

ORDINANCE NO. ORD-2019-014

ORDINANCE OF THE COUNCIL OF THE CITY OF SANTA ROSA ADDING
CHAPTER 10-45 TO THE SANTA ROSA CITY CODE TO ESTABLISH MINIMUM
WAGES TO BE PAID BY EMPLOYERS

THE PEOPLE OF THE CITY OF SANTA ROSA DO ENACT AS FOLLOWS:

Section 1. Findings and Purpose.

- A. The Fair Labor Standards Act of 1938, 29 U.S.C. Sections 201 et seq. (FLSA) establishes a national minimum wage which was last set at \$7.25 per hour effective July 2009, which amount remains the federal minimum wage currently in effect pursuant to Section 206 of the FLSA; and
- B. Section 218 of the FLSA expressly permits state and municipal governments to set minimum wages that are higher than the federal minimum wage; and
- C. California has exercised the authority granted by FLSA Section 218 establishing a state-wide minimum wage currently set at \$12.00 per hour for employers with 26 or more employees, and \$11.00 per hour for employers with 25 or fewer employees, pursuant to California Labor Code Section 1182.12; and
- D. California Labor Code Section 1182.12 provides that California minimum wages for employers with 26 or more employees will increase to \$13.00 per hour on January 1, 2020, to \$14.00 per hour on January 2, 2021, and to \$15.00 per hour on January 1, 2022; and that minimum wages for employers with 25 or fewer employees will increase to \$12.00 per hour on January 1, 2020, to \$13.00 per hour on January 1, 2021, to \$14.00 per hour on January 1, 2022, and to \$15.00 per hour on January 1, 2023; and
- E. California Labor Code Section 1182.12 provides that on or before August 1, 2023, and on or before each August 1 thereafter, the Director of Finance shall calculate an adjusted minimum wage increase. The calculation shall increase the minimum wage by the rate of change in the averages of the most recent July 1 to June 30 period for the United States Bureau of Labor Statistics non-seasonally adjusted United States Consumer Price Index for Urban Wage Earners and Clerical Workers (U.S. CPI-W). The result shall be rounded to the nearest ten cents (\$0.10). Each adjusted minimum wage increase calculated under this subdivision shall take effect on the following January 1. If the rate of change is negative, there shall be no increase or decrease in the minimum wage on the following January 1; and
- F. California Labor Code Section 1205(b) permits local jurisdictions to exercise their police power to establish local minimum wages that are higher than the state minimum wage; and

- G. California Labor Code Section 1197 provides that the minimum wage fixed by the Labor Commission or by any applicable state or local law is the minimum wage to be paid to employees, and the payment of a lower wage than the applicable minimum wage is unlawful; and
- H. A 2018 University of California, Berkeley report from the Center for Labor Research and Education entitled “Estimated Impact of a Proposed Minimum Wage Law for the North Bay” (Report), was commissioned by North Bay Jobs with Justice, the North Bay Labor Council, and other labor, environmental, and community organizations. The report analyzed the prospective impact of a proposed expedited timeline implementing the \$15.00 per hour minimum wage by 2020 for the cities of Novato, Petaluma, Sonoma, Sebastopol and Santa Rosa; and
- I. The report finds that of the minimum wage workers that would be affected by an expedited \$15.00 per hour minimum wage timeline, more than 50% are thirty years or older, 6.4% are teenagers, 60% are of black, Latinx, Asian, and other non-white ethnicity, 50% have some college experience, 15% hold a bachelor’s or higher degree, and median annual earnings of affected workers are half of those of the overall North Bay workforce, often make up half of their family’s income; and
- J. The industries employing most of the workers that would be affected by the proposed minimum wage are retail trade, food services, and health services; and
- K. The report concludes that minimum wage increases within the range of that proposed for analysis lead to net gains in worker earnings, have no negative effect on employment, and can reduce workplace turnover and increase job stability; and
- L. Section 3 of the Santa Rosa City Charter provides that, except as prohibited by the state constitution or restricted by the City Charter, the City shall have all powers and privileges that may be exercised by a charter city; and
- M. In enacting this ordinance City Council is exercising its police power as a California charter city pursuant to Article XI, Sections 5 and 7 of the California Constitution, pursuant to the Santa Rosa City Charter, and the authority for local minimum wage regulations granted in 29 U.S.C. Section 218 of the Fair Labor Standards, and California Labor Code Sections 1197 and 1205(b); and
- N. The City Council has been provided with information upon which the findings and actions set forth in this Ordinance are based, allowing the Council to adopt this Ordinance to be effective on July 1, 2020.

