

ATTACHMENT 10

DRAFT MODEL MINIMUM WAGE ORDINANCE FROM NBJJ

THE PEOPLE OF THE CITY OF _____ DO ENACT AS FOLLOWS:

[Preamble]

Section ____ .010 Definitions.

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

“City” shall mean the City of _____.

“Employee” shall mean any person who:

- a. In a particular week performs at least two (2) hours of work within the geographic boundaries of the City for an Employer; and
- b. 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.

“Employer” shall mean 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.

“Franchise” means a written agreement by which:

1. A Person is granted the right to engage in the business of offering, selling, or distributing goods or services under a marketing plan prescribed or suggested in substantial part by the grantor or its affiliate;
2. The operation of the business is substantially associated with a trademark, service mark, trade name, advertising, or other commercial symbol; designating, owned by, or licensed by the grantor or its affiliate; and
3. The person pays, agrees to pay, or is required to pay, directly or indirectly, a franchise fee.

“Franchisee” means a person to whom a Franchise is offered or granted.

“Franchisor” means a person who grants a franchise to another person.

“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.

“Small Business” shall mean an Employer for which normally twenty five or fewer persons work for compensation during a given week, including persons employed outside the City. 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 a separate entity controls the operation of another entity. The factors to consider in making this assessment include, but are not limited to: (a) degree of interrelation between the operations of multiple entities; (b) degree to which the entities share common management; (c) centralized control of labor relations; and (d) degree of common ownership or financial control over the entities. The term “Small Business” shall not include a Franchisee associated with a Franchisor or a network of Franchises with Franchisees that employ more than 10 employees in aggregate.

Section __.020. Employment in City.

A. Employees are covered by this Chapter for each hour worked within the geographic boundaries of the City.

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 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 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.

3. 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.

Section __.030 Minimum Wages.

A. Effective January 1, 2020, an Employer shall pay an Employee 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 __.030(C).

B. Effective January 1, 2020, a Small Business shall pay an Employee a wage of no less than \$14.00. On and after January 1, 2021, the hourly wage shall be no less than the hourly rate required for all Employers, as set forth in Section __.030(A) and as increased annually pursuant to Section __.030(C).

- C. On January 1, 2021, and annually thereafter, the minimum wage for all Employers will increase based 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. The [municipal officer or department] shall announce the adjusted rates on October 1st and publish a bulletin announcing the adjusted rates, which shall take effect on January 1st of the ensuing year.
- D. An Employee who is at least 14 but not older than 17 years of age and who is a “Learner,” as defined in California Welfare Commission Order No. 4-2001, shall be paid not less than 85 percent of the minimum wage required by this Section and rounded to the nearest nickel 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.
- E. 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.

Section ____ .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.

Section ____ .050. No Waiver of Rights.

Except for bona fide collective bargaining agreements, any waiver by an Employee of any or all of the provisions of this article shall be deemed contrary to public policy and shall be void and unenforceable. Any attempt by an Employer to have an Employee waive rights given by this Chapter shall constitute a willful violation of this Chapter.

Section ____ .060. Retaliatory Action Prohibited.

- A. No Employer shall discharge, reduce in compensation or otherwise discriminate against any Employee for opposing any practice proscribed by this Chapter, for participating in proceedings related to this article, for seeking to enforce his or her rights under this Chapter by any lawful means, or for otherwise asserting rights under this Chapter.
- B. Taking adverse action against a person within one hundred twenty (120) days of the person’s exercise of rights protected under this Chapters 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 termination, demotion or penalty 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.

- C. 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.

Section _____.070. Enforcement.

- A. The City, any Person aggrieved by a violation of this Chapter, and any entity a member of which is aggrieved by a violation of this Chapter may bring a civil action against the Employer or other person violating this Chapter in a court of competent jurisdiction 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 and/or injunctive relief. Violations of this Chapter are declared to irreparably harm the public and covered Employees generally. The Court shall award reasonable attorney's fees, witness fees and expenses to any plaintiff who prevails in an action to enforce this Chapter. No criminal penalties shall attach for any violation of this Chapter.
- B. An Employee, a representative of 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 Employee or person, the City may disclose his or her name and identifying information as necessary to enforce this Chapter or other Employee protection laws. The City shall make every effort to resolve complaints informally, in a timely manner.
- C. Where the City, after a hearing that affords a suspected violator due process, determines that a violation has occurred, it may order any appropriate relief including, but not limited to, reinstatement, the payment of any back wages unlawfully withheld, and the payment of an additional sum as an administrative penalty in the amount of \$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.
- D. Except where prohibited by state or federal law, upon a determination of a violation of this chapter after a hearing that affords a suspected violator due process, City agencies and departments may revoke or suspend any registration certificates, permits, or licenses held or requested by the Employer until such time as a violation of this Chapter is remedied.
- E. Remedies for the violation of this Chapter shall 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 (\$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.
 - 2. Interest on all due and unpaid wages at the rate of interest specified in subdivision (b) or 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 Sec. 200) or Division 2 of the California Labor Code, to the date the wages are paid in full.

3. For an Employee found to have been unlawfully retaliated against in violation of ____060(A), treble the wages lost due to the violation.

Section ____080. Notifications and Retention of Records.

- A. No later than October 1st of each year, the City shall publish and make available to Employers a notice suitable for posting by Employers in the workplace informing Employees of the adjusted minimum-wage rate for the upcoming year and their rights under this Chapter. Such notice shall be in English, Spanish and such other languages as provided in any regulations promulgated pursuant to Section ____140. Every Employer shall post in a conspicuous place at any workplace or job site where any Employee works the current notice described in this subsection.
- 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 all languages spoken by more than 10 percent of Employees, and shall also be posted prominently in areas at the work site where it will be seen by all Employees. The City is authorized to prepare sample notices and Employer use of such notices shall constitute compliance with this subsection.
- C. Each Employer shall maintain for at least (3) three years for each Employee a record of his or her name, hours worked, pay rate, and Service Charge collection and distribution, if applicable. Each Employer shall provide each Employee or his or her representative a copy of the records relating to such Employee upon the Employee's or representative's reasonable request. Where an Employer does not maintain or retain adequate records documenting wages paid or does not allow reasonable access to such records, it shall be presumed in any administrative or judicial enforcement proceeding to enforce the provisions of this Chapter that the Employee's account of how much he or she was paid is accurate, absent clear and convincing evidence otherwise.
- D. Each Employer shall provide each Employee, upon hire and annually, a written notification setting forth the Employer's legal name, address, and telephone number, and the name and contact information for a person responsible for inquiries concerning compliance with this Chapter.
- E. Failure to provide the notices and maintain the records required under this Section shall render the employer subject to administrative citation, pursuant to the provisions of this Chapter.

Section ____090. Coexistence with Other Available Relief.

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

Section ____100. 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.

Section ____ .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.

Section ____ .130. 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 or unconstitutional.

Section ____ .140. Regulations.

The City [Manager or Department] may promulgate regulations for the implementation and enforcement of this Chapter. Any regulations promulgated by the City [Manager or Department] 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.

Section ____ .150. CEQA Statement

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.