

ORDINANCE NO. .
BOARD OF SUPERVISORS, COUNTY OF SAN MATEO,
STATE OF CALIFORNIA

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**AN ORDINANCE TO ADD CHAPTER 5.158 (MINIMUM WAGE) TO TITLE 5 TO THE
SAN MATEO COUNTY ORDINANCE CODE**

The Board of Supervisors of the County of San Mateo, State of California,

ORDAINS as follows:

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WHEREAS, the State of California has enacted a minimum wage that will reach \$15.50 per hour on January 1, 2023;

WHEREAS, in an effort to assist working households achieve economic security and a higher quality of life, while acknowledging the higher relative cost of living in San Mateo County, the Board of Supervisors wishes to enact a minimum wage of \$16.50 per hour for all employers operating in unincorporated areas of San Mateo County effective April 1, 2023, with such minimum wage to be adjusted from time to time to reflect changes in the cost of living; and

WHEREAS, a higher minimum wage promotes public health, safety, and welfare by requiring that employees be compensated in a manner that enhances their standard of living; and

WHEREAS, the County of San Mateo may adopt a higher minimum wage under the powers invested in the County under the laws of the State of California.

SECTION 1. SAN MATEO COUNTY ORDINANCE CODE CHAPTER 5.158 ADDED

Chapter 5.158 is added to Title 5 to the San Mateo County Ordinance Code to read, in its entirety, as follows:

Chapter 5.158.010 – Purpose and Intent

- (a) In enacting this chapter, the Board of Supervisors recognizes the importance and value of workers in the unincorporated areas and seeks to address the relatively higher cost of living in the County.
- (b) A higher minimum wage promotes the health, safety, and welfare of workers in the unincorporated areas by requiring that employees be compensated in a manner that enhances their standard of living.
- (c) Establishment of a minimum wage above the State minimum wage that is commensurate with minimum wages adopted by towns and cities within the

County underscores the Board of Supervisor's continued commitment to improve County residents' quality of life and acknowledge their significant economic contributions to the County.

Chapter 5.158.020 – Definitions

- (a) "Calendar Week" means a period of seven consecutive days starting on Sunday.
- (b) "Employee" means any person who:
 - (1) In a calendar week performs at least two hours of work within the geographic boundaries of the County 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, Section 1197, et seq. of the California Labor Code and wage orders published by the State of California Industrial Welfare Commission. Employees shall include Learners, as defined by the California Industrial Welfare Commission
- (c) "Employer" means any person 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.
- (d) "County Minimum Wage" means the hourly rate set by Section 5.158.040.
- (e) "CPI-W" means the Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI-W). It is a monthly measure of the average change over time in the prices paid by urban wage earners and clerical workers for a market basket of consumer goods and services. The CPI-W is based on the spending patterns of urban wage earners and clerical workers and is published by the Bureau of Labor Statistics (BLS).
- (f) "Learner" is defined by California Industrial Welfare Commission Order No. 4-2001.

Chapter 5.158.030 – Payment of Minimum Wage and Authorized Exceptions

- (a) Except as provided in subsection (b), an Employer must pay an Employee no less than the County Minimum Wage for all time worked within the geographic boundaries of the unincorporated areas of the County.
- (b) An Employer must pay an Employee who is a Learner no less than 85 percent of the County Minimum Wage for the first 160 hours of employment. Thereafter, the Employer must pay the Learner Employee the County Minimum Wage.

- (c) State and federal agencies shall not be required to pay the minimum wage mandated by this Chapter when the work performed is related to their governmental function.
- (d) 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 compensation or other non-wage benefits of any such Employee, except to the extent such prohibition would be pre-empted by the Federal Employee Retirement Income Security Act or state law.

Chapter 5.158.040 – Hourly Rate

The County Minimum Wage is:

- (a) Beginning April 1, 2023, an hourly rate of \$16.50;
- (b) Beginning on January 1, 2024, and each January thereafter, the County Minimum Wage shall be an hourly rate equal to the prior year hourly rate increased by the lesser of: (i) 3.5 percent or (ii) a percentage amount equal to the prior year's increase, if any, in the CPI-W as determined by the United States Department of Labor. A change, if any, to the County Minimum Wage is calculated by using the preceding August to August change in the CPI-W to calculate the annual increase. The hourly rate is not decreased by a decrease in the CPI. In no event shall the County Minimum Wage be decreased.

