided by 2,080 hours.
174

175 (f) *Contractor* means a person or an entity that has a service
176 contract, lease, or concession agreement with Milwaukee County
177 covered under this Chapter.
178

179 (g) *Subcontractor* means a person or an entity:
180

181 (1) Having an agreement or arrangement with a contractor to

182 furnish a service for the benefit of Milwaukee County that would be
183 covered under this chapter; or,

184
185 (2) Having an agreement or arrangement with a contractor to
186 operate on a property that is subject to a lease or concession
187 agreement with Milwaukee County that would be covered under this
188 chapter; or,

189
190 (3) Purchasing or leasing from a recipient of financial assistance;
191 or, managing or operating an enterprise employing people on the
192 premises of property developed or improved as a result of financial
193 assistance.

194
195 *(h)Recipient* means a person or entity receiving economic
196 development financial assistance as defined in 111.02 (d) but does
197 not include a person or entity indirectly benefiting from incidental
198 effects of County policies, regulations or ordinances.

199
200 **111 .03. Standards Requirement**

201
202 (1) All employees performing part or full time work for a contractor,
203 subcontractor, lessee or recipient of economic development financial
204 assistance covered under this chapter and all direct employees of the
205 County, shall be paid the minimum wage rate defined in Chapter
206 111.02(e), except as provided in sub-section (c) of this section.

207
208 (a)Tipped employees, employees paid on commission, or employees
209 whose compensation consists of more than hourly wages shall be
210 paid an hourly wage, when coupled with the other compensation, that will
211 at least equal the minimum wage rate. The value of meals
212 or lodging shall be calculated pursuant to Chapter DWD 272,
213 Wisconsin Administrative Code.

214
215 (b)Contractors and subcontractors as defined in Chapter 111.02(g) (1)
216 and (2) shall be subject to the requirements of this chapter for the
217 duration of the agreement with the County. Employees of
218 contractors and subcontractors shall be covered under the requirements
219 of this chapter for the hours worked in performance of covered
220 agreements.

221
222 (c)Recipients of economic development financial assistance and
223 subcontractors as defined in Chapter shall:

224
225 i. Be subject to the requirements of this chapter for a period
226 equal to one year for every \$100,000 provided in economic
227 development financial assistance, rounded to the nearest whole year; and

228 employees of such recipients and subcontractors shall be covered under
229 the requirements of this chapter for work performed on the premises of a
230 project benefiting from financial assistance.

231
232 (d) Minimum wage rate requirement will be updated annually on the
233 last business day of February.

234
235 (2) Excluded employees:

236
237 (a) The provisions in this chapter shall exclude:

- 238
- 239 i. Student learners as defined by Wisconsin Chapter
 - 240 104.01(7); and,
 - 241 ii. Employees of sheltered workshops as defined by
 - 242 Wisconsin Chapter 104.01 (6); and,
 - 243 iii. Employees under the age of 18; and,
 - 244 iv. Employees not performing work under a Milwaukee
 - 245 County service contract, concession, or lease; and,
 - 246 v. Employees not working in a financially assisted
 - 247 economic development project; and,
 - 248 vi. Interns and seasonal employees; and,
 - 249 vii. Volunteers receiving stipends; and
 - 250 viii. Any other category of employee excluded under
 - 251 Wisconsin Chapter 104.
 - 252 ix. Employees of a contractor, subcontractor,
 - 253 concessionaire or recipient of financial assistance
 - 254 otherwise covered under this chapter where the
 - 255 employer otherwise subject to the provisions of this
 - 256 chapter employs no more than 20 employees and where
 - 257 the employer otherwise subject to the provisions of this
 - 258 chapter is not an affiliate or subsidiary of another
 - 259 business entity dominant in its field of operation.
 - 260 x. Employees of contractors, subcontractors, or a recipient
 - 261 of financial assistance who provide residential services
 - 262 such as Community Based Residential Facilities, Adult
 - 263 Family Homes, Residential Community Apartment
 - 264 Complexes, and Supportive and Independent living.
 - 265 xi. Employees of a member who receives personal care and
 - 266 supportive home care through a self-directed
 - 267 service program model in Milwaukee County.

268 (b) The requirements of this section may be modified or waived as regard
269 employees who are covered by a collective bargaining agreement
270 between the employer and a bona fide union, where the parties to such
271 collective bargaining agreement expressly specify their intent in the
272 agreement.

273

274 **111.04. Contracting Requirements**

275

276 (1) Department heads or their designee shall include requirements for
277 compliance with this Chapter in:

278 (a) Every bid, request for proposal, or request for qualifications for
279 services, leases, concessions, or economic development financial
280 assistance covered under this Chapter; and,

281 (b) All new service, lease, and concession agreements, and all new
282 agreements involving financial assistance; and,

283 (c) All renewals or amendments of agreements for services, leases,
284 concessions, or economic development financial assistance covered
285 under this Chapter after the effective date of this ordinance.

286

287 (2) Contractors, subcontractors, and recipients of financial assistance must
288 submit to the department a notarized affidavit certifying that they will
289 comply with the requirements of this chapter prior to contract or
290 subcontract award or receipt of any financial assistance.

