

DEPARTMENT: Administration/County Counsel

BY: Rich Inman, CAO

12-16-03 *Adopt*

PHONE: 966-3222

RECOMMENDED ACTION AND JUSTIFICATION:

Introduce, adopt and waive first reading of ordinance entitled "An Ordinance Adding Chapter 2.112 to the Mariposa County Code Establishing the Mariposa County In-Home Supportive Services Public Entity". *Authority*

BACKGROUND AND HISTORY OF BOARD ACTIONS:

County staff in collaboration with the County's In-Home Supportive Services (IHSS) Advisory Committee has been working to develop an ordinance that will establish the Mariposa County In-Home Supportive Services Public Entity. This entity will be responsible under Section 2.112.060 of the ordinance to perform a wide variety of duties. Furthermore, the way in which the Authority conducts its business shall be determined by the Governing Body of the Authority which is the Board of Supervisors. The manner in which the Authority is staffed will be determined at a later date. This ordinance's sole purpose is to officially establish the Authority.

ALTERNATIVES AND CONSEQUENCES OF NEGATIVE ACTION:

Financial Impact? (x) Yes () No Current FY Cost: \$

Annual Recurring Cost: \$

Budgeted In Current FY? () Yes () No () Partially Funded

Amount in Budget: \$ _____

List Attachments, number pages consecutively

Additional Funding Needed: \$ _____

Ordinance _____

Source:

Internal Transfer _____

Unanticipated Revenue _____ 4/5's vote

Transfer Between Funds _____ 4/5's vote

Contingency _____ 4/5's vote

() General () Other

CLERK'S USE ONLY:

Res. No.: _____

Ord. No. 1002

Vote - Ayes: 5

Noes: _____

Absent: _____

MW Approved

() Minute Order Attached () No Action Necessary

The foregoing instrument is a correct copy of the original on file in this office.

Date: _____

Attest: MARGIE WILLIAMS, Clerk of the Board
County of Mariposa, State of California

By: _____
Deputy

COUNTY ADMINISTRATIVE OFFICER:

Requested Action Recommended

No Opinion

Comments:

CAO: *RSI*

MARIPOSA COUNTY ORDINANCE NO. 1002

AN ORDINANCE ADDING CHAPTER 2.112 TO THE MARIPOSA COUNTY CODE ESTABLISHING THE MARIPOSA COUNTY IN-HOME SUPPORTIVE SERVICES PUBLIC AUTHORITY

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

SECTION I: Chapter 2.112 is added to the Mariposa County Code establishing the In-Home Supportive Services Public Authority of Mariposa County to read as follows:

2.112.010 Findings and Purpose.

As required by Welfare and Institutions Code Section 12302.25, the Board of Supervisors of Mariposa County hereby 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's 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.

2.112.020 Definitions.

1. "IHSS" means in-home supportive services as described in Welfare and Institutions Code Section 12300 et seq., as amended from time to time.
2. "In-home supportive services personnel and provider" means a person who provides in-home supportive services to one or more recipients.
3. "Public Authority" means the Mariposa County In-Home Supportive Services Public Authority.
4. "Recipient" means a person eligible and authorized to receive in-home supportive services under Welfare and Institutions Code Section 12300 et seq.
5. "County" means the County of Mariposa.
6. "Advisory Committee" means a committee of not more than 11 individuals appointed by the Board of Supervisors to serve in an advisory capacity regarding IHSS and the Public Authority, related to the delivery and administration of IHSS.

2.112.030 Public Authority Created.

The Board of Supervisors hereby 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 Mariposa County In-Home Supportive Services Public Authority and shall hereafter be referred to as "Public Authority".

