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3 FROM THE OFFICE OF JOSPEH J. CZARNEZKI

4 MILWAUKEE COUNTY CLERK

5 County Ordinance No. 14-7

6 File No. 13-955

7  
8 AN ORDINANCE

9  
10 The Milwaukee County Board of Supervisors ordains as follows:

11  
12 **Section 1. Chapter 111 of the Milwaukee County General Ordinances is hereby created**  
13 **as follows:**

14  
15 **111.01. Policy.**

16  
17 It shall be the policy of Milwaukee County that certain contractors,  
18 subcontractors, lessees and recipients of financial assistance doing business  
19 with the County shall be subject to the requirements of this chapter, a minimum  
20 wage ordinance, as below. This minimum wage ordinance shall apply to all  
21 contractors, subcontractors, and recipients of financial assistance as defined  
22 herein party to an agreement covered under this chapter with any Milwaukee  
23 County unit, division, office, department, or sub-unit thereof, and Milwaukee  
24 County quasi-public entity including:

- 25 (a) A service contract as defined in MCGO 32.20(17), or an agreement to  
26 provide personal care and supportive home care to persons with  
27 disabilities or the frail elderly provided by agencies that exclusively  
28 contract with Milwaukee County, involving an amount greater than or  
29 equal to \$20,000; and,  
30 (b) A lease agreement involving County funding or a public asset involving  
31 an amount greater than or equal to \$20,000; and,  
32 (c) A concession agreement involving an amount greater than or equal to  
33 \$20,000; and,  
34 (d) Economic development financial assistance involving an amount of  
35 financial assistance from the County greater than or equal to  
36 \$1,000,000.

37  
38 **111.02. Definitions.**

39  
40 For all agreements covered under this chapter, the following definitions  
41 shall apply:

- 42 (a) *Service Contract* means an agreement between the County or related  
43 entity and another party that provides a set of services defined in MCGO

44 32.20(17), as well as personal care, or supportive home care provided to  
45 persons with disabilities or the frail elderly by preferred provider.

46 (1) Service contracts do not include:

- 47 i. Purchase of goods or commodities or its delivery
- 48 ii. Equipment lease and maintenance
- 49 iii. Professional services contracts
- 50 iv. Contracts with any school district, municipality, or any
- 51 other governmental unit
- 52 v. Contracts in which State or Federal funder has a prevailing
- 53 wage requirement
- 54 vi. Contracts for Family Care *other than* preferred provider
- 55 agencies that exclusively contract with Milwaukee County to
- 56 provide personal care and supportive home care.
- 57 vii. Contracts procured under Milwaukee County Ordinance
- 58 Chapter 46.

59 (b) *Concession Agreement* means an agreement between the County or  
60 related entity and another party to allow the organization exclusive or semi-  
61 exclusive right to operate a particular enterprise usually making use of  
62 some resource of the County or related entity requiring payment to the  
63 County or related entity fees, rent, or percentage of revenues derived from  
64 the particular enterprise; airport concessions are included as defined by  
65 Milwaukee County Ordinance 42.02(1)(c). Airport concessionaires are  
66 exempted from the provisions of this chapter for any contracts executed  
67 prior to January 1, 2017.

68  
69 (c) *Lease* means an agreement between the County or related entity as  
70 lessor and another party as lessee to provide exclusive use of real  
71 property, a particular asset or resource in exchange for rental payments or  
72 a fee, and which involves financial assistance consistent with Wisconsin  
73 Chapter 104.001(3). The following leases are exempted:

74 (1) *Cultural institutions*: Leases with institutions including the Fund  
75 for the Arts/CAMPAC, Milwaukee County Historical Society,  
76 Milwaukee County Federated Library System, Marcus Center,  
77 Milwaukee Public Museum, Charles Allis and Villa Terrace Museums,  
78 War Memorial Center, Milwaukee Art Museum, and any other cultural  
79 organization that receives contributions from Milwaukee County.

80  
81 (2) *Non Profit*: Leases with nonprofit corporations, unless the nonprofit  
82 corporation passes through to a for-profit entity an amount greater than or  
83 equal to \$1,000,000 in which case the for-profit entity shall be subject to  
84 this chapter as a subcontractor as in 111.03(1)(b).

85  
86 (3) *Other Local Units of Government*: Leases with any school  
87 district, municipality or any other governmental or quasi-  
88 governmental unit.

