

ORDINANCE NO. 15-004

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF EMERYVILLE ADDING CHAPTER 37 TO TITLE 5 OF THE EMERYVILLE MUNICIPAL CODE, "MINIMUM WAGE, PAID SICK LEAVE, AND OTHER EMPLOYMENT STANDARDS" AND ADDING SECTION 3-1.141 TO CHAPTER 1 OF TITLE 3 OF THE EMERYVILLE MUNICIPAL CODE, "BUSINESS TAXES"

WHEREAS, the current Federal minimum wage rate is \$7.25 per hour, and the California minimum wage is \$9.00 per hour; and

WHEREAS, in an effort to help working households achieve economic security and acknowledging the higher relative cost of living in San Francisco Bay Area, the City Council of the City of Emeryville wishes to enact a citywide minimum wage that is higher than the minimum wage required by the federal and state rates; and

WHEREAS, a higher minimum wage rate protects the public health, safety and welfare by requiring that employees are compensated in such a manner as to enable and facilitate their individual self-reliance within the City of Emeryville; and

WHEREAS, the City of Emeryville may adopt a higher minimum wage pursuant to the powers vested in the City 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, section 1205(b) of the California Labor Code and section 16000 of the California Business and Professions Code;

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF EMERYVILLE HEREBY ORDAINS AS FOLLOWS:

SECTION ONE. PURPOSE AND INTENT

The purpose and intent of this Ordinance is to adopt a new Chapter 37 of Title 5 of the Emeryville Municipal Code, "Minimum Wage, Sick Leave, and Other Employment Standards," to provide standards for minimum wages paid to employees, paid sick leave, and equitable disbursement of hospitality service charges above and beyond the requirements of state law. It is the intent of the City Council of the City of Emeryville that this Ordinance provide for a higher minimum wage for employees than provided in any state statute which purports to preempt this Ordinance.

It is also the purpose and intent of this Ordinance to add section 3-1.141 to Chapter 1 of Title 3 of the Emeryville Municipal Code, "Business Taxes," to provide that all persons engaging in business in Emeryville shall comply with the provisions of Chapter 37 of Title 5 of the Emeryville Municipal Code as a condition of issuance of a business tax certificate.

SECTION TWO. ADDING CHAPTER 37 TO TITLE 5 OF THE EMERYVILLE MUNICIPAL CODE

Chapter 37 is hereby added to Title 5 of the Emeryville Municipal Code to read as follows:

Chapter 37 - Minimum Wage, Paid Sick Leave, and Other Employment Standards

5-37.01 Definitions

As used in this Chapter, the following terms shall have the following meanings:

- a) "Calendar week" shall mean a period of seven consecutive days starting on Sunday.
- b) "City" shall mean the City of Emeryville.
- c) "Employee" shall mean any person who:
 - 1) In a calendar week performs at least two (2) hours of work within the geographic boundaries of the City for an Employer; 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. Employees shall include Learners, as defined by the California Industrial Welfare Commission.
- d) "Employer" shall mean any person (including a natural person, corporation, nonprofit corporation, general partnership, limited partnership, limited liability partnership, limited liability company, business trust, estate, trust, association, joint venture, agency, instrumentality, or any other legal or commercial entity, whether domestic or foreign), who directly or indirectly (including through the services of a temporary services or staffing agency or similar entity) employs or exercises control over the wages, hours or working conditions of any Employee.
- e) "Paid Sick Leave" shall mean paid "sick leave" as defined in California Labor Code section 233(b)(4), except that the definition here extends beyond the Employee's own illness, injury, medical condition, need for medical diagnosis or

treatment, or medical reason, to also encompass time taken off work by an Employee for the purpose of providing care or assistance to other persons specified below with an illness, injury, medical condition, or need for medical diagnosis or treatment.

- f) "Minimum Wage" shall have the meaning set forth in Section 5-37.02 of this Chapter.
- g) "Small Business" shall mean an Employer for which normally fifty five (55) or fewer Employees work for compensation during a given week. In determining the number of Employees performing work for an Employer during a given week, all Employees performing work for the Employer for compensation on a full-time, part-time, or temporary basis shall be counted, including Employees made available to work through the services of a temporary services or staffing agency or similar entity.

