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WHEREAS, in 2005, Wisconsin Chapter 104, Minimum Wage Law, was created and repealed any city, village, town, or county living wage ordinances in place before June 16 of that year; and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

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

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

53 **AN ORDINANCE**
54

55 The Milwaukee County Board of Supervisors ordains as follows:
56

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

60 **111.01. Policy.**
61

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

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

82 **111.02. Definitions.**
83

84 For all agreements covered under this chapter, the following definitions shall
85 apply:

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

88 32.20(17), as well as personal care, or supportive home care provided to
89 persons with disabilities or the frail elderly by preferred provider.
90 (1)Service contracts do not include:
91 i. Purchase of goods or commodities or its delivery
92 ii. Equipment lease and maintenance
93 iii. Professional services contracts
94 iv. Contracts with any school district, municipality, or any
95 other governmental unit
96 v. Contracts in which State or Federal funder has a prevailing
97 wage requirement
98 vi. Contracts for Family Care *other than* preferred provider agencies
99 that exclusively contract with Milwaukee County to provide personal
100 care and supportive home care.
101 vii. Contracts procured under Milwaukee County Ordinance Chapter
102 46.

103 (b)*Concession Agreement* means an agreement between the County or related
104 entity and another party to allow the organization exclusive or semi-
105 exclusive right to operate a particular enterprise usually making use of
106 some resource of the County or related entity requiring payment to the
107 County or related entity fees, rent, or percentage of revenues derived from
108 the particular enterprise; airport concessions are included as defined by
109 Milwaukee County Ordinance 42.02(1)(c).

110 (c)*Lease* means an agreement between the County or related entity as lessor
111 and another party as lessee to provide exclusive use of real property, a
112 particular asset or resource in exchange for rental payments or a fee, and
113 which involves financial assistance consistent with Wisconsin Chapter
114 104.001(3). The following leases are exempted:
115 (1) *Cultural institutions*: Leases with institutions including the Fund for
116 the Arts/CAMPAC, Milwaukee County Historical Society,
117 Milwaukee County Federated Library System, Marcus Center,
118 Milwaukee Public Museum, Charles Allis and Villa Terrace
119 Museums, War Memorial Center, Milwaukee Art Museum, and any
120 other cultural organization that receives contributions from
121 Milwaukee County.
122 (2) *Non Profit*: Leases with nonprofit corporations, unless the nonprofit
123 corporation passes through to a for-profit entity an amount greater than or
124 equal to \$1,000,000 in which case the for-profit entity shall be subject to
125 this chapter as a subcontractor as in 111.03(1)(b).
126 (3) *Other Local Units of Government*: Leases with any school district,
127 municipality or any other governmental or quasi-governmental
128 unit.

129 (d)*Economic Development Financial Assistance* means any form of assistance,
130 consistent with Wisconsin Chapter 104.001(3), of an amount greater than
131 or equal to \$1,000,000, provided to a recipient directly by the County in

132 the form of loan rates below those commercially available, loan forgiveness
133 or guarantees, bond financing or forgiveness, leases of land or real
134 property or other assets for an amount below fair market value, or grants of
135 land or real property, or other valuable consideration, or any other assets
136 provided to develop real property, to foster economic development or to
137 create or retain jobs or for other similar purposes which inure to the benefit
138 of the recipient. The following are exempted:

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

144 (b) *Cultural Institutions*: Economic Development Financial Assistance
145 to the Fund for the Arts/CAMPAC, Milwaukee County Historical
146 Society, Milwaukee County Federated Library System, Marcus
147 Center, Milwaukee Public Museum, Charles Allis and Villa Terrace
148 Museums, War Memorial Center, Milwaukee Art Museum, and any
149 other cultural organization that receives contributions from
150 Milwaukee County.

151 (c) *Other Units of Government*: Economic Development Financial
152 Assistance provided to any school district, municipality or any
153 other governmental or quasi-governmental unit.

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

155 (e) *Living wage means* a minimum hourly wage rate equal to 110% of the
156 poverty income level set forth annually by the U.S. Department of
157 Health and Human Services for a family of four (4) divided by 2,080
158 hours.

159 (f) *Contractor* means a person or an entity that has a service contract, lease,
160 or concession agreement with Milwaukee County covered under this
161 Chapter.

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

163 (1) Having an agreement or arrangement with a contractor to furnish
164 a service for the benefit of Milwaukee County that would be
165 covered under this chapter; or,

166 (2) Having an agreement or arrangement with a contractor to operate
167 on a property that is subject to a lease or concession agreement
168 with Milwaukee County that would be covered under this chapter;
169 or,

170 (3) Purchasing or leasing from a recipient of financial assistance; or,
171 managing or operating an enterprise employing people on the
172 premises of property developed or improved as a result of
173 financial assistance.

