



City of San Leandro

Meeting Date: September 19, 2016

Ordinance

File Number: 16-420 **Agenda Section:** CONSENT CALENDAR

Agenda Number: 8.G.

TO: City Council

FROM: Chris Zapata
City Manager

BY: City Council

FINANCE REVIEW: David Baum
Finance Director

TITLE: ORDINANCE that Accelerates Implementation of the Statewide Minimum Wage Requirements in San Leandro

The Council of the City of San Leandro does ORDAIN as follows:

Section 1. That a new Chapter 4-35 is hereby added to the San Leandro Municipal Code to read as follows:

Chapter 4-35 MINIMUM WAGE

Sections

- 4-35-100 Title and Purpose.
- 4-35-200 Authority.
- 4-35-300 Definitions.
- 4-35-400 Minimum Wage.
- 4-35-450 Effectiveness of Ordinance if State Minimum Wage Becomes Greater than City's
- 4-35-500 Waiver Through Collective Bargaining.
- 4-35-600 Notice, Posting and Payroll Records.
- 4-35-700 Retaliation Prohibited.
- 4-35-800 Implementation
- 4-35-900 Enforcement
- 4-35-1000 Relationship to Other Requirements.
- 4-35-1100 Application of Minimum Wage to Welfare-To-Work Programs.
- 4-35-1200 Fees.
- 4-35-1300 Employee Exemptions

4-35-100 Title and Purpose.

This ordinance shall be known as the "Minimum Wage Ordinance."

The purpose of this ordinance is to protect the public health, safety and welfare. It does this

by requiring that employees are compensated by their employers or respective subcontractors in such a manner as to enable and facilitate their individual self-reliance within the City of San Leandro.

4-35-200 Authority.

This Chapter is adopted pursuant to the powers vested in the City of San Leandro 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 and Section 1205(b) of the California Labor Law.

4-35-300 Definitions.

The following terms shall have the following meanings:

- A. "City" shall mean the City of San Leandro.
- B. "Department" shall mean the Department of Finance or other City department or agency as the City Manager may designate.
- C. "Employee" shall mean any person who:
 - 1. In a calendar week performs at least two (2) hours of work for an Employer within the geographic boundaries of the City; 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 California Industrial Welfare Commission, or is a participant in a Welfare-to-Work Program.
- D. "Employer" shall mean any person receiving or holding a business license under Chapter 2-2 of the San Leandro Municipal Code, or any person, including corporate officers or executives, as defined in Section 18 of the California Labor Code, who directly or indirectly through any other person, including through the services of a temporary employment agency, staffing agency, subcontractor or similar entity, employs or exercises control over the wages, hours or working conditions of any Employee.
- E. "Minimum Wage" shall have the meaning set forth in Section 4-35-400 of this Chapter.
- F. "Nonprofit Corporation" shall mean a nonprofit 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 nonprofit status under Section 501(c)(3) of the United States Internal Revenue Code of 1986, as amended, and all rules and regulations promulgated under such Section, or any non-profit educational organization qualified under Section 23701(d) of the Revenue and Taxation Code.
- G. "Welfare-to-Work Program" shall mean the CalWORKS Program, County Adult Assistance Program (CAAP) that includes the Personal Assisted Employment Services (PAES) Program, and General Assistance Program, and any successor programs that are substantially similar to them.

4-35-400 Minimum Wage.

- A. Employers shall pay Employees no less than the Minimum Wage set forth in this Section for each hour worked within the geographic boundaries of the City.
- B. Beginning July 1, 2017, the Minimum Wage shall be an hourly rate of \$12.00. On July 1, 2018, the Minimum Wage shall increase to an hourly rate of \$13.00. On July 1, 2019, the Minimum Wage shall increase to an hourly rate of \$14.00. On July 1, 2020, the Minimum Wage shall increase to an hourly rate of \$15.00.

C. A violation for unlawfully failing to pay the Minimum Wage shall be deemed to continue from the date immediately following 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 immediately preceding the date the wages are paid in full.

4-35-450 Effectiveness of Ordinance if State Minimum Wage Becomes Greater than City's

All requirements and provisions of this Chapter shall be preempted and ineffective if the State minimum wage is or becomes greater than the Minimum Wage established by this Chapter.

4-35-500 Waiver Through Collective Bargaining.

To the extent required by federal law, all or any portion of the applicable requirements of this Chapter may be waived in a bona fide collective bargaining agreement, provided that such waiver is explicitly set forth in such agreement in clear and unambiguous terms.

4-35-600 Notice, Posting and Payroll Records.