5-37.02. Minimum Wage

- a) Employers shall pay Employees no less than the Minimum Wage for each hour worked within the geographic boundaries of the City.
- b) Beginning on July 1, 2015, the Minimum Wage paid by Employers which are not Small Businesses shall be an hourly rate of \$14.44. To prevent inflation from eroding its value, beginning on the 1st of July 2016, and then each year thereafter on the 1st of July, the Minimum Wage shall increase by an amount corresponding to the prior calendar year's increase, if any, in the Consumer Price Index for all urban consumers for the San Francisco-Oakland-San Jose, CA metropolitan statistical area (or if such index is discontinued, then in the most similar successor index).
- c) For Employers which are Small Businesses, the Minimum Wage rate shall be as follows:
 - 1) Beginning July 1, 2015, the Minimum Wage shall be an hourly rate of \$12.25 per hour.
 - 2) Beginning July 1, 2016, the Minimum Wage shall be an hourly rate of \$13.00 per hour.
 - 3) Beginning July 1, 2017, the Minimum Wage shall be an hourly rate of \$14.00 per hour.

- 4) Beginning July 1, 2018, the Minimum Wage shall be an hourly rate of \$15.00 per hour.
 - 5) Beginning July 1, 2019, the Minimum Wage shall be the then-current Minimum Wage rate for Employers which are not Small Businesses. To prevent inflation from eroding its value, beginning on the 1st of July 2020, and then each year thereafter on the 1st of July, the Minimum Wage shall increase by an amount corresponding to the prior calendar year's increase, if any, in the Consumer Price Index for all urban consumers for the San Francisco-Oakland-San Jose, CA metropolitan statistical area (or if such index is discontinued, then in the most similar successor index).
- d) An Employee who is a Learner, as defined by the California Industrial Welfare Commission, shall be paid no less than 85 percent of the applicable Minimum Wage provided in the Chapter for the first 160 hours of employment. Thereafter the Employee shall be paid the applicable Minimum Wage rate provided in this Chapter.
 - e) Consistent with state law, an Employer may not deduct any 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 and as a part of the wages due the Employee from the Employer. Further, the value of any Employer provided benefits, including health care benefits, shall not be deducted or credited against wages due an Employee.

5-37.03. Paid Sick Leave

a) Purpose and Intent

It is the purpose and intent of this Chapter to provide Paid Sick Leave benefits beyond the requirements of AB 1522, the Health Workplaces, Healthy Families Act of 2014. The provisions of AB 1522 shall apply to Paid Sick Leave requirements of this Chapter, unless otherwise provided by the provisions of this Chapter herein.

b) Accrual of Paid Sick Leave

For Employees of Small Businesses, there shall be a cap of 48 hours of accrued Paid Sick Leave. For Employees of all other Employers, there shall be a cap of 72 hours of accrued Paid Sick Leave. Accrued Paid Sick Leave for Employees carries over from year to year (whether calendar year or fiscal year), but is limited to the aforementioned cap. Nothing herein precludes an Employer

from establishing a higher cap or no cap on the number of accrued hours.

