

**CITY OF SAN MATEO
ORDINANCE NO. 2016-__**

**ADDING CHAPTER 5.92, “MINIMUM WAGE” TO
TITLE 5, “BUSINESS LICENSES AND REGULATIONS,”
OF THE SAN MATEO MUNICIPAL CODE**

WHEREAS, the State of California has enacted a minimum wage that will reach \$15.00 per hour in January of 2022; and

WHEREAS, in an effort to help working households achieve economic security and acknowledging the higher relative cost of living on the Peninsula, the City Council of the City of San Mateo wishes to enact a citywide minimum wage to reach \$15.00 per hour before 2022; and

WHEREAS, a higher minimum wage rate protects public health, safety and welfare by requiring that employees are compensated in such a manner as to enable and facilitate their individual self-reliance within the City of San Mateo; and

WHEREAS, the City of San Mateo may adopt a higher minimum wage pursuant to the powers vested in the City under the laws and Constitution of the State of California including but not limited to the police powers vested in the City pursuant to Article XI, Section 7, of the California Constitution;

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF SAN MATEO, CALIFORNIA, ORDAINS that:

Section 1. PURPOSE AND INTENT. The purpose and intent of this Ordinance is to adopt a new Chapter 5.92 of Title 5 of the San Mateo Municipal Code to provide a minimum wage that increases annually and reaches the level of \$15.00 per hour on January 1, 2019 for most employers and January 1, 2020 for employers that are non-profit corporations.

Section 2. ADDING CHAPTER 5.92 TO TITLE 5 OF THE SAN MATEO MUNICIPAL CODE. Chapter 5.92 is added to Title 5 of the San Mateo Municipal Code to read as follows:

**Chapter 5.92
MINIMUM WAGE**

- 5.92.010 Definitions.**
- 5.92.020 Minimum Wage.**
- 5.92.030 Notice and Posting.**
- 5.92.040 Implementation.**
- 5.92.050 Enforcement.**
- 5.92.060 Waiver Through Collective Bargaining.**
- 5.92.070 No Pre-Emption of Higher Standards.**
- 5.92.080 Federal or State Funding.**

5.92.010 DEFINITION. As used in this Chapter, the following terms shall have the following meanings:

- (a) “Calendar week” shall mean a period of seven consecutive days starting on Sunday.
- (b) “City” shall mean the City of San Mateo.

(c) "Employee" shall mean any person who:

(1) In a calendar week performs at least two hours of work within the geographic boundaries of the City for an Employer; and

(2) Qualifies as an employee entitled to payment of a minimum wage from any Employer under the California Minimum Wage law, as provided under Section 1197 of the California Labor Code and wage orders published by the State of California Industrial Welfare Commission.

Employees shall include Learners, as defined by the California Industrial Welfare Commission.

(d) "Employer" shall mean any person (including a natural person, corporation, non-profit corporation, general partnership, limited partnership, limited liability partnership, limited liability company, business trust, estate, trust, association, joint venture, agency, instrumentality, or any other legal or commercial entity, whether domestic or foreign), who directly or indirectly (including through the services of a temporary services or staffing agency or similar entity) employs or exercises control over the wages, hours or working conditions of any Employee.

(e) "Non-Profit Corporation" shall mean a non-profit corporation, duly organized, validly existing, and in good standing under the laws of the jurisdiction of its incorporation and (if a foreign corporation) in good standing under the laws of the State of California, which corporation has established and maintains valid non-profit status under Section 501 subsection (c)(3) of Title 26 of the United States Internal Revenue Code of 1986, as amended and all rules and regulations promulgated thereunder.

(f) "Minimum Wage" shall have the meaning set forth in Section 5.92.020 of this Chapter.

5.92.020 MIMIMUM WAGE.

(a) Employers shall pay Employees no less than the Minimum Wage for each hour worked within the geographic boundaries of the City.

(b) For Employers which are not Non-Profit Corporations, the Minimum Wage paid shall be as follows:

(1) Beginning January 1, 2017, the Minimum Wage shall be an hourly rate of \$12.00.

(2) Beginning January 1, 2018, the Minimum Wage shall be an hourly rate of \$13.50.

