

ORDINANCE NO. 2513

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF REDWOOD CITY AMENDING SECTION 46.030 OF THE CODE OF THE CITY OF REDWOOD CITY RELATING TO A CITY-WIDE MINIMUM WAGE BY ADDING A CAP ON THE ANNUAL COST OF LIVING INCREASE TO MINIMUM WAGE, INCLUDING A CATCH-UP PROVISION, AND ROUNDING THE MINIMUM WAGE TO THE NEAREST FIVE CENTS

WHEREAS, on April 9, 2018, the City Council of the City of Redwood City ("City Council") adopted Ordinance No. 2443 adding Chapter 46 relating to a city-wide minimum wage ("Minimum Wage Ordinance") in an effort to help working households achieve economic security; and

WHEREAS, on September 12, 2022, staff provided an informational update to the City Council on the City's local minimum wage; and

WHEREAS, the City Council now desires to (i) cap the annual cost of living increase to minimum wage to five percent (5%) of Consumer Price Index (CPI) to steadily increase the minimum wage without negatively impacting small businesses from large increases in any given year; (ii) create a catch-up provision; and (iii) round the wage to the nearest five cents.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF REDWOOD CITY DOES ORDAIN AS FOLLOWS:

Section 1. The recitals set forth above are true and correct and are hereby incorporated herein by this reference as if fully set forth in their entirety.

Section 2. The City Council of the City of Redwood City amends Section 46.030 of the City Code as shown in Exhibit A by adding the text shown in double underline (example) and deleting the text shown in strikeout (~~example~~), attached hereto and incorporated by reference. Wording in brackets ([example]) is informational only and is not to be included in the published ordinance.

Section 3. The proposed Ordinance is not a project within the meaning of section 15378 of the CEQA Guidelines because it has no potential for resulting in either a direct or a reasonably foreseeable indirect physical change in the environment, either directly or ultimately. In the event that this Ordinance is found to be a project under CEQA, it is subject to the CEQA exemption contained in CEQA Guidelines section 15061(b)(3) because it can be seen with certainty to have no possibility of having a significant effect on the environment.

Section 4. The City Clerk is directed to cause this Ordinance to be published in the manner required by law.

Section 5. This Ordinance shall go into effect thirty (30) days after the date of its passage and adoption.

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Exhibit A

CHAPTER 46: – Minimum Wage Ordinance

SEC. 46.010. – Short title: This Chapter shall be known as the "Minimum Wage Ordinance."

SEC. 46.020. – Definitions. The following terms shall have the following meanings:

- a. **Calendar Week** shall mean a period of seven consecutive days starting on Sunday.
- b. **Employee** shall mean any person who:
 1. In a calendar week performs at least two (2) hours of work for any 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. Employees shall contain learners as defined in this section.
- 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. **Learner** shall mean an employee who is a Learner as defined by California Welfare Commission Order No. 4-2001.
- e. **Minimum Wage** shall mean the minimum wage set forth in Section 46.030 of this Chapter.

SEC. 46.030. – Minimum Wage.