A. Except for the first increase to take effect on July 1, 2017 per Section 4-35-400, on or by January 1 of each year, the Department shall publish and make available to Employers a bulletin announcing the adjusted Minimum Wage rate, which shall take effect on July 1 of the following year. In conjunction with this bulletin, the Department shall by July 1 of each year publish and make available to Employers, in the top five languages spoken by residents of the City as determined by the City Manager or his designee after reviewing the most recent United States Census Data, 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. Every Employer shall post in a conspicuous place at any workplace or job site in the City where any Employee works the notice published each year by the Department informing Employees of the current Minimum Wage rate and of their rights under this Chapter. Every Employer shall post such notices in the top five languages spoken by residents of the City as determined by the City Manager or his designee after reviewing the most recent United States Census Data. 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 render the Employer subject to administrative citation, pursuant to Section 900, Subsection A, of this Chapter.

C. Employers shall retain payroll records pertaining to Employees for a period of four years, and shall allow the City access to such records, with appropriate notice and at a mutually agreeable time, to monitor compliance with the requirements of this Chapter. Where an Employer does not maintain or retain adequate records documenting wages paid or does not allow the City reasonable access to such records, the Employee's account of how much he or she was paid shall be presumed to be accurate, absent clear and convincing evidence otherwise. Failure to maintain such records or to allow the City reasonable access shall render the Employer subject to administrative citation, pursuant to Section 900, Subsection A, of this Chapter.

D. If a violation of this Chapter has been finally determined, the City shall require the Employer to post public notice of the Employer's failure to comply in a form determined by the City. Failure to post such notice shall render the Employer subject to administrative citation, pursuant to Section 900, Subsection A, of this Chapter.

4-35-700 Retaliation Prohibited.

It shall be unlawful for an Employer or any other party to discriminate in any manner or take any adverse action (including action relating to any term, condition or privilege of employment) against any person in retaliation for exercising rights protected under this Chapter. Rights protected under this Chapter include, but are not limited to: the right to file a complaint or inform any person about any party's alleged noncompliance with this Chapter; and the right to inform any person of his or her potential rights under this Chapter or otherwise educate any person about this Chapter or to assist him or her in asserting such rights. Protections of this Chapter shall apply to any person who mistakenly, but in good faith, alleges noncompliance with this Chapter. Taking adverse action against a person within 90 days of the person's exercise of rights protected under this Chapter shall raise a rebuttable presumption of having done so in retaliation for the exercise of such rights. Failure to comply with this provision shall render the Employer subject to administrative citation, pursuant to Section 900, Subsection A, of this Chapter.

4-35-800 Implementation

A. Administrative Procedures. The Department is authorized to coordinate implementation and enforcement of this Chapter and may promulgate appropriate administrative procedures for such purposes. Any administrative procedures promulgated by the Department 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 administrative procedures may establish procedures for ensuring fair, efficient and cost-effective implementation of this Chapter, including supplementary procedures for helping to inform Employees of their rights under this Chapter, for monitoring Employer compliance with this Chapter, and for providing administrative hearings to determine whether an Employer or other person has violated the requirements of this Chapter.

B. Reporting Violations. An Employee or any other person may report to the Department in writing any suspected violation of this Chapter. The Department shall encourage reporting pursuant to this subsection by keeping confidential, to the maximum extent permitted by applicable laws, the name and other identifying information of the Employee or person reporting the violation. Provided, however, that with the authorization of such person, the Department may disclose his or her name and identifying information as necessary to enforce this Chapter or other employee protection laws. In order to further encourage reporting by Employees, if the Department notifies an Employer that the Department is investigating a complaint, the Department shall require the Employer to post or otherwise notify its Employees that the Department is conducting an investigation, using a form provided by the Department. Failure to post such notice shall render the Employer subject to administrative citation, pursuant to Section 900, Subsection A, of this Chapter.

C. Investigation. The Department shall be responsible for investigating any possible violations of this Chapter by an Employer or other person. The Department shall have the authority to inspect workplaces, interview persons and request the City Attorney to subpoena books, papers, records, or other items relevant to the enforcement of this Chapter.

D. Informal Resolution. The Department shall make every effort to resolve complaints informally, in a timely manner.

4-35-900 Enforcement

A. Where prompt compliance is not forthcoming, the City and the Department shall take any appropriate enforcement action to secure compliance, including but not limited to the following:

1. The City may issue an Administrative Citation pursuant to Chapter 1-12 of the San Leandro Municipal Code. The amount of this fine shall vary based on the provision of this Chapter being violated, as specified below:

a. A fine of five hundred dollars(\$500.00) may be assessed for retaliation by an Employer against an Employee for exercising rights protected under this Chapter for each Employee retaliated against.

b. A fine of two hundred fifty dollars (\$250.00) 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 investigation to Employee
- iii. Failure to maintain payroll records for four years
- iv. Failure to allow the City access to payroll records

c. A fine equal to the total amount of appropriate remedies, pursuant to subsection E of this section. 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.