89

90 (d) *Economic Development Financial Assistance* means any form of  
91 assistance, consistent with Wisconsin Chapter 104.001(3), of an  
92 amount greater than or equal to \$1,000,000, provided to a recipient  
93 directly by the County in the form of loan rates below those  
94 commercially available, loan forgiveness or guarantees, bond  
95 financing or forgiveness, leases of land or real property or other  
96 assets for an amount below fair market value, or grants of  
97 land or real property, or other valuable consideration, or any other  
98 assets provided to develop real property, to foster economic  
99 development or to create or retain jobs or for other similar purposes  
100 which inure to the benefit of the recipient. The following are  
101 exempted:

102  
103 (a) *Non-Profit Corporations*: Economic Development Financial  
104 Assistance provided to nonprofit corporations, unless the nonprofit  
105 corporation passes through to a for-profit entity an amount greater  
106 than or equal to \$1,000,000 in which case the for-profit entity shall  
107 be subject to this chapter as a subcontractor as in 111.03(1)(b).

108  
109 (b) *Cultural Institutions*: Economic Development Financial Assistance  
110 to the Fund for the Arts/CAMPAC, Milwaukee County Historical  
111 Society, Milwaukee County Federated Library System, Marcus  
112 Center, Milwaukee Public Museum, Charles Allis and Villa Terrace  
113 Museums, War Memorial Center, Milwaukee Art Museum, and any  
114 other cultural organization that receives contributions from  
115 Milwaukee County.

116  
117 (c) *Other Units of Government*: Economic Development Financial  
118 Assistance provided to any school district, municipality or any  
119 other governmental or quasi-governmental unit.

120  
121 (d) *Sale of land/assets*: Sales of land or real property assets.

122  
123 (e) *Living wage means* a minimum hourly wage rate equal to 100%  
124 of the poverty income level set forth annually by the U.S.  
125 Department of Health and Human Services for a family of four (4)  
126 divided by 2,080 hours.

127  
128 (f) *Contractor* means a person or an entity that has a service  
129 contract, lease, or concession agreement with Milwaukee County  
130 covered under this Chapter.

131  
132 (g) *Subcontractor* means a person or an entity:

133  
134 (1) Having an agreement or arrangement with a contractor to

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

137

138 (2) Having an agreement or arrangement with a contractor to  
139 operate on a property that is subject to a lease or concession  
140 agreement with Milwaukee County that would be covered under this  
141 chapter; or,

142

143 (3) Purchasing or leasing from a recipient of financial assistance;  
144 or, managing or operating an enterprise employing people on the p  
145 remises of property developed or improved as a result of financial  
146 assistance.

147

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

152

153 **111 .03. Standards Requirement**

154

155 (1) All employees performing part or full time work for a contractor,  
156 subcontractor, lessee or recipient of economic development financial  
157 assistance covered under this chapter and all direct employees of the  
158 County, shall be paid the minimum wage rate defined in Chapter  
159 111.02(e), except as provided in sub-section (c) of this section.

160

161 (a)Tipped employees, employees paid on commission, or employees  
162 whose compensation consists of more than hourly wages shall be  
163 paid an hourly wage, when coupled with the other compensation, that will  
164 at least equal the minimum wage rate. The value of meals  
165 or lodging shall be calculated pursuant to Chapter DWD 272,  
166 Wisconsin Administrative Code.

167

168 (b)Contractors and subcontractors as defined in Chapter 111.02(g) (1)  
169 and (2) shall be subject to the requirements of this chapter for the  
170 duration of the agreement with the County. Employees of  
171 contractors and subcontractors shall be covered under the requirements  
172 of this chapter for the hours worked in performance of covered  
173 agreements.

174

175 (c)Recipients of economic development financial assistance and  
176 subcontractors as defined in Chapter shall:

177

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

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

184  
185 (d) Minimum wage rate requirement will be updated annually on the  
186 last business day of February.

187  
188 (2) Excluded employees:

189  
190 (a) The provisions in this chapter shall exclude:

- 191
- 192 i. Student learners as defined by Wisconsin Chapter
  - 193 104.01(7); and,
  - 194 ii. Employees of sheltered workshops as defined by
  - 195 Wisconsin Chapter 104.01 (6); and,
  - 196 iii. Employees under the age of 18; and,
  - 197 iv. Employees not performing work under a Milwaukee
  - 198 County service contract, concession, or lease; and,
  - 199 v. Employees not working in a financially assisted
  - 200 economic development project; and,
  - 201 vi. Interns and seasonal employees; and,
  - 202 vii. Volunteers receiving stipends; and
  - 203 viii. Any other category of employee excluded under
  - 204 Wisconsin Chapter 104.
  - 205 ix. Employees of a contractor, subcontractor,
  - 206 concessionaire or recipient of financial assistance
  - 207 otherwise covered under this chapter where the
  - 208 employer otherwise subject to the provisions of this
  - 209 chapter employs no more than 20 employees and where
  - 210 the employer otherwise subject to the provisions of this
  - 211 chapter is not an affiliate or subsidiary of another
  - 212 business entity dominant in its field of operation.
  - 213 x. Employees of contractors, subcontractors, or a recipient
  - 214 of financial assistance who provide residential services
  - 215 such as Community Based Residential Facilities, Adult
  - 216 Family Homes, Residential Community Apartment
  - 217 Complexes, and Supportive and Independent living.
  - 218 xi. Employees of a member who receives personal care and
  - 219 supportive home care through a self-directed service
  - 220 program model in Milwaukee County.

