

ORDINANCE NUMBER _____ (CCS)

(City Council Series)

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF
SANTA MONICA REQUIRING A MINIMUM WAGE FOR EMPLOYEES AND
AMENDING CHAPTER 4.65 OF THE SANTA MONICA MUNICIPAL CODE

WHEREAS, income inequality is a growing problem throughout the United States and within the greater Los Angeles area; and

WHEREAS, state minimum wages paid to workers living and working within the greater Los Angeles region, including the City of Santa Monica, are inadequate to meet basic needs and sustain working families; and

WHEREAS, on June 10, 2015, in recognition of these public concerns, and to promote the general health, safety, and welfare by ensuring that workers receive an adequate living wage, the City of Los Angeles adopted an ordinance establishing a higher minimum wage for its local workforce; and

WHEREAS, regional coordination in minimum wage policies promotes fairness and equitable regional development; and

WHEREAS, the City seeks to improve the welfare of the City's workers, particularly those in low-wage positions, by supporting fair employment practices and ensuring that workers receive decent compensation for the work they perform and services provided; and

WHEREAS, requiring a higher than state-mandated minimum wage furthers the City's Strategic Initiatives for Maintaining an Inclusive and Diverse Community; and

WHEREAS, increasing the minimum wage for workers in the City promotes the public health, safety, and welfare.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF SANTA MONICA DOES HEREBY ORDAIN AS FOLLOWS:

SECTION 1. Santa Monica Municipal Code Chapter 4.65 is hereby amended to read as follows:

Chapter 4.65 LIVING MINIMUM WAGE

4.65.010 Definitions.

As used in this eChapter:

(a) "City" means the City of Santa Monica.

(b) "Employee" means:

(1) For City contractors working on a City contract, "Employee" means any person who works on the City contract and who does not actually work as a manager, supervisor, or confidential employee, and who is not required to possess an occupational license; or

(2) For employers, "employee" means any person who in a particular week performs at least two hours of work within the geographic boundaries of the City for an employer; and qualifies as an employee entitled to payment of a minimum wage from any employer as provided under the California Labor Code and wage orders published by the California Industrial Welfare Commission.

(c) "Employer" means any person, including a corporate officer or executive, association, organization, partnership, business trust, and limited liability company or corporation, who directly or indirectly, or through an agent or any other person, including through the services of a temporary service or staffing agency or similar entity, employs or exercises control over the wages, hours or working conditions of any employee. "Employer" does not include City contractors working on a City contract.

(d) "Government agencies" include federal agencies, state agencies, cities, counties, school districts, and all other public entities.

(e) "Hardest to employ" means persons who have been out of the workforce for an extended period of time and who face considerable barriers when trying to re-enter the mainstream workforce.

(f) "Minimum wage" means a wage payment at an initial hourly rate set under this Chapter. As of July 1, 2005, minimum wage means a wage payment at an initial hourly rate of eleven dollars and fifty cents per hour. As of July 1, 2014, minimum wage means a wage payment at an initial hourly rate of fifteen dollars and thirty-seven cents. The minimum wage shall be adjusted annually each July 1st, beginning 2006, by an amount corresponding to the previous year's change (January to January) in the Consumer Price Index for Urban Wage Earners and Clerical Workers 1967=100 for Los Angeles-Riverside-Orange County, California.

(g) "Nonprofit corporation" means any organization that is duly organized, validly existing and in good standing under the laws of the jurisdiction of its incorporation and, if a foreign corporation, in good standing under the laws of the State of California, which has

established and maintains valid nonprofit status under Section 501(c)(3) of the Internal Revenue Code, as amended, and all rules and regulations promulgated thereunder.

(h) "Service charge" means all separately-designated amounts charged and collected by an employer from customers that are for service by employees or benefits to employees, or are described in such a way that customers might reasonably believe that the amounts are for those services or benefits, including but not limited to those charges designated on receipts, invoices, or billing statements under the term "service charge," "delivery charge," "portage charge", "health care surcharge," or similar language.

(i) "Supportive services" includes, but is not limited to, counseling services, individual case management, pre-employment job readiness training, daily monitoring of participants while on the job, provision of unsubsidized competitive employment opportunities, and assistance in applying for, obtaining, and maintaining unsubsidized competitive employment.

(j) "Transitional employer" means a nonprofit corporation that provides transitional jobs for the long-term unemployed, and that has been certified by the City as a transitional employer.

(k) "Transitional job" means short-term, wage-paying, subsidized employment in a nonprofit corporation that combines actual work, skill development, and supportive services to help participants overcome barriers to employment and transition to unsubsidized competitive employment.