174 (h) *Recipient* means a person or entity receiving economic development
175 financial assistance as defined in 111.02 (d) but does not include a

176 person or entity indirectly benefiting from incidental effects of County
177 policies, regulations or ordinances.

178

179 **111 .03. Standards Requirement**

180

181 (1) All employees performing part or full time work for a contractor,
182 subcontractor, lessee or recipient of economic development financial
183 assistance covered under this chapter and all direct employees of the
184 County, shall be paid the minimum wage rate defined in Chapter
185 111.02(e), except as provided in sub-section (c) of this section.

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

192 (b) Contractors and subcontractors as defined in Chapter 111.02(g) (1)
193 and (2) shall be subject to the requirements of this chapter for the
194 duration of the agreement with the County. Employees of
195 contractors and subcontractors shall be covered under the
196 requirements of this chapter for the hours worked in performance
197 of covered agreements.

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

200 i. Be subject to the requirements of this chapter for a period
201 equal to one year for every \$100,000 provided in economic
202 development financial assistance, rounded to the nearest
203 whole year; and employees of such recipients and
204 subcontractors shall be covered under the requirements of
205 this chapter for work performed on the premises of a project
206 benefiting from financial assistance.

207 (d) Minimum wage rate requirement will be updated annually on the
208 last business day of February.

209 (2) Excluded employees:

210 (a) The provisions in this chapter shall exclude:

- 211 i. Student learners as defined by Wisconsin Chapter
212 104.01(7); and,
- 213 ii. Employees of sheltered workshops as defined by
214 Wisconsin Chapter 104.01 (6); and,
- 215 iii. Employees under the age of 18; and,
- 216 iv. Employees not performing work under a Milwaukee
217 County service contract, concession, or lease; and,
- 218 v. Employees not working in a financially assisted
219 economic development project; and,

- 220 vi. Interns and seasonal employees; and,
- 221 vii. Volunteers receiving stipends; and
- 222 viii. Any other category of employee excluded under
- 223 Wisconsin Chapter 104.
- 224 ix. Employees of a contractor, subcontractor, concessionaire
- 225 or recipient of financial assistance otherwise covered
- 226 under this chapter where the employer otherwise subject
- 227 to the provisions of this chapter employs no more than 20
- 228 employees and where the employer otherwise subject to
- 229 the provisions of this chapter is not an affiliate or
- 230 subsidiary of another business entity dominant in its field
- 231 of operation.
- 232 x. Employees of contractors, subcontractors, or a recipient of
- 233 financial assistance who provide residential services such
- 234 as Community Based Residential Facilities, Adult Family
- 235 Homes, Residential Community Apartment Complexes,
- 236 and Supportive and Independent living.
- 237 xi. Employees of a member who receives personal care and
- 238 supportive home care through a self-directed service
- 239 program model in Milwaukee County.
- 240 (b)The requirements of this section may be modified or waived as regard
- 241 employees who are covered by a collective bargaining agreement
- 242 between the employer and a bona fide union, where the parties to such
- 243 collective bargaining agreement expressly specify their intent in the
- 244 agreement.

245

246 **111.04. Contracting Requirements**

247

- 248 (1)Department heads or their designee shall include requirements for
- 249 compliance with this Chapter in:
- 250 (a) Every bid, request for proposal, or request for qualifications for
- 251 services, leases, concessions, or economic development financial
- 252 assistance covered under this Chapter; and,
- 253 (b) All new service, lease, and concession agreements, and all new
- 254 agreements involving financial assistance; and,
- 255 (c) All renewals or amendments of agreements for services, leases,
- 256 concessions, or economic development financial assistance covered
- 257 under this Chapter after the effective date of this ordinance.
- 258 (2)Contractors, subcontractors, and recipients of financial assistance must
- 259 submit to the department a notarized affidavit certifying that they will
- 260 comply with the requirements of this chapter prior to contract or
- 261 subcontract award or receipt of any financial assistance.
- 262 (3)Contractors and subcontractors as defined in Chapter 111.02(g) shall
- 263 submit to the Department of Audit at the conclusion of every third month