c) Use of Paid Sick Leave

- 1) An Employee may use Paid Sick Leave not only when he or she is ill or injured or for the purpose of the Employee's receiving medical care, treatment, or diagnosis, as specified more fully in California Labor Code section 233(b)(4), but also to aid or care for a family member of Employee when the family member or members is or are ill or injured or receiving medical care, treatment, or diagnosis. For purposes of this subsection, "family member" shall have the meaning provided in Labor Code section 245.5. If the Employee has no spouse or registered domestic partner, the Employee may designate one person as to whom the Employee may use paid sick leave to aid or care for that person in lieu of a spouse or registered domestic partner. The Employee may use all or any percentage of his or her Paid Sick Leave to aid or care for the aforementioned persons. The opportunity to make such a designation shall be extended by the Employer to the Employee no later than 30 calendar days after the date on which the Employee begins to accrue Paid Sick Leave pursuant to this Chapter. There shall be a window of 14 calendar days for the Employee to make this designation after notice from the Employer. Thereafter, the opportunity to make such a designation, including the opportunity to change such a designation previously made, shall be extended by the Employer to the Employee on an annual basis by January 31st of each year, with a window of 14 calendar days for the Employee to make the designation after notice from the Employer. An Employee may use Paid Sick Leave to aid or care for a guide dog, signal dog, or service dog, as those terms are defined by the California Disabled Persons Act, Civil Code section 54.1, of the Employee, Employee's family member, or the person designated by the Employee pursuant to this section.
- 2) An Employer may require Employees to give reasonable notification of an absence from work for which Paid Sick Leave is or will be used.
- 3) In each year of employment, an Employee may use up to the total number of Paid Sick Leave hours accrued, subject to the maximum number of accruable Paid Sick Leave hours, as provided in this section.

5-37.04. Hospitality Service Charges

a) Definitions: The following definitions shall apply to this section:

- 1) "Service Charge" means all separately-designated amounts collected by a Hospitality Employer from customers that are for service provided by Hospitality Workers, or are described in such a way that customers might reasonably believe that the amounts are for those services, including but not limited to those charges designated on receipts under the term "service charge," "delivery charge," or "portage charge."
- 2) "Hospitality Employer" means an Employer who owns, controls, or operates any part of a hotel or restaurant or banquet facilities within the City, including as a subcontractor thereto, but does not include any governmental agency.
- 3) "Hospitality Worker" means an Employee who works for a Hospitality Employer and who performs a service for which a Hospitality Employer imposes a Service Charge. "Hospitality Worker" does not include a managerial employee.

b) Hospitality Employers' Responsibilities

- 1) Service Charges shall not be retained by the Hospitality Employer but shall be paid over in their entirety to the Hospitality Worker(s) performing services for the customers from whom Service Charges are to be collected. No part of these charges may be paid to supervisors except for any portion of their work time spent on nonsupervisory work serving these customers, and then at no higher rate of compensation than the average of what is paid other Hospitality Workers performing similar customer service. The Service Charges shall be distributed to the Hospitality Workers not later than the next payroll following the work or collection of the charge from the customer, whichever is later. Without limitation of the foregoing:
 - a) Service charges collected for banquets or catered meetings shall be paid to the Hospitality Workers who actually work the banquet or catered meeting;
 - b) Service charges collected for room service shall be paid to the Hospitality Workers who actually

deliver food and beverage associated with the charge;
and

- c) Service charges collected for portage service shall be paid to the Hospitality Workers who actually carry the baggage associated with the charge.
- 2) Each Hospitality Employer shall disclose in writing to Employees its plan of distribution of service charges to Hospitality Workers and shall report to Employees on each payroll date the amount of service charges collected and amounts distributed to Hospitality Workers for the pay period in question.
- 3) No Hospitality Employer or agent thereof shall deduct any amount from wages due an Employee on account of a service charge, or require a Hospitality Employee to credit the amount, or any part thereof, of a service charge, against and as a part of the wages due the Hospitality Employee from the Hospitality Employer.
- 4) This section does not apply to any tip, gratuity, money, or part of any tip, gratuity, or money that has been paid or given to or left for a Hospitality Worker by customers over and above the actual amount due for services rendered or for goods, food, drink, or articles sold or served to the customer.

5-37.05. Notice and Posting

- a) By April 1 of each year, the City shall publish and make available to Employers a bulletin announcing the adjusted Minimum Wage rate, which shall take effect on July 1 of that year. In conjunction with this bulletin, the City shall by May 1 of each year publish and make available to Employers, in English and other languages as provided in any implementing regulations, 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) Each Employer shall give written notification to each current Employee and to each new Employee at time of hire, of his or her rights under this Chapter. The notification shall be in English and other languages as provided in any implementing regulations, and shall also be posted prominently in areas at the work site where it will be seen by all Employees. 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 the provisions of this Chapter. The City is authorized to prepare sample notices and Employer use of such notices shall constitute compliance with this subsection.

