

ORDINANCE No. 20-

ORDINANCE OF THE CITY OF HAYWARD, CALIFORNIA ADDING ARTICLE 15 TO CHAPTER 6 OF THE HAYWARD MUNICIPAL CODE RELATING TO PAYMENT OF MINIMUM WAGES BY EMPLOYERS

THE CITY COUNCIL OF THE CITY OF HAYWARD DOES ORDAIN AS FOLLOWS:

Section 1. Article 15 is hereby added to Chapter 6 of the Hayward Municipal Code to read as follows:

SEC. 6-15.00 Title.

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

SEC. 6-15.10 Authority.

This Article is adopted pursuant to the powers vested in the City of Hayward 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 Cal. Labor Code § 1205(b) and the Charter of the City of Hayward.

SEC. 6-15.11 Definitions.

The following terms shall have the following meanings:

“City” means the city of Hayward or any third-party service provider to the extent designated by the city of Hayward to perform various investigative, enforcement and informal resolution functions pursuant to this chapter.

“Employee” means 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 Cal. Labor Code § 1197 and wage orders published by the California Industrial Welfare Commission, or is a participant in a Welfare-to-Work Program.

“Employer” means any person receiving or holding a business tax certificate under Article 1, Chapter 8 of this Code, or any person, including corporate officers or executives, as defined in Cal. Labor Code § 18, 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.

“Minimum wage” shall have the meaning set forth in Section 6-15.12.

“Large Business” means a business with 26 or more full or part-time employees.

“Small Business” means a business with 25 or fewer full or part-time employees.

“Welfare-to-Work Program” means the CalWORKS Program, County Adult Assistance Program (CAAP) that includes the Personal Assisted Employment Services (PAES) Program, and General Assistance Program, and any successor programs that are substantially similar to them.

SEC. 6-15.12 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 on January 1, 2021, the minimum wage shall be an hourly rate of \$14.00 for small businesses. On January 1, 2022, the minimum wage shall increase to an hourly rate of \$15.00 for small businesses. To prevent inflation from eroding its value, beginning on January 1, 2024, and each January 1<sup>st</sup> thereafter, the minimum wage shall increase by an amount corresponding to the increase in the state minimum wage, if any, to account for the increase in the cost of living.

(c) Beginning on January 1, 2021 the minimum wage shall be an hourly rate of \$15.00 for large businesses. To prevent inflation from eroding its value, beginning on January 1, 2024, and each January 1<sup>st</sup> thereafter, the minimum wage shall increase by an amount corresponding to the increase, if any, in the cost of living, not to exceed five percent.

(d) 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 Cal. Labor Code Part 1 (commencing with Section 200) of Division 2, to the date immediately preceding the date the wages are paid in full.

SEC. 6-15.13 Exemptions.

The requirements of this article shall not apply to the following employees:

(a) State, federal and county agencies, including school districts, shall not be required to pay the local 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) Employees who are standing by or on-call according to the criteria established by the Fair Labor Standards Act, 29 U.S.C. Section 201. This exemption shall apply only during the time when the employee is actually standing by or on-call.

(c) 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. 6-15.14 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. 6-15.15 Notice, Posting and Payroll Records.

(a) By October 1st or as soon as practicable thereafter 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 1st. In conjunction with

this bulletin, the city shall by October 1st, or as soon as practicable thereafter of each year, publish and make available to employers, in the top three languages spoken in the city based on the latest available census information for 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 the top three languages spoken in the city based on the latest available census information for the city 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 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. Failure to maintain such records or to allow the city reasonable access shall render the employer subject to administrative citation, pursuant to Section 6-15.18.

(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 administrative citation, pursuant to Section 6-15.18.

SEC. 6-15.16 Retaliation Prohibited.

(a) It is 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.

(b) 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.

SEC. 6-15.17 Implementation.

(a) Guidelines. The city 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.

Notwithstanding the foregoing, the City may refer a complaint to the State Labor Commissioner for investigation and enforcement.

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

#### 6-15.18 Enforcement.

(a) Where prompt compliance is not forthcoming, the city shall take any appropriate enforcement action to secure compliance. To secure compliance, the city may use the following enforcement measures:

(1) The city may issue a Notice of Violation requiring prompt correction of the violation.

(2) The city may issue an administrative citation with a fine of not more than \$50.00 for each day or portion thereof and for each employee or person as to whom the violation occurred or continued.

(3) The city may initiate a civil action for injunctive relief and damages and civil penalties in a court of competent jurisdiction.

(4) The City may refer the matter to the State Labor Commissioner for enforcement action.

(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 \$50.00 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, the city and any of its 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 \$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 Cal. Civ. Code § 3289(b), which shall accrue from the date that the wages were due and payable as provided in Cal. Labor Code Part 1 (commencing with Section 200) of Division 2, 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. 6-15.19 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. 6-15.20 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 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. 6-15.21 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.

Section 2. California Environmental Quality Act (CEQA). The City Council independently finds and determines that this action is exempt from CEQA pursuant to Section 15061(b)(3) of the CEQA Guidelines, as an activity that is covered by the general rule that CEQA applies only to projects which have the potential for causing a significant effect on the environment. The general exemption applies in this instance because it can be seen with certainty that there is no possibility that the proposed amendments could have a significant effect on the environment, and thus are not subject to CEQA. Thus, it can be seen with certainty that the proposed project would not have a significant effect on the environment.

Section 3. If any section, subsection, paragraph or sentence of this Ordinance, or any part thereof, is for any reason found to be unconstitutional, invalid or beyond the authority of the City of Hayward by a court of competent jurisdiction, such decision shall not affect the validity or effectiveness of the remaining portions of this Ordinance.

Section 4. Pursuant to Section 620 of the Charter of the City of Hayward, this Ordinance shall become effective thirty (30) days from the date of its adoption by the City Council.

INTRODUCED at a regular meeting of the City Council of the City of Hayward, held the \_\_\_ day of, \_\_\_\_ 2020, by Council Member \_\_\_\_\_ .

ADOPTED at a regular meeting of the City Council of the City of Hayward held the \_\_\_ day of \_\_\_\_\_ , 2020, by the following votes of members of said City Council.

AYES: COUNCIL MEMBERS:  
MAYOR:

NOES: COUNCIL MEMBERS:

ABSTAIN: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBER

APPROVED: \_\_\_\_\_  
Mayor of the City of Hayward

DATE: \_\_\_\_\_

ATTEST: \_\_\_\_\_  
City Clerk of the City of Hayward

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney of the City of Hayward