(3) Beginning January 1, 2019, the Minimum Wage shall be an hourly rate of \$15.00.

(c) For Employers which are Non-Profit Corporations, the Minimum Wage rate shall be as follows:

(1) Beginning January 1, 2017, the Minimum Wage shall be an hourly rate of \$10.50.

(2) Beginning January 1, 2018, the Minimum Wage shall be an hourly rate of \$12.00.

(3) Beginning January 1, 2019, the Minimum Wage shall be an hourly rate of \$13.50.

(4) Beginning January 1, 2020, the Minimum Wage shall be equal to that of the employers which are not Non-Profit Corporations, and shall be subject to the Consumer Price Index increase as described in section (d).

(d) Beginning on January 1, 2020, and each January thereafter, the minimum wage shall increase by an amount equal to the prior year's increase, if any, in the Consumer Price Index (CPI) for San Francisco-Oakland-San Jose as determined by the United States Department of Labor. The change shall be calculated by using the August to August change in the CPI to calculate the annual increase, if any. A decrease in the CPI shall not result in a decrease in the minimum wage.

(e) An Employee who is a Learner, as defined by California Industrial Welfare Commission Order No. 4-2001, shall be paid no less than 85 percent of the applicable Minimum Wage for the first 160 hours of employment. Thereafter, the Employee shall be paid the applicable Minimum Wage rate.

(f) An Employer may not deduct an amount from wages due an Employee on account of any tip or gratuity, or credit the amount or any part thereof, of a tip or gratuity, against, or as a part of, the wages due the Employee from the Employer.

5.92.030 NOTICE AND POSTING.

(a) By October 1 of each year, the City shall publish and make available to Employers a bulletin announcing the adjusted Minimum Wage rate, to take effect January 1 of the following year. In conjunction with this bulletin, the City shall, by November 1 of each year, publish and make available to Employers, in English and other languages as provided in any implementing regulations, a notice suitable for posting by Employers in the workplace informing Employees of the current Minimum Wage rate and of their rights under this Chapter.

(b) Each Employer shall give written notification to each current Employee, and to each new Employee at time of hire, of his or her rights under this Chapter. The notification shall be in English and other languages as provided in any implementing regulations, and shall also be posted prominently in areas at the work site where it will be seen by all Employees. Every Employer shall also provide each Employee, at the time of hire, with the Employer's name, address, and telephone number in writing. Failure to post such notice shall constitute a violation of this Municipal Code. The City is authorized to prepare sample notices and Employer use of such notices shall constitute compliance with this subsection.

5.92.040 IMPLEMENTATION. City may promulgate regulations for the implementation and enforcement of this Chapter. Any regulation promulgated by City shall have the force and effect of law and may be relied on by Employers, Employees and other parties to determine their rights and responsibilities under this Chapter. Any regulations may establish procedures for ensuring fair, efficient and cost-effective implementation of this Chapter, including supplementary procedures for informing Employees of their rights under this Chapter, for monitoring Employer compliance with this Chapter, and for providing administrative hearings or determining whether an Employer has violated the requirements of this Chapter.

5.92.050 ENFORCEMENT.

(a) Enforcement by the City.

City may take any enforcement action set forth in Title 1 of this Municipal Code to address violations of this Chapter.

(b) Private Rights of Action.

An Employee claiming harm from a violation of this Chapter may bring an action against the Employer in court to enforce the provisions of this Chapter and shall be entitled to all remedies available to correct any violation of this Chapter, including but not limited to, back pay, reinstatement, injunctive relief, or civil penalties as provided herein. An Employee who is a prevailing party in an action to enforce this Chapter is entitled to an award of reasonable attorney fees, witness fees, and costs.

(c) Remedies.

(1) The remedies for violation of this Chapter include but are not limited to:

(A) Reinstatement, the payment of back wages unlawfully withheld, and payment of an additional sum as a civil penalty in the amount of \$50 to each Employee whose rights under this Chapter were violated for each day or portion thereof that the violation occurred or continued, and fines imposed pursuant to other provisions of this Code or state law.

(B) Interest on all due and unpaid wages at the rate of interest specified in subdivision (b) of Section 3289 of the California Civil Code, which shall accrue from the date that the wages were due and payable as provided in Part 1 (commencing with Section 200) of Division 2 of the California Labor Code, to the date the wages are paid in full.

