

- TO CREATE CHAPTER 2.95 OF THE CODE: LIVING WAGE -

The County Board of Supervisors of the County of Eau Claire does ordain as follows:

SECTION 1. That Chapter 2.95 of the code be created to read:

Chapter 2.95

LIVING WAGE

Sections:

- 2.95.001 Policy.
- 2.95.005 Definitions.
- 2.95.010 Standards Requirement
- 2.95.020 Contracting Requirements.
- 2.95.030 Maintenance and Monitoring of Records.
- 2.95.040 Severability and Savings.

2.95.001 Policy. It shall be the policy of the County that certain contractors, subcontractors, lessees and recipients of economic development financial assistance doing business with the County shall be subject to the requirements of this chapter. This living wage ordinance shall apply to all contractors, subcontractors, and recipients of economic development financial assistance as defined herein party to an agreement covered under this chapter with any County unit, division, office, department, or sub-unit thereof, and County quasi-public entity including:

- A. A service contract as defined in 2.95.005 A. or an agreement to provide personal care and supportive home care to persons with disabilities or the frail elderly provided by agencies that exclusively contract with the County, involving an amount greater than or equal to \$30,000; and,
- B. A lease agreement involving the County funding or a public asset involving an amount greater than or equal to \$30,000; and
- C. A concession agreement involving an amount greater than or equal to \$30,000; and,
- D. Economic development financial assistance involving an amount of financial assistance from the County greater than or equal to \$1,000,000.

2.95.005 Definitions. For all agreements covered under this chapter, the following definitions shall apply:

- A. Service contract means an agreement between the County or related entity and another party that provides a set of services, primarily related to staff services including, but not limited to, housekeeping, security, landscaping, maintenance, clerical services, food services, and other non-professional services, as well as personal care, or supportive home care provided to persons with disabilities or the frail elderly by a preferred provider.

1. Service contracts do not include:
 - a. Purchase of goods or commodities or its delivery.
 - b. Equipment lease and maintenance.
 - c. Professional services contracts.
 - d. Contracts with any school district, municipality, or any other governmental unit.
 - e. Contracts in which State or Federal funder has a prevailing wage requirement.
 - f. Child alternate care contracts.
 - g. Child contracts that are administered through the State TPA (Third Party Administrator).

B. Concession agreement means an agreement between the County or related entity and another party to allow the organization the exclusive or semi-exclusive right to operate a particular enterprise usually making use of some resource of the County or related entity requiring payment to the County or related entity fees, rent, or percentage of revenues derived from the particular enterprise.

C. Lease means an agreement between the County or related entity as lessor and another party as lessee to provide exclusive use of real property, a particular asset or resource in exchange for rental payments or a fee, and which involves financial assistance consistent with Wis. Stat. Ch. 104.001(3). The following leases are exempted:

1. Cultural institutions: Leases with institutions including the Friends of Beaver Creek Reserve and any other cultural organization that receives contributions from the County.
2. Nonprofit: Leases with nonprofit corporations, unless the nonprofit corporation passes through to a for-profit entity an amount greater than or equal to \$1,000,000, in which case the for-profit entity shall be subject to this chapter as a subcontractor as in 2.95.010 A.2.
3. Other local units of government: Leases with any school district, municipality or any other governmental or quasigovernmental unit.

D. Economic development financial assistance means any form of assistance, consistent with Wis. Stat. Ch. 104.001(3), of an amount greater than or equal to \$1,000,000, provided to a recipient directly by the County in the form of loan rates below those commercially available, loan forgiveness or guarantees, bond financing or forgiveness, sales or leases of land or real property or other assets for an amount below fair market value, or grants of land or real property, or other valuable consideration, or any other assets provided to develop real property, to foster economic development or to create or retain jobs or for other similar purposes which inure to the benefit of the recipient. The following are exempted:

1. Nonprofit corporations: Economic development financial assistance provided to nonprofit corporations, unless the nonprofit corporation passes through to a for-profit entity an amount greater than or equal to \$1,000,000, in which case the for-profit entity shall be subject to this chapter as a subcontractor as in 2.95.010 A.2.
2. Cultural institutions: Economic development financial assistance to the Friends of Beaver Creek Reserve, any other cultural organization that receives contributions from County.
3. Other units of government: Economic development financial assistance provided to any school district, municipality or any other governmental or quasi-governmental unit.

E. Living wage means a minimum hourly wage rate equal to the following percentage levels of the poverty income level set forth annually by the U.S. Department of Health and Human Services for a family of four (4), divided by 2,080 hours:

1. 100%, as of January 1, 2017
2. 103.75%, as of January 1, 2018
3. 107.5%, as of January 1, 2019
4. 111.25%, as of January 1, 2020
5. 115%, as of January 1, 2021

F. Contractor means a person or an entity that has a service contract, lease, or concession agreement with the County covered under this chapter.