4.65.015 Minimum wage payment requirements for employers.

(a) An employer shall pay an employee a wage of no less than the hourly rates set under this Section.

(b) Employers with 26 or more employees shall pay no less than the following hourly wages:

(1) On July 1, 2016, the hourly wage shall be \$10.50;

(2) On July 1, 2017, the hourly wage shall be \$12.00;

(3) On July 1, 2018, the hourly wage shall be \$13.25;

(4) On July 1, 2019, the hourly wage shall be \$14.25; and

(5) On July 1, 2020, the hourly wage shall be \$15.00.

(c) Employers with 25 or fewer employees shall pay no less than the following hourly wages:

(1) On July 1, 2017, the hourly wage shall be \$10.50;

(2) On July 1, 2018, the hourly wage shall be \$12.00;

(3) On July 1, 2019, the hourly wage shall be \$13.25;

(4) On July 1, 2020, the hourly wage shall be \$14.25; and

(5) On July 1, 2021, the hourly wage shall be \$15.00.

(d) On July 1, 2022, and annually thereafter, the minimum wage will increase based on the Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI-W) for the Los Angeles metropolitan area (Los Angeles-Riverside-Orange County, California), which is published by the Bureau of Labor Statistics. The City shall announce the adjusted rates annually each January 1st and publish a bulletin announcing the adjusted rates, which shall take effect on July 1st of each year.

(e) Employees who are learners, as defined in Labor Code Section 1192 and consistent with wage orders published by the California Industrial Welfare Commission, and who are 14-17 years of age, shall be paid not less than 85% of the minimum wage rounded to the

nearest nickel during their first 160 hours of employment. After more than 160 hours of employment, learners shall be paid the applicable minimum wage pursuant to this Section.

(f) For purposes of this Section, the number of employees shall be determined by the average number of employees employed during the previous calendar year.

4.65.016 Deferral application for certain nonprofit corporation employers.

The City shall establish a procedure to allow a nonprofit corporation employer with 26 or more employees to qualify for the deferral rate schedule set forth in Section 4.65.015, subdivision (c). A nonprofit corporation employer seeking the deferral must establish compelling evidence that:

(a) The chief executive officer earns a salary that, when calculated on an hourly basis, is less than five times the lowest wage paid by the nonprofit corporation; or

(b) The nonprofit corporation is a transitional employer; or

(c) The nonprofit corporation serves as a child care provider; or

(d) The nonprofit corporation is funded primarily by City, county, state or federal grants or reimbursements.

4.65.020 Minimum wage payment requirements for City contractors.

Any contractor providing services to the City of Santa Monica pursuant to a contract in the amount of ~~fifty-four thousand two hundred dollars~~ \$54,200 or more shall pay at least the minimum wage of \$15.37 per hour to any employee working on that contract for work done on the contract. This minimum wage shall be adjusted annually each July 1st, by an amount corresponding to the previous year's change (January to January) in the Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI-W) for the Los

Angeles metropolitan area (Los Angeles-Riverside-Orange County, California), which is published by the Bureau of Labor Statistics.

4.65.025 Equal benefit requirements for ~~City~~ contractors.

Any employer or any City contractor working on a City contract subject to the minimum wage requirements of this Chapter shall provide the same benefits to a same-sex spouse or a domestic partner of an employee ~~working on the City contract~~ as are provided to any spouse of an employee ~~working on the City contract~~.

4.65.030 Exemptions.

(a) The requirements of this Chapter shall not apply to employers that are government agencies.

(b) The requirements of this Chapter shall not apply to employers ~~City contractors working on a City contract~~ that are government agencies, City grantees, nonprofit corporations, or corporations providing banking services.

4.65.031 Limited exemption for transitional employers.

(a) Transitional employers that provide supportive services and transitional jobs for the hardest to employ may pay each employee in a transitional job an hourly wage that is below the minimum wage set forth under this Chapter during the first 18 months of the employee's work in the transitional job.

(b) The City shall establish a procedure to determine whether an employer may be certified as a transitional employer, including but not limited to consideration of the following criteria:

(1) The employer is a nonprofit corporation;

(2) A profile of program participants (e.g., homeless individuals, individuals with addictions, at-risk youth);

(3) A description of the employer's transitional job program components, including supportive services, designed to help program participants transition towards unsubsidized competitive employment; and

(4) Any other criteria as may be developed in the administrative regulations adopted consistent with this Chapter.