5-37.06. Implementation

a) Regulations

City 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 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 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 has violated the requirements of this Chapter.

b) Reporting Violations

An aggrieved Employee may report to City in writing any suspected violation of this Chapter. City shall keep confidential, to the maximum extent permitted by applicable laws, the name and other identifying information of the Employee reporting the violation. Provided, however, that with the authorization of such Employee, City may disclose his or her name and identifying information as necessary to enforce this Chapter or other employee protection laws.

c) Investigation

City may investigate any possible violations of this Chapter by an Employer. City shall have the authority to inspect workplaces, interview persons and subpoena records or other items relevant to the enforcement of this Chapter.

d) Informal Resolution

If the City elects to investigate a complaint, City shall make every effort to resolve complaints informally and in a timely manner. The City's investigation and pursuit of informal resolution does not limit or act as a prerequisite for an Employee's right to bring a private action against an Employer as provided in this Chapter.

5-37.07. Enforcement

a) Enforcement by City

Where compliance with the provisions of this Chapter is not forthcoming, City may take any appropriate enforcement action to ensure compliance, including but not limited to the following:

1) City may issue an Administrative Citation pursuant to provisions of the Emeryville Municipal Code. The amount of this fine shall vary based on the provision of this Chapter violated, as specified below:

A. A fine may be assessed for retaliation by an Employer against an Employee for exercising rights protected under this Chapter. The fine shall be one thousand dollars (\$1,000.00) for each Employee retaliated against.

B. A fine of five hundred dollars (\$500.00) 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 right to designate person in-lieu of spouse or registered domestic partner to use paid sick leave to aid or care for that person.
- iii. Failure to maintain payroll records for the minimum period of time as provided in this Chapter.
- iv. Failure to allow the City access to payroll records.

C. A fine equal to the total amount of appropriate remedies, pursuant to subsection c) 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, City may pursue administrative remedies in accordance with the following procedures:

- A. Whenever City determines that a violation of any provision of this Chapter is occurring or has occurred, 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. 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;
 - v. A warning that the compliance order shall become final unless a written request for hearing before the City is received within fourteen (14) days 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 before a Hearing Officer designated by City and, if necessary, a subsequent appeal to the City Manager that affords the Employer due process. During the pendency of the hearing and any subsequent appellate process, the City will not enforce any aspect of the compliance order. The decision of the Hearing Officer shall be final with no further right of administrative review.
- 3) The City may initiate a civil action for injunctive relief and damages and civil penalties in a court of competent jurisdiction

b) Private Rights of Action

An Employee claiming harm from a violation of this Chapter may bring an action against the Employer in court to enforce the provisions of this Chapter and shall be entitled to all remedies available to remedy any violation of this Chapter, including but not limited to back pay, reinstatement, injunctive relief, and or civil penalties as provided herein. The prevailing party in an action to enforce this Chapter is entitled to an award of reasonable attorney's fees, witness fees and costs.

c) Remedies

1) The remedies for violation of this Chapter include but are not limited to:

- A. 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 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 Chapter or state law.
- B. 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.
- C. Reimbursement of the City's administrative costs of enforcement and reasonable attorney's fees.
- D. If a repeated violation of this Chapter has been finally determined in a period from July 1 to June 30 of the following year, the City may require the Employer to pay an additional sum as a civil penalty in the amount of \$50 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.

