

ORDINANCE NO.

AN ORDINANCE ADDING CHAPTER 42, ARTICLE II TO THE MOUNTAIN VIEW CITY CODE TO REQUIRE THE PAYMENT OF A CITY-WIDE MINIMUM WAGE

THE CITY COUNCIL OF THE CITY OF MOUNTAIN VIEW DOES HEREBY ORDAIN AS FOLLOWS:

Section 1. Chapter 42, Article II is hereby added to the Mountain View City Code to read as follows:

“CHAPTER 42

WAGES

ARTICLE II.

CITY-WIDE MINIMUM WAGE

SEC. 42.1. Short title.

This ordinance shall be known as the “Minimum Wage Ordinance.”

SEC. 42.2. Authority.

This chapter is adopted pursuant to the powers vested in the City of Mountain View under the laws and constitution of the State of California 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 Code.

SEC. 42.3. Definitions.

The following terms shall have the following meanings:

a. “City” shall mean City of Mountain View or the City of San Jose Office of Equality Assurance to the extent designated by the City of Mountain View to perform various investigative, enforcement and informal resolution functions pursuant to this article.

b. "Employee" shall mean any person who:

1. In a calendar week performs at least two (2) hours of work for an employer as defined below; 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 Sec. 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.

c. "Employer" shall mean any person, including corporate officers or executives, as defined in Sec. 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, or similar entity, employs or exercises control over the wages, hours, or working conditions of any employee and who is either subject to the city's business license requirements or maintains a business facility in the city.

d. "Minimum wage" shall have the meaning set forth in Sec. 42.4 of this article.

e. "Welfare-to-Work Program" shall mean the CalWORKs program, and the Santa Clara County Works Program (SCC Works) employment assistance program, and any successor programs that are substantially similar to them.

SEC. 42.4. 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 of Mountain View.

b. The minimum wage shall be an hourly rate of \$10.30. To prevent inflation from eroding its value, beginning on January 1, 2016, and each year thereafter, the minimum wage shall increase by an amount corresponding to the prior year's increase, if any, in the cost of living. The prior year's increase in the cost of living shall be measured by the percentage increase, if any, as of August of the immediately preceding year over the level as of August of the previous year of the Consumer Price Index (Urban Wage Earners and Clerical Workers, U.S. City Average for All Items) or its successor index as published by the U.S. Department of Labor or its successor agency, with the amount of the minimum wage increase rounded to the nearest multiple of five (5) cents. The adjusted minimum wage shall be announced by October 1 of each year and shall become effective as the new minimum wage on January 1 of each year.

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 Sec. 200) of Division 2 of the California Labor Code, to the date immediately preceding the date the wages are paid in full.

SEC. 42.5. Exempt organizations.

State, federal and county agencies, including school districts, shall not be required to pay minimum wage when the work performed is related to their governmental function. However, for work that is not related to their governmental function, including, but not limited to: booster or gift shops, non-K-12 cafeterias, on-site concessions and similar operations, minimum wage shall be required to be paid. Minimum wage shall also be required to be paid by lessees or renters of facilities or space from an exempt organization.

Any organization claiming "auxiliary organization" status under California Education Code Sec. 89901 or Sec. 72670(c) shall not be required to pay minimum wage. The organization, upon request of the city, shall provide documentary proof of its auxiliary organization status.

SEC. 42.6. Waiver through collective bargaining.

To the extent required by federal law, all or any portion of the applicable requirements of this article 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.

SEC. 42.7. Notice, posting and payroll records.

a. By December 1 of each year, the city shall publish and make available to employers a bulletin announcing the adjusted minimum wage rate for the upcoming year, which shall take effect on January 1 of each year. In conjunction with this bulletin, the city shall, by December 1 of each year, publish and make available to employers, in all languages spoken by more than five (5) percent of the work force in the City, a notice suitable for posting by employers in the workplace informing employees of the current minimum wage rate and of their rights under this article.

b. Every employer shall post in a conspicuous place at any workplace or job site where any employee works the notice published each year by the city informing employees of the current minimum wage rate and of their rights under this article. Every employer shall post such notices in any language spoken by at least five (5) percent of the employees at the workplace or job site. Every employer shall also provide each employee at the time of hire with the employer's name, address and telephone number in writing.

c. Employers shall retain payroll records pertaining to employees for a period of four (4) 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 article. 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.

SEC. 42.8. Retaliation prohibited.