2.112.040 Governing Body.

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

2.112.050 Advisory Committee.

The County's In-Home Supportive Services (IHSS) Advisory Committee was established by the Mariposa County Board of Supervisors by Resolution No. 02-144, in accordance with the requirements of Welfare and Institutions Code Section 12301.6(b), (c), (d) It shall serve as the advisory committee to the Public Authority and shall fulfill the roles and responsibilities required of Welfare and Institutions Code Section 12301.6. This IHSS Advisory Committee shall assume all responsibility for the functions and responsibilities previously delegated to the Advisory Committee by the Board of Supervisors. It shall report directly to the Public Authority's governing body.

1. Membership. Welfare and Institutions Code Section 12301.3 requires: (a) Each county shall appoint an in-home supportive services advisory committee that shall be comprised of not more than 11 individuals. No less than 50 percent of the membership of the advisory committee shall be individuals who are current or past users of personal assistance services paid for through public or private funds or as recipients of services under this article. (b) Prior to the appointment of members to a committee required by subdivision (a), the County Board of Supervisors shall solicit recommendations for qualified members through a fair and open process that includes the provision of reasonable written notice to, and reasonable response time by, members of the general public and interested persons and organizations.

2. Responsibility. Welfare and Institutions Code Section 12301.4 requires: Each advisory committee established pursuant to Section 12301.3 or 12301.6 shall provide ongoing advice and recommendations regarding in-home supportive services to the public authority, any administrative body in the county that is related to the delivery and administration of in-home supportive services, and the governing body and administrative agency of the public authority, nonprofit consortium, contractor, and public employees. Upon enactment of this Ordinance, the IHSS Advisory Committee will also serve as the Public Authority Advisory Committee.

2.112.060 Public Authority Duties.

The duties and responsibilities of the Public Authority shall include but not be limited to the following:

1. To implement the goals and objectives of Welfare and Institutions Code Sections 12300 et seq. including, but not limited to a) the provision of assistance to recipients in finding in-home supportive services personnel through the establishment of a registry; recipients shall not be obligated to hire from the registry; b) the investigation of the qualifications and background of potential in-home supportive services personnel; c) the establishment of a referral system under which in-home supportive services providers shall be referred to recipients; d) provision for training for providers and recipients; e) the performance of any other functions related to the delivery of in-home supportive services; and f) 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; and the adoption of rules and regulations for the administration of the Public Authority consistent with the provisions of this Chapter.

2. To adopt a budget for the Public Authority.

3. To exercise all powers, duties and functions as are prescribed by statute, ordinance of the Board of Supervisors and the Public Authority.

4. Notwithstanding Subdivision (a)(4), the Public Authority shall not be obligated to provide training directly, to pay for training provided privately or in the community, to pay providers for the 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 Public Authority shall not be obligated to ensure that any provider or recipient attend or complete any training.

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

2.112.070 Powers.

1. The Public Authority shall be an entity separate from the County of Mariposa and shall file the Statement of Fact for the Roster of Public Agencies required by Government Code Section 53051.

2. The Public 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 Section 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 limitation set forth in this Chapter.

3. The Public Authority shall have the power in its own name to do any of the following:

a. 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.

b. To sue and be sued in its own name.

c. To incur debts, liabilities or obligations subject to any limitations herein set forth.

d. 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 Public Authority's full exercise of its powers.

e. To perform all acts necessary and proper to carry out fully the purpose of this Chapter and not inconsistent with Welfare and Institutions Code Sections 12300 et seq. or this Chapter.

4. The Public 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 retain, select, terminate and direct the work of any worker providing services to them.

5. 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.

2.112.080 Liability of Public Authority.

1. Any obligation or legal liability of the Public Authority, whether statutory, contractual or otherwise, shall be the obligation or liability solely of the Public Authority and shall not be the obligation or liability of the County of Mariposa.

2. All contracts, leases, or other agreements of any nature, including collective bargaining agreements, between the Public Authority and any party, except those with the County, shall contain the following statement: "The Public Authority is an Independent legal entity, separate and apart from the County of Mariposa. The Public Authority has no power to bind the County to any contractual or legal obligations. Nor may the obligees of the Public Authority seek recourse against the County of Mariposa for any financial or legal obligation to Public Authority."