Section 2. City Code Amendment. Chapter 10-45 is added to the Santa Rosa City Code to read as follows:

“Chapter 10-45 Minimum Wages to be Paid by Employers

10-45.010 Definitions.

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

- A. “City” means the City of Santa Rosa.
- B. “Employee” means any person who:
 - (1) In a particular 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 1182.12 and Section 1197 of the California Labor Code.
- C. “Employer” means any Person, including corporate officers or executives, 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, unless exempt by law.
- D. “Learners” means Employees during their first 160 hours of employment working in occupations in which they have no previous similar or related experience. A Learner may be of any age.
- E. “Person” means an individual, corporation, 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; “Person” shall also include the City.

10-45.020 Employment in City and Covered Employee Hours.

- A. Employees are covered by this Chapter for each hour worked within the geographic boundaries of the City, except as otherwise provided in subsection B, below.
- B. An Employee who is typically based outside the City and performs work in the City on an occasional basis is covered by this Chapter in a one-week period only if the Employee performs more than two (2) hours of work for an Employer within the City during that one-week period.
 - (1) Once an Employee who works in the City on an occasional basis performs more than two (2) hours of work for an Employer within the City during a one-week period, payment for all time worked in the City during that one-week period shall be made in compliance with

the requirements of this Chapter.

- (2) Time spent in the City solely for the purpose of travelling through the City from a point of origin outside the City to a destination outside the City, with no employment-related or commercial stops in the City except for refueling or the Employee's personal meals or errands, is not covered by this Chapter.

10-45.030 Minimum Wages.

- A. Effective July 1, 2020, Employers who employ twenty-six (26) or more Employees shall pay Employees a wage of no less than \$15.00 per hour. On and after January 1, 2021, the hourly wage shall be increased pursuant to Section 10-45.030(D).
- B. Effective July 1, 2020, Employers who employ twenty-five (25) or fewer Employees shall pay Employees a wage of no less than \$14.00 per hour.
- C. Effective January 1, 2021, Employers who employ twenty-five (25) or fewer Employees shall pay Employees a wage of no less than \$15.00 per hour plus the CPI-W pursuant to Section 10-45.030(D).
- D. On January 1, 2021, and annually thereafter, the minimum wage all Employers must pay to Employees under this section, regardless of the number of Employees each Employer employs, will be adjusted on the Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI-W) for the San Francisco-Oakland-San Jose Consolidated Metropolitan Statistical Area (or its successor index), which is published by the U.S. Department of Labor. Beginning in October 2020, and annually thereafter, the City will publicize the CPI-W or successor index for that year, as well as the adjusted minimum wage that will apply for all Employers pursuant to this section which shall take effect on January 1 of the ensuing year.
- E. An Employee who is a Learner shall be paid not less than eighty-five (85) percent of the minimum wage required in accordance with this section and rounded to the nearest \$.05 during their first 160 hours of employment. After more than 160 hours of employment, Employees covered by this subsection shall be paid the applicable minimum wage pursuant to this Section.
- F. In determining the number of persons performing work for an Employer during a given week, all persons performing work for the same business enterprise for compensation on a full-time, part-time, or temporary basis shall be counted, including persons made available to work through the services of a temporary services or staffing agency or similar entity, regardless of whether the Employees work inside of or outside of the City. Separate entities will be considered an integrated enterprise and a single Employer under this Chapter where one entity controls the operation of the other entity or entities. The factors to consider in making this assessment include, but are not limited to:
 - (1) Degree of interrelation between the operations of multiple entities;
 - (2) Degree to which the entities share common management;

(3) Centralized control of labor relations; and

(4) Degree of common ownership or financial control over the entities.

G. An Employer may not deduct any amount from wages due an Employee pursuant to this Section 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 pursuant to this Section.

10-45.040 Exemption for Collective Bargaining Agreement.

All or any portion of the applicable requirements of this Chapter may be waived in a bona fide collective bargaining agreement, but only if the waiver is explicitly set forth in that agreement in clear and unambiguous terms. Unilateral implementation of terms and conditions of employment by either party to a collective bargaining relationship shall not constitute or be permitted as a waiver of all or any part of the provisions of this article.

10-45.050 No Waiver of Rights.

Except for waivers in accordance with Section 10-45.040, waiver of any requirement of this Chapter by any Employee shall be deemed contrary to public policy, void and unenforceable. Any attempt by an Employer to cause Employees to waive any of their rights under this Chapter shall constitute a violation of this Chapter subject to enforcement in accordance with Section 10-45.070.

