

# IHSS PUBLIC AUTHORITY ORDINANCE

ORDINANCE NO. \_\_\_\_

## AN ORDINANCE ADDING ARTICLE XXIV TO CHAPTER 2 OF THE SONOMA COUNTY CODE ESTABLISHING THE SONOMA COUNTY IN-HOME SUPPORTIVE SERVICES PUBLIC AUTHORITY

The Board of Supervisors of the County of Sonoma, State of  
California, ordains as follows:

### **SECTION I.**

Article XXIV is added to Chapter 2 of the Sonoma County Code to read as  
follows:

#### **2-358 FINDINGS AND PURPOSE.**

As required by Welfare and Institutions Code section 12302.25, the Board of Supervisors of Sonoma County determines that the establishment of a public authority whose powers are derived from and consistent with the provisions of Welfare and Institutions Code section 12301.6 is necessary for the public health and welfare. The public authority shall serve as the employer of providers of in-home supportive services for purposes of the Meyers-Milias-Brown Act.

#### **2-359 DEFINITIONS.**

For purposes of this Article, the following definitions apply:

- (a) "Authority" means the Sonoma County In-Home Supportive Services Public Authority.
- (b) "Provider" means a person who provides authorized in-home supportive services.
- (c) "Recipient" means a person eligible for and authorized to receive in-home supportive services.
- (d) "IHSS" means the Sonoma County In-Home Supportive Services

Program.

(e) "County" means Sonoma County.

(f) "Directors" means the governing body of the Public Authority.

**2-360 PUBLIC AUTHORITY CREATED.**

The Board of Supervisors establishes a public authority whose powers and authority are derived from and consistent with the provisions of Welfare and Institutions Code sections 12300 *et seq.* The public authority shall be known as the Sonoma County In-Home Supportive Services Public Authority and shall be referred to as the "Authority."

**2-361 GOVERNING BODY.**

The governing body of the Authority shall be the Sonoma County Board of Supervisors.

**2-362 ADVISORY COMMITTEE.**

The County's In-Home Supportive Services (IHSS) Advisory Committee was established by the Sonoma County Board of Supervisors by Resolution No. 00-1115 in accordance with the requirements of Welfare and Institutions Code section 12301.6(b)(C), (D). The existing IHSS Advisory Committee shall serve as the advisory committee to the Authority and shall fulfill the roles and responsibilities required by Welfare and Institutions Code section 12301.6.

The IHSS Advisory Committee will be composed of ten (10) members at least 50% of whom are current or past recipients of personal assistance services paid for through public or private funds and shall be appointed by the Board of Supervisors.

- (a) Membership on the IHSS Advisory Committee shall be as follows:
- 5 Members who are current or previous users of personal assistance services paid for through public or private funds who are representative of the Sonoma County IHSS caseload.
  - 2 Members who are current or former IHSS providers.
  - 2 Members with experience in program development, administration, and fiscal management who represent or advocate for home care service delivery organizations and their consumers.

- 1 Ex officio member from the Human Services Department of Sonoma County.
- (b) The IHSS Advisory Committee shall provide ongoing advice and recommendations regarding in-home supportive services to the County Board of Supervisors, any administrative body in the County that is related to the delivery and administration of in-home supportive services, and the Directors and administrative agency of the Authority.

**2-363 AUTHORITY DUTIES.**

The duties and responsibilities of the Authority shall be as follows:

- (a) To implement the goals and objectives of Welfare and Institutions Code section 12301.6, including, but not limited to:
- 1) the provision of assistance to recipients in finding in-home supportive services personnel through the establishment of a registry;
  - 2) the investigation of the qualifications and background of potential in-home supportive services personnel;
  - 3) the establishment of a referral system under which in-home supportive services personnel shall be referred to recipients;
  - 4) the provision for training for providers and recipients;
  - 5) the performance of any other functions related to the delivery of in-home supportive services; and
  - 6) the assurance that the requirements of the personal care option pursuant to Subchapter 19 (commencing with section 1396) of Chapter 7 of Title 42 of the United States Code are met.
- (b) To exercise all powers, duties and functions as are prescribed by statute, Ordinance of the Board of Supervisors and the Authority.
- (c) Notwithstanding subdivision (a)(4), the Authority shall not be obligated to provide training directly, to pay for training provided privately or in the community, to pay for the providers' time spent in training, to accompany recipients to training, to pay for transportation to training or to pay for any materials required by the training. The Authority shall not be obligated to ensure that any provider or recipient attend or complete any training.

