

## MODEL MINIMUM WAGE ORDINANCE

*Note: the following model ordinance was developed for the Ensuring Opportunity Campaign by our campaign partner, EBASE (East Bay Alliance for a Sustainable Economy).*

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### CHAPTER XX: CITY MINIMUM WAGE AND OTHER EMPLOYMENT STANDARDS

#### Sec. I. Definitions

As used in this Chapter, the following capitalized terms shall have the following meanings:

"City" shall mean the <<CITY>>.

"Employee" shall mean any person who:

- a. In a particular week performs at least two (2) hours of work within the geographic boundaries of the CITY for an Employer; and
- b. 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 California Industrial Welfare Commission.

"Employer" shall mean any Person 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.

"Paid Sick Leave" shall mean paid "sick leave" as defined in California Labor Code § 233(b)(4), except that the definition here extends beyond the Employee's own illness, injury, medical condition, need for medical diagnosis or treatment, or medical reason, to also encompass time taken off work by an Employee for the purpose of providing care or assistance to other persons specified below with an illness, injury, medical condition, or need for medical diagnosis or treatment.

"Minimum Wage" shall have the meaning set forth in Section II.B. of this Chapter.

"Person" means an individual, corporation, 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.

"Small Business" shall mean an Employer for which normally fewer than ten persons work for compensation during a given week, including persons employed outside the City. The City Council is authorized to adopt regulations further defining "small business" for businesses with fluctuating numbers of employees. In determining the number of persons performing work for an employer during a given week, all persons performing work for the same business enterprise for compensation on a full-

time, part-time, or temporary basis shall be counted, including persons made available to work through the services of a temporary services or staffing agency or similar entity.

## **Sec. II. Minimum Wage.**

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

B. The Minimum Wage rate shall be as follows:

1. Beginning on the 1<sup>ST</sup> OF JANUARY, 2016, the Minimum Wage shall be an hourly rate of \$11 per hour. (\$12.25 per hour to get to \$15 by 2018)
2. Beginning on January 1, 2017, the Minimum Wage shall be an hourly rate of \$12.00 an hour. (\$13.50 per hour)
3. Beginning on January 1, 2018, the Minimum Wage shall be an hourly rate of \$13.00 an hour. (\$15 per hour)
4. Beginning on January 1, 2019, the Minimum Wage shall be an hourly rate of \$14.00 an hour.
5. Beginning on January 1, 2020, the Minimum Wage shall be an hourly rate of \$15.00 an hour.

To prevent inflation from eroding its value, beginning on the 1<sup>st</sup> of January 2021 (or 2019), and then each year thereafter on the 1<sup>st</sup> of January, the Minimum Wage shall increase by an amount corresponding to the prior calendar year's increase, if any, in the Consumer Price Index for urban wage earners and clerical workers for the San Francisco-Oakland-San Jose, CA metropolitan statistical area (or if such index is discontinued, then in the most similar successor index).

## **Sec. III. Paid Sick Leave**

A. ACCRUAL OF PAID SICK LEAVE.

1. Paid Sick Leave shall begin to accrue as of the January 1, 2016. For Employees hired by an Employer after January 1, 2016, the Employee shall not be entitled to use Paid Sick Leave until after 90 calendar days of employment with the Employer.
2. For every 30 hours worked after Paid Sick Leave begins to accrue for an Employee, the Employee shall accrue one hour of Paid Sick Leave. Such leave shall accrue only in hour-unit increments; there shall be no accrual of a fraction of an hour of such leave.
3. For Employees of Small Businesses, there shall be a minimum cap of 48 hours of accrued Paid Sick Leave. For Employees of other Employers, there shall be a minimum cap of 72 hours of accrued Paid Sick Leave. Accrued Paid Sick Leave for Employees carries over

from year to year (whether calendar year or fiscal year), but is limited to the aforementioned cap. Nothing herein precludes an Employer from establishing a higher cap or no cap on the number of accrued hours.

