

LEGAL TEXT OF MINIMUM WAGE ORDINANCE

AN INITIATIVE ORDINANCE OF THE CITY OF SAN JOSE
AMENDING TITLE 4 OF THE SAN JOSE MUNICIPAL CODE TO
REQUIRE THE PAYMENT OF A CITY-WIDE MINIMUM WAGE

WHEREAS families and workers need to earn a living wage, and public policies which help achieve that goal are beneficial; and

WHEREAS payment of a minimum wage advances the interests of the City as a whole, by creating jobs that keep workers and their families out of poverty; and

WHEREAS a minimum wage will enable a worker to meet basic needs and avoid economic hardship; and

WHEREAS this ordinance is intended to improve the quality of services provided in the City to the public by reducing high turnover, absenteeism, and instability in the workplace; and

WHEREAS prompt and efficient enforcement of this Chapter will provide workers with economic security and the assurance that their rights will be respected.

NOW THEREFORE, BE IT ORDAINED, BY THE PEOPLE OF THE CITY OF SAN JOSE:

SECTION 1. Title 4 of the San Jose Municipal Code is hereby amended to add a new Chapter to be numbered, entitled and to read as follows:

CHAPTER 4.100 **Minimum Wage Ordinance**

4.100. 010 TITLE.

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

4.100. 020 AUTHORITY.

This Chapter is adopted pursuant to the powers vested in the City of San Jose 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 Law.

4.100.030 DEFINITIONS.

The following terms shall have the following meanings:

A. "City" shall mean City of San Jose.

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.

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.

C. "Employer" shall mean 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 or similar entity, employs or exercises control over the wages, hours or working conditions of any Employee and who is either subject to the Business License Tax Chapter 4.76 of the Municipal Code or maintains a facility in the City.

D. "Minimum Wage" shall have the meaning set forth in Section 4.100.040 of this Chapter.

E. "Office" shall mean the Office of Equality Assurance or such other City department or office as the Council shall by resolution designate.

F. "Welfare-to-Work Program" shall mean the CalWORKS Program, County Adult Assistance Program (CAAP) which includes the Personal Assisted Employment Services (PAES) Program, and General Assistance Program, and any successor programs that are substantially similar to them.

4.100. 040 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. The Minimum Wage shall be an hourly rate of ten dollars (\$10). To prevent inflation from eroding its value, beginning on January 1, 2014, 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 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.

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.

4.100.050 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.

4.100.060 NOTICE, POSTING AND PAYROLL RECORDS.

A. By December 1 of each year, the Office 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. In conjunction with this bulletin, the Office shall by December 1 of each year publish and make available to Employers, in all languages spoken by more than five 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 Chapter.

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 Office informing Employees of the current Minimum Wage rate and of their rights under this Chapter. Every Employer shall post such notices in any language spoken by at least five percent of the Employees at the work-place 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 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.

4.100.070 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 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 and 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 ninety (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.

4.100.080 IMPLEMENTATION

A. Guidelines. The Office shall be authorized to coordinate implementation and enforcement of this Chapter and may promulgate appropriate guidelines or rules for such purposes. Any guidelines or rules promulgated by the Office 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 guidelines or rules 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 Office in writing any suspected violation of this Chapter. The Office 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 Office 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 Office notifies an Employer that the Office is investigating a complaint, the Office shall require the Employer to post or otherwise notify its Employees that the Office is conducting an investigation, using a form provided by the City.

C. Investigation. The Office shall be responsible for investigating any possible violations of this Chapter by an Employer or other person. The Office 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 Office shall make every effort to resolve complaints informally, in a timely manner, and shall have a policy that the Office shall take no more than one year to resolve any matter, before initiating an enforcement action. The failure of the Office to meet these timelines within one year shall not be grounds for closure or dismissal of the complaint.

4.100.090 ENFORCEMENT

A. Where prompt compliance is not forthcoming, the Office shall take any appropriate enforcement action to secure compliance.

1. The Office may issues an Administrative Citation pursuant to Chapter 1.15 of the Code with a fine of not more than \$50 for each day or portion thereof and for each Employee or person as to whom the violation occurred or continued.
2. Alternatively, the Office may initiate a proceeding under Chapter 1.14 of the Code by issuing a 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, any entity a member of which is aggrieved by a violation of this Chapter, 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 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 \$50 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.

E. Relief

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 \$50 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 reasonable attorneys fees.

F. Posted Notice

If a repeated violation of this Chapter has been finally determined, the Office may require the Employer to post public notice of the Employer's failure to comply in a form determined by the City.

4.100.100 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.

4.100.110 APPLICATION OF MINIMUM WAGE TO WELFARE-TO-WORK PROGRAMS.

The Minimum Wage established pursuant to Section 4(b) of 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 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.

4.100.120 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.

4.100.130 AMENDMENT BY THE CITY COUNCIL.

This Chapter may be amended by the City Council without a vote of the people as regards the implementation or enforcement thereof, in order to achieve the purposes of this Chapter, but not with regard to lessening the substantive requirements of the Chapter or its scope of coverage.

SECTION 2. Effective Date.

This ordinance shall become effective on the ninetieth (90) day after it is certified. 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.