- 264 during the period of an agreement covered under this chapter verifiable
265 payroll records that shall minimally contain:
- 266 a. Name of contractor, and in the case of sub-contractor, the name of
267 the direct employer of employees covered under this chapter; and,
 - 268 b. Contract or project name; and,
 - 269 c. Name of all employees employed to perform the contract or
270 subcontract and their job classifications; and,
 - 271 d. Address of each employee employed to perform the contract or
272 subcontract; and,
 - 273 e. Hourly rate of pay for each employee employed to perform the
274 contract or subcontract.
- 275 (4) Contractors, subcontractors and recipients of financial assistance shall not
276 use the requirements of this chapter to reduce the wages of employees.
- 277 (5) For every service contract and economic development assistance grant the
278 current rate shall be posted by the contractor or grant beneficiary at the site
279 of the work in a prominent place where it can be easily seen and read by
280 persons employed in the performance of such contract or grant. The poster
281 shall also provide information of the means the reader may use to file a
282 complaint of violation. In addition, copies of the current rate requirements
283 shall be supplied to any person employed in the performance of a service
284 contract or economic development assistance grant at the request of such
285 person and within a reasonable period of time after the request.
- 286 (6) Milwaukee County reserves the right to inspect and audit any payroll
287 records of any contractor or subcontractor or recipient of financial
288 assistance for which this chapter applies, for any reason and at any time.

289
290 **111.05 Accountability, Enforcement and Monitoring**

- 291
- 292 (1) The Division of Audit shall enforce this ordinance and shall convene a
293 workgroup, the composition of which will be determined by the Auditor,
294 from stakeholders in county departments. This workgroup will:
- 295 (a) Develop language for RFP's, bids, concessions, and leases
296 agreements; and,
 - 297 (b) Define processes for field and desk audits ensuring compliance
298 with this section; and,
 - 299 (c) Ensure that each department/division head or his/her designee
300 complies with payroll monitoring processes imposed on agreements;
301 and,
 - 302 (d) Define penalties and sanctions for noncompliance, subject to
303 county board approval, including any combination of the
304 following:
 - 305 a. withholding of payment or imposing monetary penalties in an
306 amount sufficient to pay the wages of all affected employees;
307 or

- 308 b. termination of agreement; or
- 309 c. temporary debarment of contractors or subcontractors no less
- 310 than three years; or
- 311 d. permanent debarment of contractors or subcontractors; and
- 312 (e) Examine the impact on airport concessionaires, real estate
- 313 development contracts, and human service providers a year after
- 314 the implementation of this ordinance; and
- 315 (f) Publish and disseminate all procedures within sixty (60) days of the
- 316 passage and publication of this ordinance.
- 317 (2) Contractors, subcontractors and recipients of financial assistance covered
- 318 under this chapter shall not discriminate or take adverse employment
- 319 action against an employee covered by this ordinance for filing a
- 320 complaint under this chapter, informing another covered employee of the
- 321 provisions of this chapter, or assisting another covered employee in filing a
- 322 complaint under this chapter.
- 323 (3) Successor contractors or subcontractors shall offer employees of the
- 324 incumbent or previous contractor or subcontractors, who perform or
- 325 performed the same or substantially similar work in performance of the
- 326 current or previous contract or subcontract as will be performed under the
- 327 successor contract or subcontract, continued employment for at least 90
- 328 days, unless the successor contractor or subcontractor demonstrates cause
- 329 for discontinuation of employment.
- 330 (4) Nothing in this section shall prevent a covered employee, a group of
- 331 covered employees, or other person adversely affected by a violation of this
- 332 section from attempting to bring an action against a contractor or
- 333 subcontractor in a court of competent jurisdiction seeking relief under
- 334 MCGO Chapter 111. Milwaukee County shall not be liable in any action
- 335 arising under this Chapter brought by a covered employee, a group of
- 336 employees, or other person adversely affected violation of this section.
- 337 (5) An aggrieved individual, contractor or subcontractor may appeal findings
- 338 of noncompliance in accordance with procedures established in chapter
- 339 110 of this Code.

340
341 **111.06. Severability and Savings**

342
343 If any provision of this chapter or application thereof is judged invalid, the
344 invalidity shall not affect other provisions or application of the chapter which can
345 be given effect without the invalid provisions or application, and to this end the
346 provisions of this chapter are declared severable.

347
348 **111.07. Waiver by County Board/Rights of Enforcement**

349
350 Milwaukee County recognizes that from time to time it may be in the County's best
351 interest to enter into contracts, leases or other agreements, including agreements involving

352 financial assistance, which have been negotiated, bid for, or otherwise entered into in a
353 manner which is not in strict conformity with the terms of this ordinance. Upon adoption
354 or ratification of any such contract, lease or other agreement by the County Board through
355 a vote carrying two-thirds of all seats on the County Board, any such nonconformity shall
356 be deemed to have been waived by the County.

357

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

361

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

364

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

368

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

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jmj

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