4. If an Employer has a paid leave policy, such as a paid time off policy, that makes available to Employees an amount of paid leave that may be used for the same purposes as Paid Sick Leave under this Chapter and that is sufficient to meet the requirements for accrued Paid Sick Leave as stated in subsections (a)-(c), the Employer is not required to provide additional Paid Sick Leave.
5. An Employer is not required to provide financial or other reimbursement to an Employee upon the Employee's termination, resignation, retirement, or other separation from employment, for accrued Paid Sick Leave that the Employee has not used.

#### B. USE OF PAID SICK LEAVE.

1. An Employee may use Paid Sick Leave not only when he or she is ill or injured or for the purpose of the Employee's receiving medical care, treatment, or diagnosis, as specified more fully in California Labor Code § 233(b)(4), but also to aid or care for the following persons when they are ill or injured or receiving medical care, treatment, or diagnosis: Child; parent; legal guardian or ward; sibling; grandparent; grandchild; and spouse, registered domestic partner under any state or local law, or designated person. The Employee may use all or any percentage of his or her Paid Sick Leave to aid or care for the aforementioned persons. The aforementioned child, parent, sibling, grandparent, and grandchild relationships include not only biological relationships but also relationships resulting from adoption; step-relationships; and foster care relationships. "Child" includes a child of a domestic partner and a child of a person standing in loco parentis. If the Employee has no spouse or registered domestic partner, the Employee may designate one person as to whom the Employee may use paid sick leave to aid or care for that person in lieu of a spouse or registered domestic partner. The opportunity to make such a designation shall be extended to the Employee no later than the date on which the Employee has worked 30 hours after Paid Sick Leave begins to accrue pursuant to this Chapter. There shall be a window of 10 work days for the Employee to make this designation. Thereafter, the opportunity to make such a designation, including the opportunity to change such a designation previously made, shall be extended to the Employee on an annual basis, with a window of 10 work days for the Employee to make the designation.
2. An Employer may not require, as a condition of an Employee's taking Paid Sick Leave, that the Employee search for or find a replacement worker to cover the hours during which the Employee is on Paid Sick Leave.

3. An Employer may require Employees to give reasonable notification of an absence from work for which Paid Sick Leave is or will be used.
4. An Employer may only take reasonable measures to verify or document that an Employee's use of Paid Sick Leave is lawful, and shall not require an Employee to incur expenses in excess of five dollars in order to show his or her eligibility for such paid leave.

#### **Sec. IV. Hospitality Service Charges**

##### **A. DEFINITIONS FOR THIS SECTION:**

1. "Service Charge" means all separately-designated amounts collected by a Hospitality Employer from customers that are for service by Hospitality Workers, or are described in such a way that customers might reasonably believe that the amounts are for those services, including but not limited to those charges designated on receipts under the term "service charge," "delivery charge," or "portage charge."
2. "Hospitality Employer" means a Person who owns, controls, or operates any part of a hotel or restaurant or banquet facilities within the City, including as a subcontractor thereto, but does not include any governmental agency.
3. "Hospitality Worker" means any individual who works for a Hospitality Employer and who performs a service for which a Hospitality Employer imposes a Service Charge. "Hospitality Worker" does not include a managerial employee.

##### **B. HOSPITALITY EMPLOYERS' RESPONSIBILITIES**

1. Service Charges shall not be retained by the Hospitality Employer but shall be paid over in their entirety to the Hospitality Worker(s) performing services for the customers from whom Service Charges are to be collected. No part of these charges may be paid to supervisors except for any portion of their work time spent on nonsupervisory work serving these customers, and then at no higher rate of compensation than the average of what is paid other Hospitality Workers performing similar customer service. The Service Charges shall be distributed to the Hospitality Workers not later than the next payroll following the work or collection of the charge from the customer, whichever is later. Without limitation of the foregoing:
  - a. Service charges collected for banquets or catered meetings shall be paid to the Hospitality Workers who actually work the banquet or catered meeting;
  - b. Service charges collected for room service shall be paid to the Hospitality Workers who actually deliver food and beverage associated with the charge; and

- c. Service charges collected for portage service shall be paid to the Hospitality Workers who actually carry the baggage associated with the charge.
2. Each Hospitality Employer shall disclose in writing to Employees its plan of distribution of service charges to Hospitality Workers and shall report to Employees on each payroll date the amount of service charges collected and amounts distributed to Hospitality Workers for the pay period in question.
3. No Hospitality Employer or agent thereof shall deduct any amount from wages due to Employee on account of a service charge, or require a Hospitality Employee to credit the amount, or any part thereof, of a service charge, against and as a part of the wages due the Hospitality Employee from the Hospitality Employer.
4. This section does not apply to any tip, gratuity, money, or part of any tip, gratuity, or money that has been paid or given to or left for a Hospitality Worker by customers over and above the actual amount due for services rendered or for goods, food, drink, or articles sold or served to the customer.

