

CITY OF ALAMEDA ORDINANCE NO. ____

New Series

AMENDING THE ALAMEDA MUNICIPAL CODE BY ADDING ARTICLE 4-60 (MINIMUM WAGE) TO CHAPTER IX (REGULATIONS CONCERNING TRADE AND COMMERCE) CONCERNING A CITYWIDE MINIMUM WAGE TO RAISE ALAMEDA'S MINIMUM WAGE TO \$15.00 PER HOUR BY 2020

The City Council of the City of Alameda does ordain as follows:

Section 1. Article 4-60 is hereby added to Article IX of the Alameda Municipal Code to read as follows:

Article 4-60 MINIMUM WAGE

4-60.10 Title, Purpose and Findings.

- A. This ordinance shall be known as the "Minimum Wage Ordinance."
- B. 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 in such a manner as to enable and facilitate their individual self-reliance within the City of Alameda.
- C. The Bay Area in general and the City of Alameda in particular are becoming increasingly expensive places to live and to work.
- D. Employers paying a minimum wage, as provided in this ordinance, advance the interests of the City as a whole by creating jobs that keep workers and their families out of poverty.
- E. A minimum wage, as provided in this ordinance, will help enable workers to meet basic needs and avoid economic hardships.
- F. 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.
- G. The City's prompt and efficient enforcement of this ordinance will provide workers with economic security and assurances that their rights will be respected.

4-60.20 Authority.

This Chapter is adopted pursuant to the powers vested in the City of Alameda 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 Code.

4-60.30 Definitions.

The following terms shall have the following meanings:

A. "City" shall mean the City of Alameda.

B. "Department" shall mean the Community Development Department 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 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 V of the Alameda 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. "Increase in the Cost of Living" shall mean the percentage increase, if any, in the Bay Area Consumer Price Index (Urban Wage Earners and Clerical Workers,, San Francisco-Oakland-San Jose for All Items) or its successor index as published by the U.S. Department of Labor or its successor agency (CPI); such increase to be calculated by using the February to February percentage increase in the CPI.

F. "Minimum Wage" shall have the meaning set forth in Section 4-60.40 of this Chapter.

H. "Welfare-to-Work Program" shall mean the Alameda County CalWORKS Program, the General Assistance Program, and any successor programs that are substantially similar to them.

4-60.40 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, 2019, the Minimum Wage shall be an hourly rate of \$13.50. On

July 1, 2020, the Minimum Wage shall increase to an hourly rate of \$15.00. Beginning July 1, 2022, and on July 1 of every year thereafter, the Minimum Wage then in effect shall be adjusted by the Increase in the Cost of Living but in no event shall the increase be greater than 5%. (For example, if the February 2021 to February 2022 Increase in the Cost of Living were 5%, then the Minimum Wage as of July 1, 2022 would be \$15.75 [$\$15 \times 1.05 = \15.75].) A decrease in the Cost of Living shall not result in a decrease in the Minimum Wage.

C. An Employer shall not deduct an amount from the Minimum Wage 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 part of, the Minimum Wage the Employee is due from the Employer.

D. No Employer shall fund increases in compensation required by this Article, nor otherwise respond to the requirements of this Article, by reducing the Minimum Wage paid to any Employee, nor by increasing charges to them for parking, meals, uniforms or other items, nor by reducing other non-wage benefits of any such Employee, nor by increasing the share any Employee pays towards his/her benefits.

E. A violation for unlawfully failing to pay the Minimum Wage shall be deemed to continue from the date immediately following the date the Minimum Wage was due and payable as provided in Part I (commencing with Section 200) of Division 2 of the California Labor Code, to the date immediately preceding the date the Minimum Wage is paid in full.

F. Notwithstanding subsection B of this section 4-60.40, on or before June 1, 2020, to ensure that economic conditions can support a minimum wage increase, if the Governor of the State of California makes a determination to temporarily suspend the scheduled minimum wage increase that will increase the State wide minimum wage to \$15.00, the City will also temporarily suspend the scheduled minimum wage increase for July 1, 2020 for one year.

4-60.45 Effectiveness of Ordinance if State Minimum Wage Becomes Greater than City's.