291

292 (3) Contractors and subcontractors as defined in Chapter 111.02(g) shall
293 submit to the Department of Audit at the conclusion of every third month
294 during the period of an agreement covered under this chapter verifiable
295 payroll records that shall minimally contain:

296 a. Name of contractor, and in the case of sub-contractor, the name of
297 the direct employer of employees covered under this chapter; and,

298 b. Contract or project name; and,

299 c. Name of all employees employed to perform the contract or
300 subcontract and their job classifications; and,

301 d. Address of each employee employed to perform the contract or
302 subcontract; and,

303 e. Hourly rate of pay for each employee employed to perform the
304 contract or subcontract.

305 (4) Contractors, subcontractors and recipients of financial assistance shall
306 not use the requirements of this chapter to reduce the wages of
307 employees.

308 (5) For every service contract and economic development assistance grant
309 the current rate shall be posted by the contractor or grant beneficiary at the
310 site of the work in a prominent place where it can be easily seen and read
311 by persons employed in the performance of such contract or grant. The
312 poster shall also provide information of the means the reader may use to file
313 a complaint of violation. In addition, copies of the current rate requirements
314 shall be supplied to any person employed in the performance of a service
315 contract or economic development assistance grant at the request of such
316 person and within a reasonable period of time after the request.

317 (6) Milwaukee County reserves the right to inspect and audit any payroll
318 records of any contractor or subcontractor or recipient of financial
319 assistance for which this chapter applies, for any reason and at any time.

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111.05 Accountability, Enforcement and Monitoring

- (1)The Division of Audit shall enforce this ordinance and shall convene a workgroup, the composition of which will be determined by the Auditor, from stakeholders in county departments. This workgroup will:
- (a) Develop language for RFP’s, bids, concessions, and leases agreements; and,
 - (b) Define processes for field and desk audits ensuring compliance with this section; and,
 - (c) Ensure that each department/division head or his/her designee complies with payroll monitoring processes imposed on agreements; and,
 - (d) Define penalties and sanctions for noncompliance, subject to county board approval, including any combination of the following:
 - a. withholding of payment or imposing monetary penalties in an amount sufficient to pay the wages of all affected employees; or
 - b. termination of agreement; or
 - c. temporary debarment of contractors or subcontractors no less than three years; or
 - d. permanent debarment of contractors or subcontractors; and
 - (e) Examine the impact on airport concessionaires, real estate development contracts, and human service providers a year after the implementation of this ordinance; and
 - (f) Publish and disseminate all procedures within sixty (60) days of the passage and publication of this ordinance.

(2)Contractors, subcontractors and recipients of financial assistance covered under this chapter shall not discriminate or take adverse employment action against an employee covered by this ordinance for filing a complaint under this chapter, informing another covered employee of the provisions of this chapter, or assisting another covered employee in filing a complaint under this chapter.

~~(3)Successor contractors or subcontractors shall offer employees of the incumbent or previous contractor or subcontractors, who perform or performed the same or substantially similar work in performance of the current or previous contract or subcontract as will be performed under the successor contract or subcontract, continued employment for at least 90 days, unless the successor contractor or subcontractor demonstrates cause for discontinuation of employment.~~

(4 ~~3~~)Nothing in this section shall prevent a covered employee, a group of covered employees, or other person adversely affected by a violation of this

366 section from attempting to bring an action against a contractor or
367 subcontractor in a court of competent jurisdiction seeking relief under
368 MCGO Chapter 111. Milwaukee County shall not be liable in any action
369 arising under this Chapter brought by a covered employee, a group of
370 employees, or other person adversely affected violation of this section.

371

372 (~~5~~ 4)An aggrieved individual, contractor or subcontractor may appeal
373 findings of noncompliance in accordance with procedures established in
374 chapter 110 of this Code.

375

376 **111.06. Severability and Savings**

377

378 If any provision of this chapter or application thereof is judged invalid, the
379 invalidity shall not affect other provisions or application of the chapter
380 which can be given effect without the invalid provisions or application, and
381 to this end the provisions of this chapter are declared severable.

382

383 **111.07. Waiver by County Board/Rights of Enforcement**

384

385 Milwaukee County recognizes that from time to time it may be in the County's
386 best interest to enter into contracts, leases or other agreements, including
387 agreements involving financial assistance, which have been negotiated, bid for,
388 or otherwise entered into in a manner which is not in strict conformity with the
389 terms of this ordinance. Upon adoption or ratification of any such contract, lease
390 or other agreement by the County Board through a vote carrying two-thirds of all
391 seats on the County Board, any such nonconformity shall be deemed to have
392 been waived by the County.

393

394 This ordinance shall not be construed to create any right or rights of enforcement
395 in any person seeking to do business with the County and compliance with the
396 terms of the ordinance shall rest solely with the County of Milwaukee.

397

398 **Section 2. Chapter 32.09 of the General Ordinances is hereby amended**
399 **as follows:**

400

401 (17) "Service contract" means an agreement primarily related to staff
402 services including, but not limited to, housekeeping, security, landscaping,
403 maintenance, clerical services, food services, and other non-professional
404 services.

405

406 **Section 3. This ordinance shall become effective upon passage and**
407 **publication.**

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409

410 jmj

411 01/14/14

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