2. Alternatively, the City may pursue administrative remedies in accordance with the following procedures:

a. Whenever the City determines that a violation of any provision of this Chapter is occurring or has occurred, the City may issue a written compliance order to the Employer responsible for the violation.

b. 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. The time period after which administrative penalties will begin to accrue if compliance with the order has not been achieved;
- v. Either a copy of this Chapter or an explanation of the consequences of noncompliance with this Chapter and a description of the hearing procedure and appeal process;

vi. A warning that the compliance order shall become final unless a written request for hearing before the City is received within seven calendar days of receipt of the compliance order.

c. Following receipt of a timely request for a hearing, the City shall provide the Employer responsible for the violation with a hearing. During the pendency of the hearing and any subsequent appellate process, the City will not enforce any aspect of the compliance order.

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

B. Any person aggrieved by a violation of this Chapter may bring a civil action in a court of competent jurisdiction against the Employer or other person violating this Chapter and, upon prevailing, shall be awarded reasonable attorneys' fees and costs and shall be entitled to such legal or equitable relief as may be appropriate to remedy the violation including, without limitation, the payment of any back wages unlawfully withheld, the payment of an additional sum as a civil penalty in the amount of \$25.00 to each Employee or person whose rights under this Chapter were violated for each day that the violation occurred or continued, reinstatement in employment and/or injunctive relief. Provided, however, that any person or entity enforcing this Chapter on behalf of the public as provided for under applicable state law

shall, upon prevailing, be entitled only to equitable, injunctive or restitutionary relief to employees, and reasonable attorneys' fees and costs.

C. This Section shall not be construed to limit an Employee's right to bring legal action for a violation of any other laws concerning wages, hours, or other standards or rights nor shall exhaustion of remedies under this Chapter be a prerequisite to the assertion of any right.

D. Except where prohibited by state or federal law, City agencies or departments may revoke or suspend any registration certificates, permits or licenses held or requested by the Employer until such time as the violation is remedied. The City shall not renew any such license of an Employer with outstanding violations, as finally determined under this Chapter, until such time as the violation is remedied.

E. The remedies for violation of this Chapter include but are not limited to:

1. Reinstatement, the payment of back wages unlawfully withheld, and the payment of an additional sum as a civil penalty in the amount of \$25.00 to 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.

2. 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.

3. Reimbursement of the City's administrative costs of enforcement and attorney's fees and costs.

4. If a repeated violation of this Chapter has been finally determined, the City may require the Employer to pay an additional sum as a civil penalty in the amount of \$50.00 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.

F. 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, civil or criminal, that may be brought to abate a violation or to seek compensation for damages suffered.

4-35-1000 Relationship to Other Requirements.

This Chapter provides for payment of a local Minimum Wage and shall not be construed to preempt or otherwise limit or affect the applicability of any other law, regulation, requirement, policy or standard that provides for payment of higher or supplemental wages or benefits, or that extends other protections.

4-35-1100 Application of Minimum Wage To Welfare-To-Work Programs.

The Minimum Wage established under this Chapter shall apply to the Welfare-to-Work programs under which persons must perform work in exchange for receipt of benefits. Participants in Welfare-to-Work Programs within the City of San Leandro shall not, during a given benefits period, be required to work more than a number of hours equal to the value of all cash benefits received during that period, divided by the Minimum Wage.

4-35-1200 Fees.

Nothing herein shall preclude the City Council from imposing a cost recovery fee on all

Employers to pay the cost of administering this Chapter.

4-35-1300 Employee Exemptions

The requirements of this chapter shall not apply to the following Employees:

1. Employees up to 25 years of age who are employed by a non-profit or governmental entity for after school or summer employment, or as a student intern, or as a volunteer, or as a trainee for a period not longer than 120 days.
2. Employees who are standing by or on-call according to the criteria established by the Fair Labor Standards Act, 29 U.S.C. Section 201. This exemption shall apply only during the time when the employee is actually standing by or on-call.

Section 2. Severability.

If any part or provision of this ordinance, or the application of this ordinance to any person or circumstance, is held invalid, the remainder of this ordinance, including the application of such part or provisions to other persons or circumstances, shall not be affected by such a holding and shall continue in full force and effect. To this end, the provisions of this ordinance are severable.

Section 3. Publication and Effective Date. This Ordinance shall take effect thirty (30) days after adoption. The title thereof shall be published once and a complete copy thereof shall be posted on the City Council Chamber bulletin board for five (5) days prior to adoption