3. The Public 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 Public Authority shall not be employees of the County for any purpose.

4. 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 Services Program. Any obligation of the Public Authority, whether statutory, contractual, or otherwise, shall be the obligation solely of the Public Authority, and shall not be the obligation of the County.

5. The Public Authority shall maintain general liability insurance in an amount determined to be adequate by the County Administrative Officer and shall name the County as an additional insured. Evidence of such insurance shall be provided to the County within 30 days of the execution of the agreement between the Authority and the County and shall be regularly provided thereafter.

6. The Public 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 Public Authority.

7. The Public Authority shall require all third parties with whom it contracts, other than the County of Mariposa, to indemnify the Public Authority, to provide the Public Authority with written acknowledgment of such indemnification and to maintain adequate levels of insurance naming the Public Authority as an additional insured.

8. The Public Authority shall not be deemed to be the employer of in-home supportive services personnel referred to recipients for purposes of liability due to the negligence or intentional torts of the in-home supportive services personnel.

2.112.090 Staffing.

Public Authority staff shall be appointed by the Public Authority's governing body by Resolution. Legal services shall be provided through the Office of the Mariposa County Counsel. Financial services, including those of Treasurer and Auditor, shall be provided through the offices of the County's Auditor and Treasurer. The Clerk of the Board shall act as Secretary to the Public Authority. The County Administrative Officer or his/her designee shall represent the Public Authority in any labor-related matters. Upon execution of a memorandum of understanding with the County, the Public Authority shall utilize other County employees to assist in carrying out purposes of the Public Authority. The Public Authority shall, at least quarterly, reimburse the County for any and all staffing costs.

1. The Authority may hire employees including administrative and support staff as deemed necessary to provide mandated functions and may elect to contract with the County for such services.

2.112.100 Employer-Employee Relations Policy.

The Public Authority shall adopt rules and regulations for administration of employer-employee relations. Only those employee organizations recognized in accordance with the Public Authority's labor relations resolution shall be entitled to negotiate with the Public 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.

2.112.110 Public Authority Labor Relations.

In-home Supportive Services providers shall be entitled to all of the rights conferred upon them by the Meyers-Milias Brown Act (Government Code Section 3500 et seq.), including the right to be represented in their relationship with the Authority by an organization of their choice, and the right to meet and confer with the Authority with regard to wages, benefits, and other terms and conditions of employment. Due to special and critical health-care services provided through the IHSS program, the Mariposa County Board of Supervisors hereby 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 and to promote harmony and productive labor relations between the Public Authority and any labor organization which seeks to represent or represents IHSS providers or Public Authority personnel:

a. The Public Authority shall have a non-strike clause in any and all collective bargaining agreements with IHSS providers and with personnel of the Public Authority. The non-strike clause shall continue at least one year beyond the other provisions of any and all collective bargaining agreements.

b. Any collective bargaining agreements reached between the Public Authority and any labor organization certified to represent IHSS providers shall be subject to this Article, and to ratification in its entirety. Final adoption of any such agreement shall be by simple majority vote of the Public Authority.

2.112.120 County Costs.

The costs and expenses of the County to provide administrative, legal, labor relations, and other services requested by the Public Authority and agreed to by the County, and to make payments to or provide benefits for in-home supportive services providers, shall be charged against the funds of the Public Authority.

2.112.130 Public Authority – County Agreement.

Prior to initiating delivery of IHSS through the Public Authority, the Public Authority shall enter into an agreement with the County specifying the roles and responsibilities of each party, provide for the County's provision of such administrative, legal, labor relations, and other services to the Public Authority as the parties may deem necessary or appropriate, and including provisions which ensure compliance with all applicable federal, state, and local laws and regulations including but not limited to all statutory and regulatory provisions applicable to the delivery of IHSS, and federal and state labor laws.

