

Section 10-45.030 Minimum Wages

- A. Effective ~~July~~January 1, 202~~0~~1, Employers who employ twenty-six (26) or more Employees shall pay Employees a wage of no less than \$15.00 per hour plus the Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI-W) for the San Francisco-Oakland-Hayward 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~~On and after January 1, 2021, the hourly wage shall be increased pursuant to Section 10-45.030(D).~~
- B. Effective ~~July~~January 1, 202~~0~~1, Employers who employ twenty-five (25) or fewer Employees shall pay Employees a wage of no less than \$14.00 per hour plus the CPI-W for the San Francisco-Oakland-Hayward 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.
- C. Effective ~~January~~July 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 that was increase pursuant to Section 10-45.030(D) assessed on January 1, 2021, so that all employers, regardless of the number of Employees each Employer employs, will be at a matching rate.
- ~~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.D. 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.E. 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.F. 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 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.

Section 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.

Section 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.

Section 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 violation(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.

Section 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.

Section 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.

Section 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.

Section 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.

Section 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.

Section 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 _____, 2019.

IN COUNCIL DULY PASSED AND ADOPTED this ____ day of _____, 2019.

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST: _____
Acting City Clerk

APPROVED: _____
Mayor

APPROVED AS TO FORM:

City Attorney