Chapter 5.158.050 – Notice and Posting

- (a) An Employer must give written notification to each current Employee, and to each new Employee at time of hire, of the Employee's rights under this Chapter. The notification shall be posted prominently in areas at the work site where it will be seen by all Employees. Failure to post such notice shall constitute a violation of this Chapter. The County Executive may prepare sample notices for use by Employers which use will constitute compliance with this subsection.
- (b) An Employer must provide each Employee, at the time of hire, with the Employer's name, address, and telephone number in writing.

Chapter 5.158.060 – Implementation

- (a) The County Executive shall publish and make available to Employers a bulletin announcing the adjusted Minimum Wage rate, to take effect April 1, 2023. The County Executive shall publish and make available to Employers a notice

suitable for posting in the workplace informing Employees of the Minimum Wage rate and of their rights under this Chapter.

- (b) Beginning October 1, 2023 and each year thereafter, the County Executive shall publish and make available to Employers a bulletin announcing the adjusted Minimum Wage rate, to take effect January 1 of the following year. Beginning November 1, 2023 and each year thereafter, the County Executive shall publish and make available to Employers a notice suitable for posting by Employers in the workplace informing Employees of the Minimum Wage rate and of their rights under this Chapter.
- (c) The County Executive may promulgate and publish regulations for the fair, efficient, and cost-effective implementation and enforcement of this Chapter, for informing Employees of their rights under this Chapter, for monitoring Employer compliance with this Chapter, and for providing administrative hearings or determining whether an Employer has violated the requirements of this Chapter.

Chapter 5.158.070 - Retaliation Prohibited

- (a) An Employer shall not discharge, reduce the compensation of, or otherwise retaliate against, any Employee for making a complaint to the County of San Mateo, the California Labor Commissioner or other body responsible for enforcement of this Chapter, an Employee's use of civil remedies to enforce the Employee's rights, and/or an Employee's assertion of rights, generally, under this Chapter.
- (b) It is unlawful for the Employer to discharge any Employee who engaged in any activity described in subsection (a) within 120 days of an Employer being notified of such activity unless the Employer has clear and convincing evidence of just cause for such discharge.

Chapter 5.158.080 - Retention of Records

Each Employer shall maintain for at least three years for each Employee, a record of the Employee's name, hours worked and pay rate. Each Employer shall provide each Employee a copy of the records relating to such Employee reasonably promptly upon the Employee's request.

Chapter 5.158.090 - Enforcement

A violation of this Chapter by an Employer may be remedied by any means available to remedy a violation of this Ordinance Code, including, but not limited to, the filing of a complaint with the California Labor Commissioner's Office, a private action by the Employee filed in the court of competent jurisdiction, and/or enforcement by the County or by contract with another agency on behalf of the County. The prevailing party in a successful private action pursuant to this chapter may recover attorneys' fees and costs from the other party.

Chapter 5.158.100 - Waiver Through Collective Bargaining

Except for employees in the property services industry (e.g., janitors, landscapers, groundskeepers, and security guards), the provisions of this Chapter may be waived in whole or in part with respect to employees covered under a written collective bargaining agreement if the following conditions are met:

- (a) The collective bargaining agreement or a subsequently negotiated waiver contains provisions which specifically waive County-mandated minimum wage rates that are higher than the contractually required wage rates for any group or groups of covered employees; and
- (b) The entire collective bargaining agreement or a subsequently negotiated waiver, inclusive of the provisions referred to in (a) above, was negotiated and entered into prior to the effective date of this Chapter.

Chapter 5.158.110 - No Pre-Emption of Higher Standards

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

Chapter 5.158.120 - 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 County activities.

SECTION 2 In the event any section, clause or provision of this ordinance shall be determined invalid or unconstitutional, such section, clause or provision shall be deemed severable and all other sections or portions hereof shall remain in full force and effect. It is the intent of the Board of Supervisors that it would have adopted all other portions of this ordinance irrespective of any such portion declared to be invalid or unconstitutional.

SECTION 3. EFFECTIVE DATE. This Ordinance shall take effect and will be enforced beginning April 1, 2023.

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