- (d) The Authority *shall not* be responsible for
  - (1) authorizing services for an IHSS recipient;
  - (2) determining a recipient's need for IHSS, the level and quality of services required, and the eligibility of individuals to be served;
  - (3) conducting the initial or any subsequent assessment of need for services; or
  - (4) terminating the recipient's participation in the IHSS program. The above-referenced services and functions shall be the exclusive responsibility of the County of Sonoma.

**2-364 POWERS.**

- (a) The Authority shall be an entity separate from the County of Sonoma and shall file the Statement of Fact for the Roster of Public Agencies required by Government Code section 53051.
- (b) The Authority shall be a corporate public body, exercising public and essential governmental functions with all powers necessary and convenient to carry out the powers conferred upon it by Welfare and Institutions Code sections 12300 *et seq.* and this Chapter, including the power to contract for services pursuant to Welfare and Institutions Code sections 12302 and 12302.1, subject to any limitations set forth in this Article.
- (c) The Authority shall have the power in its own name to do any of the following:
  - (1) to contract for the services of planners, financial consultants, and other experts and, separate and apart therefrom, to employ such other persons as it deems necessary.
  - (2) to sue and be sued in its own name.
  - (3) to incur debts, liabilities or obligations subject to any limitations herein set forth.
  - (4) to apply for, accept and receive state, federal or local licenses, permits, grants, loans or other aid from any agency of the United States of America, or of the State of California necessary for the Authority's full exercise of its powers.

- (5) to perform all acts necessary and proper to carry out fully the purpose of this Article and not inconsistent with Welfare and Institutions Code sections 12300 *et seq.* or this Article.
- (d) To promote administrative efficiencies and to avoid unintended duplication of resources prior to initiating delivery of IHSS through the Authority, as described in this Article, the County and the Authority shall enter into an agreement specifying the purposes, scope or nature of the agreement, the roles and responsibilities of each party including provisions that further compliance with all applicable County, state and federal labor laws, and compliance with all statutory and regulatory provisions applicable to the delivery of IHSS.
- (e) The Authority shall be deemed to be the employer of IHSS providers within the meaning of Chapter 10 (commencing with section 3500) of Division 4 of Title 1 of the Government Code, commonly known as the Meyers-Milias-Brown Act. Nothing in these enumerated powers shall be construed to limit or interfere with the rights of IHSS recipients to hire, fire and supervise the work of any worker providing services to them.
- (f) Nothing in these enumerated powers shall be construed to alter, require the alteration of, or interfere with the State's payroll system and other provisions of Welfare and Institutions Code section 12302.2 for independent providers of IHSS, or to affect the State's responsibilities with respect to unemployment insurance, or workers' compensation for providers of IHSS.

**2-365 LIABILITY OF AUTHORITY.**

- (a) Any obligation or legal liability of the Authority, whether statutory, contractual or otherwise, shall be the obligation or liability solely of the Authority and shall not be the obligation or liability of the County of Sonoma.
- (b) All contracts, leases, or other agreements of any nature, including collective bargaining agreements, between the Authority and any party, except those with the County, shall contain the following statement: "The Authority is an independent legal entity, separate and apart from the County of Sonoma. The Authority has no power to bind the County to any contractual or legal obligations. Nor may the obligees of the Authority seek recourse against the County of Sonoma for any financial or legal obligation of the Authority."

- (c) The Authority shall not be deemed to be the employer of IHSS providers for purposes of liability because of the negligence or intentional torts of the IHSS providers. Employees of the Authority shall not be employees of the County for any purpose.
- (d) The County shall be immune from any liability resulting from its implementation of Welfare and Institutions Code sections 12301.6 *et seq.* in the administration of the In-Home Supportive Services program. Any obligation of the Authority, whether statutory, contractual, or otherwise, shall be the obligation solely of the Authority, and shall not be the obligation of the County.
- (e) The Authority shall maintain all insurance coverage necessary in an amount to be determined adequate by the Directors. If the Authority purchases its own insurance, the limits of liability shall be in an amount acceptable to the Directors and shall name the County as an additional insured.
- (f) The Authority shall indemnify, defend and hold harmless the County, its elected and appointed officers, employees and agents from and against any and all liability, including defense costs and legal fees, resulting from claims for damages of any nature whatsoever, including but not limited to personal injury or property damages arising from or connected with any act or omission of any officer, employee or agent of the Authority.
- (g) The Authority shall require all third parties with whom it contracts, other than the County of Sonoma, to indemnify the Authority, to provide the Authority with written acknowledgment of such indemnification and to maintain adequate levels of insurance naming the Authority as an additional insured.

**2-366 STAFFING.**

The Directors of the Authority shall appoint and/or contract for a Public Authority Manager and shall provide broad general supervision and policy direction to that individual. The Public Authority Manager shall appoint and/or contract for subordinate staff necessary for the administration and operation of the Authority, within parameters set forth by the Directors.