G. Subcontractor means a person or an entity:

1. Having an agreement or arrangement with a contractor to furnish a service for the benefit of the County that would be covered under this chapter; or,
2. Having an agreement or arrangement with a contractor to operate on a property that is subject to a lease or concession agreement with the County that would be covered under this chapter; or,
3. Purchasing or leasing from a recipient of economic development financial assistance; or, managing or operating an enterprise employing people on the premises of property developed or improved as a result of financial assistance.

H. Recipient means a person or entity receiving economic development financial assistance as defined in 2.95.005 D. but does not include a person or entity indirectly benefiting from incidental effects of County policies, regulations or ordinances.

I. Professional services shall typically include services customarily rendered by architects, engineers, surveyors, real estate appraisers, certified public accountants, attorneys, financial personnel, medical services, system planning, management, and other consultants.

2.95.010 Standards Requirement.

A. All employees performing part- or full-time work for a contractor, subcontractor, lessee or recipient of economic development financial assistance covered under this chapter and all direct employees of the County, shall be paid the Living Wage rate defined in 2.95.005 E., except as provided in paragraph 3. of this section.

1. Tipped employees, employees paid on commission, or employees whose compensation consists of more than hourly wages shall be paid an hourly wage, when coupled with the other compensation, that will at least equal the minimum wage rate.
2. Contractors and subcontractors as defined in 2.95.005 G. 1. and 2. shall be subject to the requirements of this chapter for the duration of the agreement with the County. Employees of contractors and subcontractors shall be covered under the requirements of this chapter for the hours worked in performance of covered agreements.
3. Recipients of economic development financial assistance and subcontractors as defined herein shall be subject to the requirements of this chapter for a period equal to one year for every \$100,000 provided in economic development financial assistance, rounded to the nearest whole year; and employees of such recipients and subcontractors shall be covered under the requirements of this chapter for work performed on the premises of a project benefiting from financial assistance.
4. The living wage rate requirement will be updated annually on the last business day of September.

B. Excluded employees:

1. The provisions in this chapter shall exclude:
 - a. Student learners as defined by Wis. Stat. Ch. 104.01(7); and,

- 104.01 (6); and,
- b. Employees of sheltered workshops as defined by Wis. Stat. Ch.
 - c. Employees under the age of 18; and,
 - d. Employees not performing work under a County service contract, concession, or lease; and,
 - e. Employees not working in a financially assisted economic development project; and,
 - f. Interns; and,
 - g. Volunteers receiving stipends; and
 - h. Any other category of employee excluded under Wis. Stat. Ch.

104.

i. Employees of a contractor, subcontractor, concessionaire or recipient of economic development financial assistance otherwise covered under this chapter where the employer otherwise subject to the provisions of this chapter employs no more than 20 employees and where the employer otherwise subject to the provisions of this chapter is not an affiliate or subsidiary of another business entity dominant in its field of operation.

j. Employees of a member who receives personal care and supportive home care through a self-directed service program model in the County.

2. The requirements of this section may be modified or waived as regards 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.

2.95.020 Contracting Requirements.

A. Department heads or their designee shall include requirements for compliance with this chapter in:

- 1. Every bid, request for proposal, or request for qualifications for services, leases, concessions or economic development financial assistance covered under this chapter,
- 2. All new service, lease, and concession agreements, and all new agreements involving financial assistance; and,
- 3. All renewals or amendments of agreements for services, leases, concessions, or economic development financial assistance covered under this chapter after the effective date of this ordinance.

B. Contractors, subcontractors, and recipients of economic development financial assistance must submit to the department a notarized affidavit certifying that they will comply with the requirements of this chapter prior to contract or subcontract award or receipt of any financial assistance.

C. Contractors, subcontractors and recipients of economic development financial assistance shall not use the requirements of this chapter to reduce the wages of employees.

D. County reserves the right to inspect and audit any payroll records of any contractor or subcontractor or recipient of economic development financial assistance for which this chapter applies, for any reason and at any time.

2.95.030 Maintenance and Monitoring of Records. The Purchasing Department will maintain all records required by this chapter. The Purchasing Department will:

- A. Retain a log of all contracts, noting which contracts are covered by this chapter.
- B. Retain notarized affidavits from all contractors subject to the provisions of this chapter that they understand and will comply with its provisions.

C. Retain a one-page document, filled out annually by all contractors subject to the provisions of this chapter, asserting that they remain in compliance with the provisions of this chapter and providing the required wage range information.

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

2.95.050 Waiver by County Board/Rights of Enforcement. The 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, any such nonconformity shall be deemed to have been waived by the County.

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

ENACTED: July 19, 2016

Janet K. Loomis
Eau Claire County Clerk