- a. Employers shall pay Employees no less than the minimum wage set forth in this Chapter for each hour worked within the geographic boundaries of the City.
- b. On January 1, 2019, the Minimum Wage shall be an hourly rate of thirteen dollars and fifty cents (\$13.50). On January 1, 2020, the Minimum Wage shall be an hourly rate of fifteen dollars (\$15.00) plus an amount corresponding to the prior year's increase, if any, in the cost of living. (For example, if the cost of living increases by 5% in the prior year, then on January 1, 2020, the Minimum Wage will be $\$15.00 + (\$15.00 \times .05)$, or \$15.75.) To prevent inflation from eroding its value, beginning on January 1, 2021, 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, not to exceed five percent (5%), as described in subsection (c), with the amount of the minimum wage increase rounded to the nearest five cents (\$0.05). The increase in the cost of living for any year shall be measured by the percentage increase, if any, in the Consumer Price Index for San Francisco-Oakland-San Jose (or its successor index) as published by the U.S. Department of Labor or its successor agency (CPI). The increase shall be calculated by using the August to August change in the CPI. A decrease in the CPI shall not result in a decrease in the Minimum Wage.
- c. Cost of living increases to the Minimum Wage based on the CPI shall not exceed five percent (5%) annually. When the actual CPI exceeds the five percent (5%) cap, the percentage amount in excess of the cap shall be applied to the following year's cost of living increase, up to the five percent (5%) cap. Excess amounts shall be carried over from year to year until the actual CPI and the cap-adjusted cost of living increase are equivalent. (For example, if the CPI increases by 6% in year 1 and by 2% in year 2, the cap-adjusted cost of living increase for the purpose of calculating the Minimum Wage would be 5% in year 1, and 3% in year 2. In year 3, the Minimum Wage would be calculated based on the actual CPI, provided it is below 5%.)
- d. An Employee who is a Learner shall be paid no less than eighty-five percent (85%) of the applicable Minimum Wage for the first 160 hours of employment. Thereafter, the Employee shall be paid the applicable Minimum Wage.
- e. An Employer may not deduct an amount from wages 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 wages due the Employee from the Employer.

- f. No Employer may fund increases in compensation required by this Chapter, nor otherwise respond to the requirements of this Chapter, by reducing the wage rate paid to any Employee, nor by increasing charges to them for parking, meals, uniforms or other items, nor by reducing the citation or other non-wage benefits of any such Employee, nor by increasing the share any Employee pays towards her/his benefits, except to the extent such prohibition would be pre-empted by the Federal Employee Retirement Income Security Act.
- g. 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.

SEC. 46.040. – Exempt Organizations.

- a. 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.
- b. 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. 46.050. – Waiver Through Collective Bargaining. 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 and provided that the waiver may not be applied retroactively. The waiver allowed by this provision does not apply to Employees in the property services industry (e.g. janitors, landscapers, groundskeepers, and security guards).

SEC. 46.060. – Notice, posting and payroll records.

- a. By November 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 November 1 of each year,

publish and make available to Employers 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. Such notice shall be in English and other languages as provided in any regulations promulgated pursuant to Section 46.080(a).

- 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 Chapter. Every Employer shall post such notices in English and other languages as provided in any regulations promulgated pursuant to Section 46.080(a). 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 three (3) 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.

SEC. 46.070. – Retaliation prohibited.

- a. 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.
- b. Taking adverse action against a person, including, without limitation, terminating employment, within one hundred twenty days (120) 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.

SEC. 46.080. – Implementation.

- a. **Regulations.** The City Manager may promulgate regulations for the implementation and enforcement of this Chapter. Any regulations promulgated by the City Manager 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 regulations 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 City in writing any suspected violation of this Chapter. 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 Chapter 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 Chapter 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 Chapter.
- d. **Informal resolution.** The City shall make every effort to resolve complaints informally, in a timely manner.

SEC. 46.090. – 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 Chapter pursuant to Article II of Chapter 1 of the Redwood 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 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 fifty dollars (\$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, 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 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 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 Chapter 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. 46.100. – 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. This Chapter shall not be construed to limit a discharged Employee's right to bring a common law cause of action for wrongful termination.

SEC. 46.110. – 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.

SEC. 46.120. – Federal or State Funding. This Chapter shall not be applied to the extent it will cause the loss of any federal or state funding of City activities.

ORDINANCE NO. 2513

At a Joint City Council/Successor Agency Board/Public Financing
Authority Meeting thereof held on the 24th day of October 2022 by the following
votes:

AYES, and in favor of the passage and adoption of the foregoing ordinance:

AYES: Aguirre, Espinoza-Garnica, Gee, Hale, Howard, Martinez Saballos, and
Reddy

NOES: None

ABSENT: None

ABSTAINED: None

RECUSED: None



Giselle Hale
Mayor of the City of Redwood City

Attest:



Pamela Aguilar, CMC
City Clerk of Redwood City

I hereby approve the foregoing Ordinance
this 26th day of October 2022.



Giselle Hale
Mayor of the City of Redwood City