



OFFICE OF THE COUNTY CLERK

JOSEPH J. CZARNEZKI • COUNTY CLERK

MEMO

DATE: March 19, 2014
TO: The Honorable County Board of Supervisors
FROM: Joseph J. Czarnezki, County Clerk
SUBJECT: Vetoed File Returned

The County Executive has returned to my office the following file:

File No. 13-955 – A resolution/ordinance 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.

This resolution was adopted by a vote of 12 ayes – 6 noes at your meeting of February 6, 2014.

The County Executive has vetoed this resolution and attached is a copy of his veto message wherein he states his objection.

This matter is now before your honorable body.

A handwritten signature in black ink, appearing to read "Joseph J. Czarnezki".

Joseph J. Czarnezki, County Clerk



OFFICE OF THE COUNTY EXECUTIVE

Chris Abele

MILWAUKEE COUNTY EXECUTIVE

DATE: March 19, 2014

TO: The Honorable Milwaukee Board of Supervisors

FROM: Chris Abele, Milwaukee County Executive

RE: Veto of County Board File No. 13-955 on issue related to the living wage ordinance

I am vetoing County Board File No. 13-955 pursuant to the authority granted to me by Article IV, Section 23(a) of the Wisconsin Constitution and Section 59.17(6) of the Wisconsin Statutes. The County Board adopted a resolution on February 6, 2013 enacting a living wage ordinance.

The County Board and I share a common goal of reducing poverty in Milwaukee County and I would like to thank the authors of this resolution for their passion, good intentions and desire to make Milwaukee County a better place to live. I would further ask them to join with me in pressing the State and Federal governments to raise the minimum wage to benefit all workers and not place Milwaukee County in a competitive disadvantage.

For three years I have been restoring programs that address poverty in Milwaukee County. I've kept bus fares flat and increased transit service, I've added millions of dollars to mental health care and I've strengthened safety-net programs across the County. I know a number of Supervisors supported those efforts and I am proud that we did those things together without raising taxes while insulating and strengthening our core services from budget pressures. The same cannot be said for this living wage mandate.

An analysis by the independent Comptroller found that the living wage plan, if enacted, will cost taxpayers \$4.2 million in 2015, rising to \$7.3 million in 2019. Not only is that an unsustainable spending plan, it will also threaten our ability to maintain our core services, including many of the safety-net services that benefit low income workers.

The Comptroller's independent analysis clearly shows that this living wage ordinance will make many County services more expensive, including amenities and concessions at the parks and zoo. For example, the janitorial contract alone will cost taxpayers an additional \$3.8 million over the next five years. This is \$3.8 million less that we can spend on the County's core safety-net services.

Family Care Impact: The most catastrophic impact would be on the Milwaukee County Department of Family Care (Family Care). As you know, Family Care provides crucial services to the frail, elderly and

disabled – some of the most vulnerable members of our community. Family Care funding comes directly from the State, which is under no obligation to adjust the per capita rates to match the expenditures imposed by the living wage ordinance. According to the Comptroller, the wage mandate would drive \$2.6 million in additional Family Care expenditure in 2015 alone – with annual cost increases from there. Because future wages would rise based on the average annual increase in the Federal poverty tables, an additional cost of approximately \$740,000 per year would be incurred annually by Family Care, based on an estimated 2.5% annual increase.

Some Supervisors have argued that Family Care has ample reserves to cover this gap. While it is true that Family Care has managed its programs effectively and efficiently, they should not be punished for this. The Family Care reserve account of \$21 million has been carefully established to insulate Family Care from other pressures and increase the sustainability of its services in the face of volatility. The wage mandate would deplete the reserve in only three years, assuming no decreases in capitation rates from the State and no other draws on these reserves. However, we already know these assumptions are far from secure - there will be other burdens on Family Care. Just this year, the State decreased its capitation rate for the second time in three years, necessitating Family Care to draw down their reserves. Further, the rollout of the Affordable Care Act is expected to result in additional fiscal impact on the scale of \$3 million annually. Thus, the living wage mandate threatens Family Care's stability, and more importantly the stability of the services it provides to the most vulnerable.

While it has been suggested that Milwaukee County may elect to cover Family Care's losses with tax levy should the program become insolvent, the Family Care contract with the State states:

“In the event the MCO fails to maintain and report the required solvency protection, the MCO may be put under corrective action and shall submit a plan to the Department for approval that includes an analysis of the reasons for the shortfall and a plan for restoring the required solvency protection. If the MCO continues to maintain inadequate solvency protection, the Department may impose sanctions ... or terminate the contract in accordance with Article XVI.E.3., Unilateral Termination...”