## **Sec. V. ENFORCEMENT**

### **A. RETALIATION BARRED**

1. A Person shall not discharge, reduce the compensation of nor otherwise discriminate against any Person for making a complaint to the City, participating in any of its 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 compensation of any non-management Employees nor by reducing the pension, vacation, or other non-wage benefits of any such Employees, nor by increasing charges to them for parking, meals, uniforms or other items. If an Employer makes such adverse changes after the earlier of the public or the Employer having been given notice of the pendency of the proposed ordinance giving rise to this Chapter but before this Chapter has become effective, then upon this Chapter's effective date, such Employer shall restore the conditions of the status quo ante.

### **B. WAIVER**

Any waiver by an individual Employee of any of the provisions of this Chapter shall be deemed contrary to public policy and shall be void and unenforceable, except that Employees whose total compensation including wages and benefits exceeds the minimum wage shall not be barred from entering into a written valid collective bargaining agreement waiving a provision of this Chapter if such waiver is set forth in clear and unambiguous terms. In accordance with Labor Code section 351,

tips and gratuities shall not be included in total compensation. Any request to an individual Employee by an Employer to waive his or her rights under this Chapter shall constitute a violation of this Chapter.

#### C. RETENTION OF RECORDS

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

#### D. NOTICE TO EMPLOYEES

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 all languages spoken by a more than 10% of the Employees, and shall also be posted prominently in areas at the work site where it will be seen by all Employees. The City Manager or their designee is authorized to prepare sample notices; Employer use of such notices shall constitute compliance with this subsection.

#### E. CITY ACCESS

Each Employer shall permit access to work sites and relevant records for authorized City representatives for the purpose of monitoring compliance with this Chapter and investigating employee complaints of noncompliance, including production for inspection and copying of its employment records, but without allowing social security numbers to become a matter of public record.

#### F. CITY AUTHORIZED TO CONSIDER COMPLIANCE

City officials are hereby authorized to consider, to the maximum extent permitted by law, an Employer's record of noncompliance with this Chapter in making City decisions on City contracts and land use approvals and other entitlements to expand or operate within the City. The City is authorized to either deny approval or include conditions for approval ensuring future compliance by the Employer. The City is authorized to establish an administrative procedure for receiving and investigating complaints of noncompliance with this Chapter and rendering City decisions on the merits of such complaints. The City is authorized to award the same relief in its proceedings as a court may award. Pursuit of such administrative remedy shall not be a prerequisite for pursuing a private action under this Chapter.

#### G. CITY ENFORCEMENT

1. Where compliance with the provisions of this Chapter is not forthcoming, City may take any appropriate enforcement action to ensure compliance, including but not limited to the following:

a) City may issue an Administrative Citation pursuant to provisions of the City's Municipal Code. The amount of this fine shall vary based on the provision of this Chapter violated, as specified below:

1) A fine may be assessed for retaliation by an Employer against an Employee for exercising rights protected under this Chapter. The fine shall be one thousand dollars (\$1,000.00) for each Employee retaliated against.

2) A fine of up to five hundred dollars (\$500.00) may be assessed for any of the following violations of this Chapter:

i. Failure to post notice of the Minimum Wage rate.

ii. Failure to provide notice of right to designate person in-lieu of spouse or registered domestic partner to use paid sick leave to aid or care for that person.

iii. Failure to maintain payroll records for the minimum period of time as provided in this Chapter.

iv. Failure to allow the City access to payroll records.