- 2) 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, administrative or judicial, that may be brought to abate a violation or to seek compensation for damages suffered.
- 3) No criminal penalties shall attach for any violation of this Chapter, nor shall this Chapter give rise to any cause of action for damages against the City.

d) Retaliation Barred

- 1) An Employer shall not discharge, reduce the compensation of nor otherwise discriminate against any Employee for making a complaint to the City, participating in any of City's proceedings, using any civil remedies to enforce his or her rights, or otherwise asserting his or her rights under this Chapter. Within 120 days of an Employer being notified of such activity, it shall be unlawful for the Employer to discharge any Employee who engaged in such activity unless the Employer has clear and convincing evidence of just cause for such discharge.
- 2) 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 vacation or other non-wage benefits of any such Employee, except to the extent such prohibition would be preempted by the federal Employee Retirement Income Security Act.

e) Waiver

1) Waiver Through Collective Bargaining

Except to the extent required by 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 that the parties thereto intend to and do thereby waive all of or a specific portion(s) of this Chapter.

f) Retention of Records

Each Employer shall maintain for at least three years for each Employee a record of his or her name, hours worked, pay rate, Paid Sick Leave accrual and usage, and Service Charge collection and distribution. Each Employer shall provide each Employee a copy of the records relating to such Employee upon the Employee's reasonable request.

g) City Access

Each Employer shall permit access to work sites and relevant records for authorized City representatives for the purpose of monitoring compliance with this Chapter and investigating employee complaints of noncompliance, including production for inspection and copying of its employment records, but without allowing social security numbers to become a matter of public record.

5-37.08. No Preemption of Higher Standards

The purpose of this Chapter is to ensure minimum labor standards. This Chapter does not preempt or prevent the establishment of superior employment standards (including higher wages) or the expansion of coverage by ordinance, resolution, contract, or any other action of the City. This Chapter shall not be construed to limit a discharged Employee's right to bring a common law cause of action for wrongful termination.

5-37.09. Severability

If any provision or application of this Chapter is declared illegal, invalid or inoperative, in whole or in part, by any court of competent jurisdiction, the remaining provisions and portions thereof and applications not declared illegal, invalid or inoperative shall remain in full force or effect. Nothing herein may be construed to impair any contractual obligations of City. This Chapter shall not be applied to the extent it will cause the loss of any federal or state funding of City activities.

SECTION THREE. ADDING SECTION 3-1.141 TO CHAPTER 1 OF TITLE 3 OF THE EMERYVILLE MUNICIPAL CODE

Section 3-1.141 of Chapter 1 of Title 3 of the Emeryville Municipal Code is hereby added to provide as follows.

3-1.141 Compliance With Minimum Wage, Paid Sick Leave, and Other Employment Standards

Any person engaging in business in the City of Emeryville shall comply with the requirements of Chapter 37 of Title 5 of this Code as a condition of issuance of a business tax certificate. No person shall engage in business in the City of Emeryville without complying with the requirements of Chapter 37 of Title 5 of this Code.

SECTION FOUR. CEQA DETERMINATION

The City Council finds, pursuant to Title 14 of the California Administrative Code, section 15061(b)(3) and section 15378(a), that this Ordinance is exempt from the requirements of the California Environmental Quality Act (CEQA) in that it is not a Project that has the potential for causing a significant effect on the environment. This action is further exempt from the definition of a Project in section 15378(b)(3) in that it concerns general policy and procedure making.

SECTION FIVE. SEVERABILITY

Every section, paragraph, clause, and phrase of this Ordinance is hereby declared severable. If, for any reason, any section, paragraph, clause, or phrase is held to be invalid or unconstitutional, such invalidity or unconstitutionality shall not affect the validity or constitutionality of the remaining section, paragraphs, clauses, or phrases.

SECTION SIX. EFFECTIVE DATE

This Ordinance shall take effect thirty (30) days after its final passage. The City Clerk is directed to cause copies of this Ordinance to be posted or published as required by Government Code section 33693.

SECTION SEVEN. CODIFICATION

Sections Two and Three of this Ordinance shall be codified in the Emeryville Municipal Code. Sections One, Four, Five, Six and Seven shall not be so codified.

This Ordinance was introduced and first read by the City Council of the City of Emeryville at a regular meeting held on Tuesday, May 19, 2015, and **PASSED AND ADOPTED** by the City Council at a regular meeting held on Tuesday, June 2, 2015.

Russ Ashin

MAYOR

ATTEST:

[Signature]

CITY CLERK

APPROVED AS TO FORM:

Michael G. Biddly

CITY ATTORNEY