(<http://www.dhs.wisconsin.gov/LTCare/StateFedReqs/cy2014mcocontract.pdf>)

Therefore, it is up to the State to either allow the County to supplement Family Care losses with tax levy or choose to terminate the program. According to the Comptroller and Family Care, the current trend by the State has been to terminate insolvent programs.

Termination of the Family Care contract with the State would have an immediate, negative impact on:

- The 88 Milwaukee County Department of Family Care employees who will be laid-off.
- Nearly 500 care managers and nurses employed by 18 community agencies to provide care management, who will be laid-off. Family Care is the only Managed Care Organization that contracts with community agencies for care management. Thus, if their contract were terminated, it is unlikely that community partners will be able to continue to provide care management.

- Family Care members, who will be forced to enroll with another MCO or with IRIS (the State's Self Directed Supports Waiver). That new entity will be under no obligation to pay in-home care workers any more than the Federal minimum wage, currently at \$7.25 per hour. This is far less than most employees are currently paid through Family Care.
- Family Care's contract termination will result in a \$3 million dollar annual hole in the Milwaukee County budget when the Department of Family Care is no longer a contributor to the budget and its administrative and legacy costs.

Family Care is, and has been, committed to providing cost of living adjustments to in-home care workers. Home healthcare workers have, in fact, received increases for the past three years. The Department is able to do this through careful fiscal analysis - ensuring workers can receive increases without endangering the quantity or quality of services provided. Currently, Family Care pays an average of \$10.45 to its in-home care employees. I believe this approach to achieving the same goal – continuing to proactively raise wages as the Department can support them – is the most responsible path forward.

Exemptions: In addition to the fiscal impact, I am very troubled by some of the exemptions included in this ordinance and what the exemptions imply. Provision 111.03(2)(b) states that:

“The requirements of this section may be modified or waived as regard employees who are covered by a collective bargaining agreement between the employer and a bona fide union, where the parties to such collective bargaining agreement expressly specify their intent in the agreement.”

This means that an employer would not have to actually pay this higher wage to its employees, if that employer collects union member fees from its employees. That flies in the face of what Supervisors say this ordinance is supposed to do: raise the wages of workers. This exemption creates the impression that the only people who would benefit from this Board action are the unions who will see a significant increase in the money they collect from workers, while the workers for these employers do not see an increase in their wages.

We have already seen this happen to one organization – Supportive Homecare Options (SHO) – where the union is attempting to negotiate an agreement where SHO would collect member dues from its employees (approximately an additional \$300,000 in annual revenue for the union, according to SHO) in exchange for waiving the living wage provision.

This provision clearly creates a two-class employer system, as only select employers have to pay a living wage, and a disparity in various parties' ability to compete on an equal basis for Milwaukee County contracting opportunities. This certainly does not appear to be unions fighting for workers, but rather for themselves.

Another potentially problematic provision is found in chapter 111.03(3):

“Successor contractors or subcontractors shall offer employees of the incumbent or previous contractor or subcontractors... continued employment for at least 90 days, unless the successor

contractor or subcontractor demonstrates cause for discontinuation of employment.”

This provision provides a systematic advantage to incumbent bidders by requiring that any new vendor has to hire the employees of the previous vendor. This provision encompasses the totality of the incumbent labor force, as it evokes contractor and subcontractor agreements. This would inhibit any non-incumbent vendor from fully delivering or offering the total benefit that their workforce, given an organization’s particular training and skills, could otherwise bring. It is also not clear what would happen in a situation if the previous vendor wanted to move its high-performing employees to another site it operates. This would leave the new vendor to absorb the remaining employees.

Another problematic provision allows for disparate implementation. Provision 111.07 states that:

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

This provision states that the living wage ordinance could be waived with two-thirds majority of the Board, but does not state method, when, how and by whom. This does not give the necessary certainty to vendors and developers who may be interested in working with Milwaukee County. It further creates a perverse incentive, as it creates the possibility that “connected” firms will be treated differently by the Board.

This ordinance also creates burdensome reporting and audit requirements both for the County and for vendors, especially problematic for smaller and younger business that may not have this administrative capacity. Illustrating the extent of requirements, the Comptroller estimates that the County will have to hire at least 3.5 additional staff just to meet the requirements of this ordinance.

Living wage advocates cite some studies that state that living wage will not cost anything and will only help bring people out of poverty. However, what they do not state is that there are an equal number of studies that show that living wage at best has no impact on poverty and at worst displaces low-skilled workers and increases the tax burden on municipalities. We owe it to Milwaukee County taxpayers to carefully examine all evidence – on both sides – when crafting policies of this magnitude.

I ask Supervisors to sustain this veto and work with me to find real solutions to alleviate poverty in Milwaukee County and to continue to strengthen our safety net services. Again, I hope you will join me in supporting an increase of the minimum wage at the state and federal levels. This will create an even playing field for all service providers to compete and not put Milwaukee County at a disadvantage.