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

226

227 **111.04. Contracting Requirements**

228

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

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

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

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

239

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

244

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

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

251 b.Contract or project name; and,

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

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

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

258

259 (4)Contractors, subcontractors and recipients of financial assistance shall  
260 not use the requirements of this chapter to reduce the wages of  
261 employees.

262

263 (5)For every service contract and economic development assistance grant  
264 the current rate shall be posted by the contractor or grant beneficiary at the  
265 site of the work in a prominent place where it can be easily seen and read  
266 by persons employed in the performance of such contract or grant. The  
267 poster shall also provide information of the means the reader may use to file  
268 a complaint of violation. In addition, copies of the current rate requirements  
269 shall be supplied to any person employed in the performance of a service  
270 contract or economic development assistance grant at the request of such  
271 person and within a reasonable period of time after the request.

272 (6)Milwaukee County reserves the right to inspect and audit any payroll  
273 records of any contractor or subcontractor or recipient of financial  
274 assistance for which this chapter applies, for any reason and at any time.  
275

276 **111.05 Accountability, Enforcement and Monitoring**  
277

278 (1)The Division of Audit shall enforce this ordinance and shall convene a  
279 workgroup, the composition of which will be determined by the Auditor,  
280 from stakeholders in county departments. This workgroup will:  
281 (a) Develop language for RFP's, bids, concessions, and leases  
282 agreements; and,  
283 (b) Define processes for field and desk audits ensuring compliance  
284 with this section; and,  
285 (c) Ensure that each department/division head or his/her designee  
286 complies with payroll monitoring processes imposed on agreements;  
287 and,  
288 (d) Define penalties and sanctions for noncompliance, subject to  
289 county board approval, including any combination of the  
290 following:  
291 a. withholding of payment or imposing monetary penalties in  
292 an amount sufficient to pay the wages of all affected  
293 employees; or  
294 b. termination of agreement; or  
295 c. temporary debarment of contractors or subcontractors no  
296 less than three years; or  
297 d. permanent debarment of contractors or subcontractors; and  
298 (e) Examine the impact on airport concessionaires, real estate  
299 development contracts, and human service providers a year after  
300 the implementation of this ordinance; and  
301 (f) Publish and disseminate all procedures within sixty (60) days of  
302 the passage and publication of this ordinance.  
303

304 (2)Contractors, subcontractors and recipients of financial assistance  
305 covered under this chapter shall not discriminate or take adverse  
306 employment action against an employee covered by this ordinance for  
307 filling a complaint under this chapter, informing another covered employee  
308 of the provisions of this chapter, or assisting another covered employee in  
309 filing a complaint under this chapter.  
310

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

318 (43)Nothing in this section shall prevent a covered employee, a group of  
319 covered employees, or other person adversely affected by a violation of this  
320 section from attempting to bring an action against a contractor or  
321 subcontractor in a court of competent jurisdiction seeking relief under  
322 MCGO Chapter 111. Milwaukee County shall not be liable in any action  
323 arising under this Chapter brought by a covered employee, a group of  
324 employees, or other person adversely affected violation of this section.

325  
326 (54)An aggrieved individual, contractor or subcontractor may appeal  
327 findings of noncompliance in accordance with procedures established in  
328 chapter 110 of this Code.

329

330 **111.06. Severability and Savings**

331

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

336

337 **111.07. Waiver by County Board/Rights of Enforcement**

338

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

347

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

351

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

354

355 (17) "Service contract" means an agreement primarily related to staff  
356 services including, but not limited to, housekeeping, security, landscaping,  
357 maintenance, clerical services, food services, and other non-professional  
358 services.

359

360 **Section 3. This ordinance shall become effective upon passage and**  
361 **publication.**

362

363

364

**Adopted by the Milwaukee County Board of Supervisors**

365

**February 6, 2014**

366