10-45.060 Retaliatory Action Prohibited.

Any of the following actions taken by an Employer concerning an Employee may be deemed retaliatory and a violation of this Chapter subject to enforcement in accordance with Section 10-45.070:

- A. Discharging, reducing in compensation of, taking adverse action against or otherwise discriminating against any Employee for opposing any practice prescribed by this Chapter, for participating in proceedings related to this Chapter, for seeking to enforce his or her rights under this Chapter by any lawful means, or for otherwise asserting rights under this Chapter.
- B. Funding minimum wages required by this Chapter by reducing wages paid to any Employee or by increasing charges to Employees for parking, meals, uniforms or other items.

Taking adverse action against a person within one-hundred-twenty (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. The defendant must prove that the true and entire reason for the adverse action was a legitimate business reason. The plaintiff may rebut the defendant's asserted legitimate business reason by showing that it was, in fact, a pretext.

10-45.070 Enforcement.

- A. Statute of Limitations. The City and any persons aggrieved by a violation of this Chapter (or the aggrieved person's representative) may seek remedies pursuant to this section for a period of three (3) years prior to the date the claim is filed with the City or the court.
- B. Private Right of Action. The City and any person aggrieved by a violation of this Chapter (or the aggrieved person's representative), may bring a civil action against any Employer for violations(s) of this Chapter in a court of competent jurisdiction to enforce the provisions of this Chapter. Successful plaintiffs in actions pursuant to this subsection shall be entitled to such remedies specified in subsection D of this section as the court may order to enforce this Chapter, and to an award of reasonable attorney's fees, witness fees and costs of litigation.
- C. Administrative Enforcement.
- (1) Reporting Violations. An Employee, an Employee's representative, or any other Person may report any suspected violation of this Chapter to the City. The City will keep the identity of the Person reporting the violation confidential to the extent permitted by law, except as necessary to enforce or permit enforcement of this Chapter or other applicable law.
 - (2) Informal Resolution. The City may, in the City's sole discretion, seek informal resolution of complaints of violations in this Chapter.
 - (3) Violations-Penalty and Enforcement. Violations of this Chapter shall be subject to the provisions of Chapter 1-28, Violations-Penalty, and subject to Chapter 1-30, Administrative Review of Ordinance Violations, of this Code.
 - (4) Business Tax Certificate Revocation. The City Business Tax Certificate of Employers in violation of this Chapter are subject to suspension or revocation in accordance with Section 6-04.320 of this Code.
- D. Remedies for Violations. In addition to the remedies listed above in this section, remedies available for violations of this Chapter include, but are not limited to the following:
- (1) Award of any back wages unlawfully withheld, and payment of an additional sum as a civil penalty in the amount of fifty dollars (\$50.00) for each Employee whose rights under this Chapter were violated for each day or portion thereof that the violation occurred or continued.
 - (2) Award of interest on all due and unpaid wages at the legal rate of interest of ten percent (10%) per annum; or, if award of interest at the rate of ten percent (10%) per annum is not legally permitted, award of interest at the maximum legally-permitted rate up to but not exceeding ten percent (10%) per annum. Interest shall accrue from the date that the wages were due and payable as provided in Part 1 of Division 2 of the California Labor Code (commencing with Section 200) up to and including the date immediately before the date when the wages were paid in full.

- (3) Injunctive relief that is within the jurisdiction of the adjudicatory authority presiding over the proceedings.
 - (4) For Employees aggrieved by termination, demotion or other adverse action in retaliation for exercise of Employees' rights pursuant to this Chapter in violation of Section 10-45.060, in addition to the remedies above, reinstatement and return of the Employee to the status quo ante, and an award of treble the wages lost due to violation.
- E. No Cause of Action Against the City. To the maximum extent permitted by law, nothing in this Chapter may be construed to create a cause of action against the City, or a basis for seeking an award of attorney's fees against the City pursuant to the private attorney general's statute in California Code of Civil Procedure Section 1021.5 or on any other basis arising from or related to an Employer's alleged violation of the requirements of this Chapter, and/or based on or related to the City's prosecution or enforcement or alleged failure to prosecute or enforce such alleged violation, and/or based on or related to the City's implementation or alleged failure to implement the requirements of this Chapter.

10-45.080 Notification and Retention of Records.