It shall be unlawful for an employer or any other party to discriminate in any manner or take adverse action against any person in retaliation for exercising rights protected under this article. Rights protected under this article include, but are not limited to: the right to file a complaint or inform any person about any party's alleged noncompliance with this article; and the right to inform any person of his or her potential rights under this article and to assist him or her in asserting such rights. Protections of this article shall apply to any person who mistakenly, but in good faith, alleges noncompliance with this article.

Taking adverse action against a person within ninety (90) days of the person's exercise of rights protected under this article shall raise a rebuttable presumption of having done so in retaliation for the exercise of such rights.

SEC. 42.9. Implementation.

a. **Guidelines.** The city manager or designee shall be authorized to coordinate implementation and enforcement of this article and may promulgate appropriate guidelines or rules for such purposes. Any guidelines or rules promulgated by the 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 article. Any guidelines or rules may establish procedures for ensuring fair, efficient and cost-effective implementation of this article, including supplementary procedures for helping to inform employees of their rights under this article, for monitoring employer compliance with this article and for providing administrative hearings to determine whether an employer or other person has violated the requirements of this article.

b. **Reporting Violations.** An employee or any other person may report to the city in writing any suspected violation of this article. The city 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 city may disclose his or her name and identifying information as necessary to enforce this article or other employee protection laws. In order to further encourage

reporting by employees, if the city notifies an employer that the city is investigating a complaint, the city shall require the employer to post or otherwise notify its employees that the city is conducting an investigation, using a form provided by the city.

c. **Investigation.** The city shall be responsible for investigating any possible violations of this article by an employer or other person. The city 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 article.

d. **Informal Resolution.** The city shall make every effort to resolve complaints informally, in a timely manner, and shall have a policy that the city shall take no more than one (1) year to resolve any matter before initiating an enforcement action. The failure of the city to meet these time lines within one (1) year shall not be grounds for closure or dismissal of the complaint.

SEC. 42.10. Enforcement.

a. Where prompt compliance is not forthcoming, the city shall take any appropriate enforcement action to secure compliance. In addition to all other civil remedies, the city may enforce this ordinance pursuant to Article II of Chapter 1 of the Mountain View City Code. To secure compliance, the city may use the following enforcement measures:

1. The city may issue an administrative citation with a fine of not more than fifty dollars (\$50) for each day or portion thereof and for each employee or person as to whom the violation occurred or continued.
2. The city may issue an administrative 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 article, any entity a member of which is aggrieved by a violation of this article or any other person or entity acting on behalf of the public as provided for under applicable state law may bring a civil action in a court of competent jurisdiction against the employer or other person violating this article 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 fifty dollars (\$50) to each employee or person whose rights under this article 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 article 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 article 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.

e. **Relief.** The remedies for violation of this article include, but are not limited to:

1. Reinstatement, and the payment of back wages unlawfully withheld, and the payment of an additional sum as a civil penalty in the amount of fifty dollars (\$50) to each employee or person whose rights under this article 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 Sec. 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 Sec. 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 reasonable attorney's fees.

f. **Posted Notice.** If a repeated violation of this article has been finally determined, the city may require the employer to post public notice of the employer's failure to comply in a form determined by the city.

SEC. 42.11. Relationship to other requirements.

This article 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.

SEC. 42.12. Application of minimum wage to welfare-to-work programs.

The minimum wage established pursuant to Sec. 42.4 of this article 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 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.

SEC. 42.13. Fees.

Nothing herein shall preclude the city council from imposing a cost recovery fee on all employers to pay the cost of administering this article.

SEC. 42.14. Amendment by the city council.

This article may be amended by the city council in order to achieve the purposes of this article.”

Section 2. Effective Date. This ordinance shall become effective July 1, 2015. This ordinance is intended to have prospective effect only.

Section 3. 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 4. CEQA. This ordinance is not subject to the California Environmental Quality Act (“CEQA”) pursuant to Section 15060(c)(2) of the CEQA Guidelines (Title 14, Chapter 3 of the California Code of Regulations) because the activity will not result in a direct or reasonable foreseeable indirect physical change in the environment, and Section 15060(c)(3) because the activity is not a project as defined in Section 15378 of the CEQA Guidelines because it has no potential for resulting in physical change to the environment, directly or indirectly.

Section 5. Publication. Pursuant to Section 522 of the Mountain View City Charter, it is ordered that copies of the foregoing proposed ordinance be posted at least two (2) days prior to its adoption in three (3) prominent places in the City and that a single publication be made to the official newspaper of the City of a notice setting forth the title of the ordinance, the date of its introduction, and a list of the places where copies of the proposed ordinance are posted.

KC/3/ORD
011-10-07-14o-E