All requirements and provisions of this Article shall be preempted and ineffective, except the Cost of Living provision, if the State minimum wage is or becomes greater than the Minimum Wage established by this Article; provided, however, if the State minimum wage is or becomes greater than the Minimum Wage established by this Article, such minimum wage shall be adjusted one year thereafter by the Increase in the Cost of Living, and every year thereafter, ~~the Minimum Wage then in effect shall be adjusted by the Increase in the Cost of Living~~ but in no event shall the increase be greater than 5%.

4-60.50 Notice, Posting and Payroll Records.

A. The Department shall publish and make available to Employers a bulletin announcing the Minimum Wage rate. In conjunction with this bulletin, the Department shall by May 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 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 Article.

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 Article. Failure to post such notice shall render the Employer subject to enforcement action under Articles 1.5 and 1.7 of Chapter 1 of this Code.

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 reasonable 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. Failure to maintain such records or to allow the City reasonable access shall render the Employer subject to enforcement action under Articles 1.5 and 1.7 of Chapter 1 of this Code.

D. If a violation of this Article 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 separate enforcement action under Articles 1.5 and 1.7 of Chapter 1 of this Code.

4-60.55 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 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 or otherwise educate any person about this Article or 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 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. Failure to comply with this provision shall render the Employer subject to enforcement action under Articles 1.5 and 1.7 of Chapter 1 of this Code.

4-60.60 Implementation.

A. Administrative Procedures. The Department is authorized to coordinate implementation and enforcement of this Article and may promulgate appropriate administrative procedures implementing regulations for such purposes. Any

administrative procedures and implementing regulations 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 Article. Any administrative procedures and implementing regulations 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 Department in writing any suspected violation of this Article. 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 Article 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 enforcement action under Articles 1.5 and 1.7 of Chapter 1 of this Code.

C. Investigation. The Department shall be responsible for investigating any possible violations of this Article 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 Article.

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

4-60.65 Enforcement.

A. Where prompt compliance is not forthcoming, the City shall take any appropriate enforcement action to secure compliance as provided in Articles 1.5 and 1.7 of Chapter 1 of this Code.

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 an Employer or other person violating this Article and, upon prevailing, shall be awarded reasonable attorney's 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 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 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 attorney's fees and costs.

C. The remedies for violation of this Article 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 \$50.00 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 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 Article 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 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.

D. The remedies, penalties and procedures provided under this Article 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 Article. Actions taken pursuant to this Article 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.

4-60.70 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.

4-60.75 Application of Minimum Wage to Welfare-To-Work Programs.

The Minimum Wage established under 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 within the City of Alameda 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.

4-60.80 Cost Recovery Fee.

Nothing herein shall preclude the City Council from imposing a cost recovery fee on all Employers to pay the cost of administering this Article.

Section 2. CEQA.

~~This Ordinance is not a project within the meaning of Section 15378 of the CEQA Guidelines in that it (a) is an ordinance of general policy and procedure and does not constitute a project within the meaning of CEQA and (b) has no potential for resulting in either a direct or a reasonably foreseeable indirect physical change in the environment. If the Ordinance were found to be a project under CEQA, it is exempt under section 15061 (b)(3) of the CEQA Guidelines because it can be seen with certainty to have no possibility of having a significant effect on the environment. Adoption of this Ordinance is categorically exempt from CEQA Guidelines section 15324 of the CEQA Guidelines (actions taken by regulatory agencies to regulate employee wages).~~

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. Effective Date.

This Ordinance shall be in full force and effect from and after the expiration of thirty days from the date of its final passage.

Section 5. Enforcement Date.

This Ordinance shall not be enforced until July 1, 2019.

Presiding Officer of the City Council

Attest:

Lara Weisiger, City Clerk

* * * * *

I, the undersigned, hereby certify that the foregoing Ordinance was duly and regularly adopted and passed by the Council of the City of Alameda in a regular meeting assembled on the ____ day of _____, 2018, by the following vote:

AYES:

NOES:

ABSENT:

ABSTENSTIONS:

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal of said City this ____ day of _____ 2018.

Lara Weisiger, City Clerk
City of Alameda

APPROVED AS TO FORM:

Janet C. Kern, City Attorney
City of Alameda