- A. Initial Notice of Employee Rights. Within one (1) week of this Chapter taking effect, each Employer shall give written notice to each Employee of Employees' rights pursuant to this Chapter. Each Employer shall give the same notice to each new Employee within one (1) week of the start of each new Employee's employment. The notice pursuant to this paragraph shall be in each language spoken by more than ten percent (10%) of an Employer's Employees and shall be posted in a conspicuous place at each workplace or job site where any Employee of that Employer works. The City may provide Employers sample notices pursuant to this paragraph and Employers' use of such sample notices in accordance with the paragraph will satisfy the requirements of this paragraph.
- B. Annual Notice of Employee Rights. Prior to January 1 of each year, the City may publish and make available to Employers a notice suitable for posting in the workplace informing Employees of the applicable minimum wage rates in effect pursuant to this Chapter beginning January 1 of that year, and of Employees' rights pursuant to this Chapter. Any notice pursuant to this paragraph will be in English, Spanish and such other languages as provided in any administrative regulations promulgated pursuant to Section 10-45.120 of this Chapter. Each Employer shall post any notice pursuant to this paragraph in a conspicuous place at each workplace or job site where any Employee of that Employer works.
- C. Initial and Annual Notice Regarding Employee Inquiries. Each Employer shall provide each Employee, upon hiring and annually, written notice including the Employer's legal name, address, telephone number, and the name and contact information for an Employer representative responsible for inquiries concerning compliance with this Chapter.
- D. Employer Records Retention. Each Employer shall maintain a record of each Employee's name, his or her hours worked, and pay rate. Such records shall be retained for at least a

three-year period. Each Employer shall provide to each Employee or each Employee's representative a copy of the records required to be maintained concerning that Employee pursuant to this subsection upon request during normal business hours. Failure of an Employer to maintain and provide records in accordance with this subsection shall raise a rebuttable presumption that an Employee's account of how much he or she was paid in any proceeding to enforce the providing of this Chapter is accurate, which presumption may be rebutted by competent evidence to the contrary.

- E. Remedy for Violations of this Section. Employers that violate the requirements of this section shall be subject to administrative citation in accordance with Section 10-45.070(c)(3) of this Chapter, and Chapter 1-30 of the City Code.
- F. City Failure to Give Notice. Failure by the City to provide notice as permitted pursuant to this section shall not create a basis of liability of the City or any reason or purpose and shall not be a defense to any Employer's alleged failure to pay minimum wages or to otherwise fully comply with the requirements of this Chapter.

10-45.090 No City Duty Created.

The purpose of this Chapter is to establish minimum wages Employers must pay Employees for hours Employees work in the city, and to establish remedies that Employees and their representatives and the City may seek for alleged Employer violations of this Chapter. This Chapter is not intended to create and may not be construed so as to create any City duty to implement or enforce the requirements of this Chapter.

10-45.100 Coexistence with Other Available Relief.

The provisions of this Chapter shall not be construed as limiting any Employee's right to obtain any other relief to which he or she may be entitled at law or in equity.

10-45.110 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.

10-45.120 Conflicts.

Nothing in this article shall be interpreted or applied so as to create any power or duty in conflict with any federal or state law.

10-45.130 Administrative Regulations.

The City Manager may promulgate regulations for the implementation and enforcement of the 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 the Chapter."

Section 3. Authority. This Ordinance is enacted pursuant to the City of Santa Rosa's general police powers, Section 3 of the Charter of the City of Santa Rosa, Article XI of the California Constitution and Government Code.

Section 4. Environmental Determination. The proposed Ordinance is not a project within the meaning of Section 15378 of the California Environmental Quality Act (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 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 5. Severability. If any subsection, sentence, clause or phrase of this article is for any reason held to be invalid or unconstitutional by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this ordinance. The City Council hereby declares that it would have adopted this section, and each and every subsection, sentence, clause and phrase thereof not declared invalid or unconstitutional, without regard to whether any portion of the ordinance would be subsequently declared invalid, unconstitutional or unenforceable.

Section 6. Effective Date. This ordinance shall take effect on the 31st day following its adoption.

This ordinance was introduced by the Council of the City of Santa Rosa on October 1, 2019.

IN COUNCIL DULY PASSED AND ADOPTED this 22nd day of October, 2019.

AYES: (5) Mayor Schwedhelm, Vice Mayor Rogers, Council Members Fleming, Olivares, Sawyer

NOES: (0)

ABSENT: (2) Council Members Combs, Tibbetts

ABSTAIN: (0)

ATTEST: _____ APPROVED: _____
Acting City Clerk Mayor

APPROVED AS TO FORM:

City Attorney