4.65.040 Supercession by collective bargaining agreement.

The provisions of this Chapter, or any part thereof, may be waived in a bona fide collective bargaining agreement, but only if the waiver is explicitly set forth in such 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 Chapter.

4.65.050 Service charges.

(a) Service charges shall not be retained by the employer but shall be paid in their entirety by the employer to the employee(s) who performed services for the customers from whom the service charges are collected. No part of these amounts may be paid to supervisory or managerial employees. The amounts shall be paid to the employee(s) equitably and according to the services that are or appear to be related to the description of the amounts given by the employer to the customers. The amounts shall be paid to the employee(s) in the next payroll following collection of the amounts from customers.

(b) This section does not apply to any tip, gratuity, money, or part of any tip, gratuity, or money that has been paid or given to or left for an employee by customers over and above the actual amount due for services rendered or for goods, food, drink, or articles sold or served to customers.

4.65.060 Unlawful practices.

It shall be unlawful for an employer or a City contractor working on a City contract to reduce the hours of, refuse to hire, discharge or otherwise discriminate or take adverse action against any employee or other individual in order to pay wages less than the minimums established under this Chapter.

4.65.065 Retaliatory action prohibited.

It shall be unlawful for an employer or a City contractor working on a City contract to reduce the hours, wages or benefits of; discharge; or otherwise discriminate or take adverse action against any employee for opposing any practice proscribed by this Chapter, for participating in proceedings related to this Chapter, for seeking to enforce the employee's rights under this Chapter by any lawful means, or for otherwise asserting rights under this Chapter.

4.65.070 No waiver of rights.

Any waiver by an employee of any provisions of this Chapter shall be deemed contrary to public policy and shall be void and unenforceable.

4.65.080 Reports.

Every year after July 1, 2016, the Finance and Housing and Economic Development Departments shall collect economic data, including jobs, earnings, business license, and sales tax, and shall make this information available to the City Council and to the public.

4.65.090 Administrative regulations.

The Finance Director is authorized to adopt administrative regulations that are consistent with the provisions of this Chapter. Violations of the administrative regulations adopted pursuant to this Section shall constitute violations of this Chapter, and shall subject the violator to the penalties set forth in this Chapter.

4.65.100 Enforcement and penalties.

(a) Unless otherwise specifically provided, any person violating any provision of this Chapter shall be guilty of a misdemeanor, which shall be punishable by a fine not exceeding \$500 per violation, or imprisonment in the County Jail for a period not exceeding six months, or by both fine and imprisonment, or shall be guilty of an infraction, which shall be punishable by a fine not exceeding \$250.

(b) Any person violating any provision of this Chapter or any rule or regulation may be subject to administrative citations pursuant to Chapter 1.09 of this Code.

(c) Any person convicted of violating any provision of this Chapter or the terms and conditions of any permit or approval issued pursuant to this Chapter shall be required to reimburse the City its full investigative costs.

(d) Violation of any provision of this Chapter shall result in strict liability; accordingly, the prosecution shall not be required to prove criminal intent or that the violator meant to violate any provision of this Chapter.

4.65.110 Higher minimum wage under state or federal law; conflicts; relief.

(a) If at any time the state or federal minimum wage is scheduled to exceed the minimum wage required under this Chapter, employers and City contractors working on a City contract shall pay the higher minimum wage.

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

(c) Nothing in this Chapter shall be construed to limit any employee's right to obtain relief to which the employee may be entitled at law or in equity.

4.65.050120 Effective date and implementation.

The obligations as to City contractors working on a City contract imposed by this Chapter shall become effective as of July 1, 2005, and shall apply only to contracts executed after that date. The obligations as to employers imposed by this Chapter shall become effective as of July 1, 2016.

SECTION 2. Any provision of the Santa Monica Municipal Code or appendices thereto inconsistent with the provisions of this Ordinance, to the extent of such inconsistencies and no further, is hereby repealed or modified to that extent necessary to effect the provisions of this Ordinance.

SECTION 3. If any section, subsection, sentence, clause, or phrase of this Ordinance is for any reason held to be invalid or unconstitutional by a decision of any 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 passed this Ordinance and each and every section, subsection, sentence, clause, or phrase not

declared invalid or unconstitutional without regard to whether any portion of the ordinance would be subsequently declared invalid or unconstitutional.

SECTION 4. The Mayor shall sign and the City Clerk shall attest to the passage of this Ordinance. The City Clerk shall cause the same to be published once in the official newspaper within 15 days after its adoption. This Ordinance shall become effective 30 days from its adoption.

APPROVED AS TO FORM:



MARSHA JONES MOUTRIE
City Attorney