(C) Reimbursement of the City's administrative costs of enforcement and reasonable attorney fees.

(D) The City may require the Employer to pay an additional sum as a civil penalty in the amount of \$50 to the City for each Employee or person whose rights, under this Chapter, were violated for each day or portion thereof that the violation occurred or continued, and fines imposed pursuant to other provisions of this Code or state law, where there has been a previous violation of this Chapter.

(2) The remedies, penalties and procedures provided under this Chapter are cumulative and are not intended to be exclusive of any other available remedies, penalties and procedures established by law which may be pursued to address violations of this Chapter. Actions taken pursuant to this Chapter shall not prejudice or adversely affect any other action, administrative or judicial, that may be brought to abate a violation or to seek compensation for damages suffered.

(d) Retaliation Barred.

(1) An Employer shall not discharge, reduce the compensation or otherwise retaliate against any Employee for making a complaint to the City, participating in any of the City's proceedings, using any civil remedies to enforce his or her rights, or otherwise asserting his or her rights under this Chapter. Within 120 days of an Employer being notified of such activity, it shall be unlawful for the Employer to discharge any Employee who engaged in such activity unless the Employer has clear and convincing evidence of just cause for such discharge.

(2) No Employer may fund increases in compensation required by this Chapter, nor otherwise respond to the requirements of this Chapter, by reducing the wage rate paid to any Employee, nor by increasing charges to them for parking, meals, uniforms or other items, nor by reducing the citation or other non-wage benefits of any such Employee, except to the extent such prohibition would be pre-empted by the Federal Employee Retirement Income Security Act.

(e) Retention of Records.

Each Employer shall maintain for at least three years for each Employee, a record of his or her name, hours worked and pay rate. Each Employer shall provide each Employee a copy of the records relating to such Employee upon the Employee's reasonable request.

5.92.060 WAIVER THROUGH COLLECTIVE BARGAINING. Except for employees in the property services industry (i.e., janitors, landscapers, groundskeepers, and security guards), the provisions of this Chapter may be waived in whole or in part with respect to employees covered under a collective bargaining agreement if all of the following circumstances apply:

(a) Both parties to the collective bargaining agreement agree in writing to such waiver in whole or in part; and

(b) the collective bargaining agreement contains provisions which specifically allow waivers of municipal minimum wage rates in excess of the contractually required wage rates for any group or groups of covered employees; and

(c) the entire collective bargaining agreement, including the provisions referred to in (b) above, was negotiated and entered into prior to the date or when such waiver would take effect.

5.92.070 NO PRE-EMPTION OF HIGHER STANDARDS. The purpose of this Chapter is to ensure minimum labor standards. This Chapter does not pre-empt or prevent the establishment of superior employment standards (including higher wages) or the expansion of coverage by ordinance, resolution, contract, or any other action of the City. This Chapter shall not be construed to limit a discharged Employee's right to bring a common law cause of action for wrongful termination.

5.92.080 FEDERAL OR STATE FUNDING. This Chapter shall not be applied to the extent it will cause the loss of any federal or state funding of City activities.

Section 3. SEVERABILITY. In the event any section, clause or provision of this Ordinance shall be determined invalid or unconstitutional, such section, clause or provision shall be deemed severable and all other sections or portions hereof shall remain in full force and effect. It is the intent of the City Council that it would have adopted all other portions of this Ordinance irrespective of any such portion declared to be invalid or unconstitutional.

Section 4. ENVIRONMENTAL DETERMINATION. In accordance with California Environmental Quality Act (CEQA) Guidelines section 15378(b)(5), this action is categorically exempt from (CEQA) as an administrative activity that will not result in a potentially significant physical impact on the environment.

Section 5. PUBLICATION. This Ordinance shall be published in summary in a newspaper of general circulation, posted in the City Clerk's Office, and posted on the City's website, all in accord with Section 2.15 of the City Charter.

Section 6. LEGISLATIVE HISTORY AND EFFECTIVE DATE. This Ordinance was introduced on July 18, 2016 and adopted on August 15, 2016, and shall be effective thirty days after its date of adoption.