**2-367 LABOR RELATIONS PROGRAM.**

- (a) The Authority shall adopt rules and regulations for administration of employer-employee relations. Only those employee organizations recognized in accordance with the Authority's labor relations resolution shall be entitled to negotiate with the Authority on matters within the scope of representation and such other rights that may be granted to

recognized employee organizations pursuant to sections 3500 through 3511 of the Government Code.

- (b) Due to the special and critical health-care services provided through the IHSS program, the Board of Supervisors finds that any interruption of such services would pose an imminent threat to the health and safety of the recipients of IHSS services and to the community. In order to minimize the likelihood of such interruption and thereby protect the health and safety of recipients and to promote harmony and productive labor relations between the Authority and any labor organization that seeks to represent or represents the providers of services to recipients of IHSS services:
  - (1) The Authority shall have a non-strike clause in any and all collective bargaining agreements with providers and personnel of the Authority. The non-strike clause shall continue at least one (1) year beyond the other provisions of any and all collective bargaining agreements; and
  - (2) The Authority shall take all legal action necessary to bar any strike or other concerted interruption of services to IHSS recipients.
- (c) The Authority shall establish rules and regulations respecting the labor relations responsibilities of the Authority, and such rules shall provide that a showing of interest of at least fifteen percent (15%) of the eligible providers, shall be a sufficient showing of interest for any labor organization to initiate any election or representation procedures established by the Authority for the purposes of certifying an exclusive representative for purposes of collective bargaining. A 15% showing of interest is being used here, solely due to the unique aspects of the care providers. A 30% showing, which has been used historically in the County, will continue to be used in other matters.

**2-368 BUDGET.**

The Authority shall adopt its budget under the same laws, rules and policies that control the County budget process. The Authority will be maintained as a separate budget entity. The budget will be submitted to and adopted through the Human Services Department.

**2-369 FISCAL PROVISIONS.**

- (a) In adopting this Article, the Board of Supervisors recognizes that the funding of IHSS is the product of a complex relationship of federal, state and County financing and that the ability of the authority to operate and to negotiate the wages and benefits of the

IHSS providers is contingent upon the availability of adequate funding from all sources. Nothing in this Article is intended to require the County to appropriate any funds for the operation of the Authority or for the payment of wages or benefits to IHSS providers.

- (b) The Authority shall provide the County with the expenditure information necessary for the County to report to the California Department of Social Services in order to receive reimbursement for the State and Federal share of the Authority costs.
- (c) The Authority shall assist the County in developing and submitting the information and documentation necessary to obtain approval from the California Department of Social Services and the Department of Health Services for the Authority's reimbursement rate and any rate adjustment.
- (d) Payment for all services provided pursuant to this Article is contingent upon the appropriation of county, state and federal funds for the purpose of providing IHSS.

**2-370 RECORDS.**

The Authority shall develop a records retention policy consistent with county, state, and federal laws and policies. The Authority shall make any of the retained records available to all authorized County, state and federal representatives.

**2-371 TERMINATION.**

By repeal of this Chapter, the Board of Supervisors may abolish the Authority.

**SECTION II.**

If any section, subsection, sentence, clause or phrase of this ordinance is for any reason held to be unconstitutional and invalid, such decision shall not affect the validity of the remaining portion of this ordinance. The Board of Supervisors declares that it would have passed this ordinance and every section, subsection, sentence, clause or phrase, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared unconstitutional or invalid.

**SECTION III.**



This ordinance shall be declared to be in full force and effect from and after thirty (30) days after the date of its passage and shall be published once before the expiration of fifteen (15) days after passage, with the names of the Supervisors voting for or against, in *The Press Democrat*, a newspaper of general circulation published in the County of Sonoma, State of California.

In regular session of the Board of Supervisors of the County of Sonoma, introduced in \_\_\_\_\_, and passed and adopted on \_\_\_\_\_, 2002, on regular roll call of the members of said Board by the following vote:

**SUPERVISORS:**

CALE \_\_\_\_\_ KERNS \_\_\_\_\_ KELLEY \_\_\_\_\_ REILLY \_\_\_\_\_ SMITH \_\_\_\_\_  
AYES \_\_\_\_\_ NOES \_\_\_\_\_ ABSTAIN \_\_\_\_\_ ABSENT \_\_\_\_\_

**WHEREUPON**, the Chair declared the above ordinance adopted

and

**SO ORDERED.**

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Chair, Board of Supervisors  
County of Sonoma

**ATTEST:**

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EEVE T. LEWIS, County Clerk and  
ex-officio Clerk of the Board of Supervisors