2.112.140 Fiscal Provisions.

Nothing in this Chapter is intended to require the County to appropriate or to transfer any funds for the operation of the Authority or for the payment of wages or benefits for in-home supportive services personnel, except as expressly provided in an agreement between the Authority and the County, and the funds necessary to fund any obligation of the County has been appropriately provided for in the County's annual budget or in an amendment of such annual budget.

1. IHSS services shall not be reduced in order to fund the Public Authority or implementation of Government Code Sections 3500 et seq.

2. Within 90 days after the establishment of the Public Authority, and thereafter prior to the commencement of each fiscal year, the Public Authority shall adopt a budget for the ensuing fiscal year. The Public Authority shall adopt its budget under the same laws, rules and policies that control the County budget process. Hearings on the Public Authority budget shall be conducted concurrently with hearings conducted in connection with the County budget.

3. The establishment and operation of the Public Authority or the application of Government Code Sections 3500 et seq., shall not result in payments from the County's general fund beyond the County's appropriation for the Public Authority, if any, which shall be an absolute limit on County cost.

4. The maximum amount of County funds available in any given budget year for the Public Authority's wage and benefit negotiations, if any, shall be set by the Board of Supervisors as part of the County's annual budget as it may be amended from time to time.

5. The total of all operating costs, wages, and benefits proposed or established by the Public Authority shall be consistent with the provisions of the County budget. The Public Authority shall not establish a payment rate, including costs of wages, benefits and operation, until the Public Authority determines that the funds necessary for the payment rate are legally available.

2.112.150 Liability Insurance.

Without limiting the Public Authority's indemnification of the County as set forth below, the Public Authority shall acquire and maintain appropriate insurance in amounts and coverage as are determined by the County's Administrative Officer to be adequate, and shall name the County, its elected and appointed officers, employees and agents as additional insureds on any policies of insurance maintained by the Public Authority. Evidence of such insurance shall be provided to the County's Administrative Officer within thirty days of procurement.

2.112.160 Indemnification.

The Public 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, and 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 or personnel of the Public Authority.

2.112.170 Records.

The Public Authority shall maintain all records pertaining to service delivery and fiscal administrative controls for a minimum of five years after final payment for a given fiscal year, or until all pending County, state and federal audits have been completed, whichever is later. The

Public Authority shall make any of the retained records available to all authorized County, state and federal representatives.

2.112.180 Termination.

In the event the Board of Supervisors rescinds this Ordinance the Board of Supervisors shall comply with the provisions of Welfare and Institutions Code Sections 12300 et seq.

2.112.190 Disclaimer.

By establishing the Public Authority, the County is assuming an undertaking only to promote the general welfare. It is not assuming, nor is it imposing on its officers and employees, an obligation for breach of which it is liable in money damages to any person who claims that such breach proximately caused injury.


2.112.200 Interpretation.

Should any question or dispute arise the meaning of any term, phrase, word or section contained in this Ordinance the interpretation of the CAO shall be final and binding.

SECTION II: This Ordinance shall become effective thirty (30) days after final passage pursuant to Government Code § 25123.

PASSED AND ADOPTED by the Board of Supervisors of Mariposa County this 16th day of December 2003 by the following vote:

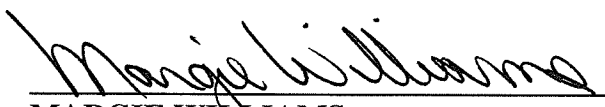
- AYES: STETSON, BALMAIN, BIBBY, PARKER, PICKARD
- NOES: NONE
- ABSENT: NONE
- ABSTAINED: NONE



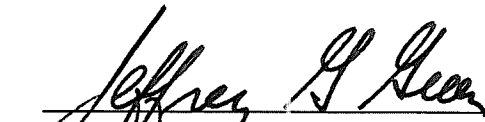
BOB PICKARD, Chairman
 Mariposa County Board of Supervisors

ATTEST:

**APPROVED AS TO FORM
AND LEGAL SUFFICIENCY:**



MARGIE WILLIAMS
 Clerk of the Board



JEFFREY G. GREEN
 County Counsel