3) A fine equal to the total amount of appropriate remedies, pursuant to Section I of this Chapter. Any and all money collected in this way that is the rightful property of an Employee, such as back wages, interest, and civil penalty payments, shall be disbursed by the City in a prompt manner.

b) Alternatively, City may pursue administrative remedies in accordance with the following procedures:

1) Whenever City determines that a violation of any provision of this Chapter is occurring or has occurred, City may issue a written compliance order to the Employer responsible for the violation. The compliance order may include an order for payment of fines as described in subsection a) of this section.

2) A compliance order issued pursuant to this chapter shall contain the following information:

i. The date and location of the violation;

ii. A description of the violation;

iii. The actions required to correct the violation;

iv. Either a copy of this Chapter or an explanation of the consequences of noncompliance with this Chapter, including payment of any fines, and a description of the hearing procedure and appeal process;

v. A warning that the compliance order shall become final unless a complete written request for a hearing before the City is received within fourteen (14) days receipt of service of the compliance order. The request for a hearing shall be submitted on a form provided by the City. Failure of an Employer to submit a complete written request within the timeframe described in this section shall result in a waiver of any right to an administrative hearing, and failure to exhaust administrative remedies. Service of the compliance order shall be deemed complete on the date of mailing.

3) Following receipt of a timely request for a hearing, the City shall provide the Employer responsible for the violation with a hearing before a Hearing Officer designated by the City that affords the Employer due process. The City Clerk shall set a hearing date that is 15 to 45 days from the date that the request for hearing is filed with the City. Notice of the scheduled hearing shall be mailed to the Employer and the affected Employee(s) at least 10 days before the date of the hearing. If multiple compliance orders are being appealed, the City Clerk and Hearing Officer may consolidate the appeals into one hearing. During the pendency of the hearing and any subsequent appellate process, the City will not enforce any aspect of the compliance order. The decision of the Hearing Officer shall be final with no further right of administrative review. The Hearing Officer may affirm or dismiss the compliance order in whole or in part, including the assessment of fines as provided by subsection a) of this section.

c) The City may initiate a civil action for injunctive relief and damages and civil penalties in a court of competent jurisdiction.

#### H. PRIVATE RIGHTS OF ACTION

Any Person 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 remedy any violation of this Chapter, including but not limited to back pay, reinstatement and/or injunctive relief. Violations of this Chapter are declared to irreparably harm the public and covered employees generally. The Court shall award reasonable attorney's fees, witness fees and expenses to any plaintiff who prevails in an action to enforce this Chapter. Any Person who negligently or intentionally violates this Chapter shall be liable for civil penalties for each violation with a maximum of \$1000 per violation, the amount to be determined by the court.

#### I. 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 the payment of an additional sum as a civil penalty in the amount of at least \$50 to each Employee whose rights under this Chapter were negligently or intentionally violated for each day or portion thereof

that the violation occurred or continued, and fines imposed pursuant to other provisions of this Chapter 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's fees.

d) If a repeated violation of this Chapter has been finally determined in a period from July 1 to June 30 of the following year, the City may require the Employer to pay an additional sum as a civil penalty in the amount of at least \$100 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 other penalties imposed pursuant to other provisions of this Code or state law.

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.

3. No criminal penalties shall attach for any violation of this Chapter, nor shall this Chapter give rise to any cause of action for damages against the City.

#### J. NO PREEMPTION OF HIGHER STANDARDS

The purpose of this Chapter is to ensure minimum labor standards. This Chapter does not preempt 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.

#### K. SEVERABILITY

If any provision or application of this Chapter is declared illegal, invalid or inoperative, in whole or in part, by any court of competent jurisdiction, the remaining provisions and portions thereof and applications not declared illegal, invalid or inoperative shall remain in full force or effect. The courts are hereby authorized to reform the provisions of this Chapter in order to preserve the maximum permissible effect of each subsection herein. Nothing herein may be construed to impair any contractual obligations of the City. This Chapter shall not be applied to the extent it will cause the loss of any federal or state funding of City activities.

**Section VI. Compliance with Minimum Wage and other Labor Standards as Condition for City Business License:**

Any person engaging in business in the City shall comply with the requirements of this Chapter as a condition of issuance of a business license. No person shall engage in business in the City without complying with the requirements of this Chapter.