

ORDINANCE No 2015-09

AN ORDINANCE OF THE CITY OF EL CERRITO AMENDING THE EL CERRITO MUNICIPAL CODE BY ADDING A NEW CHAPTER 6.95 ("CITY MINIMUM WAGE STANDARDS")

WHEREAS, the current Federal minimum wage rate is \$7.25 per hour, and the California minimum wage will be \$10.00 per hour on January 1, 2016; and

WHEREAS, the cost of living in the San Francisco Bay area is higher than the national average and many families in Contra Costa County struggle to cover basic household expenses; and

WHEREAS, a county-wide increase of the minimum wage to \$15 per hour by 2020 would benefit about 33% of Contra Costa's workforce, and 89% of working poor families; and

WHEREAS, a county-wide increase of the minimum wage to \$15 per hour by 2020 would bring the minimum wage up from 38% to 50.1% of the Contra Costa median full-time wage, well within the historical range of the ratio for the federal minimum wage to the national median full-time wage; and

WHEREAS, in Contra Costa County, more than half of workers receiving the minimum wage are employed in four industries: retail trade (19.9%), food services (17.9%), health services (9.4%), and administrative and waste management services (8.4%), a classification that includes building services contractors and employment agencies; and

WHEREAS, in 2014, there were 453 companies operating in El Cerrito with a total of 5,035 employees; and

WHEREAS, over half the jobs in El Cerrito in 2014 were concentrated in the retail, accommodation and food services, health care and social assistance, and administrative and waste management services industries; and

WHEREAS, a county-wide increase of the minimum wage to \$15 per hour by 2020 would likely result in only modest price increases for consumers spread over five years, generally ranging from 0.2% to 1.9% annually with most notably an estimated 7% overall increase in operating costs for restaurants; and

WHEREAS, other jurisdictions in the region are considering enacting a minimum wage that is higher than the minimum wage required by federal and state law, and the Cities of San Francisco, Oakland, Emeryville, Berkeley, San Jose, Mountain View, Sunnyvale, Santa Clara, Palo Alto, and Richmond have already adopted such a minimum wage; and

WHEREAS, in an effort to help working households achieve economic security and acknowledging the higher relative cost of living in San Francisco Bay Area, the City Council of the City of El Cerrito wishes to enact a citywide minimum wage that is higher than the minimum wage required by the federal and state rates; and

WHEREAS, payment of a minimum wage advances the interests of the City as a whole, by creating jobs that keep workers and their families out of poverty; and

WHEREAS, a higher minimum wage rate protects the public health, safety and welfare by requiring that workers employed in El Cerrito are compensated in such a manner as to enable and facilitate their individual self-reliance within the City of El Cerrito; and

WHEREAS, the City Council of the City of El Cerrito may desire to consider additional benefits to workers employed in El Cerrito in the future beyond those required by the State, including enhanced paid sick leave, as other communities within the region explore additional ways to improve the lives of workers in the San Francisco Bay Area; and

WHEREAS, in 2010, over 30% of the households in El Cerrito were considered to be Low, Very Low or Extremely Low income households; and

WHEREAS, the City of El Cerrito may adopt a higher minimum wage pursuant to the powers vested in the City under the laws and Constitution of the State of California including but not limited to the police powers vested in the City pursuant to Article XI, Section 7 of the California Constitution and section 1205(b) of the California Labor Code; and

WHEREAS, it is the intent of the City Council, in enacting a minimum wage ordinance, to ensure compliance with the business standards and practices of the City and to increase the minimum wage for workers within the geographic boundaries of the City.

NOW THEREFORE, The City Council of the City of El Cerrito does hereby ordain as follows:

**SECTION 1. FINDINGS.**

The above recitals are hereby declared to be true and correct and are findings of the City Council of the City of El Cerrito.

**SECTION 2. AMENDMENT OF EL CERRITO MUNICIPAL CODE TITLE 6**

Chapter 6.95 ("City Minimum Wage Standards") is hereby added to Title 6 ("Business Permits and Regulations") of the El Cerrito Municipal Code to read as follows:

**CHAPTER 6.95 CITY MINIMUM WAGE STANDARDS**

- 6.95.010 – Title.**
- 6.95.020 – Authority.**
- 6.95.030 – Definitions.**
- 6.95.040 – Minimum Wage.**
- 6.95.050 – Exemptions and Waivers.**
- 6.95.060 – Notice, Posting and Payroll Records.**
- 6.95.070 – Retaliation Barred.**
- 6.95.080 – Implementation.**
- 6.95.090 – Enforcement.**
- 6.95.100 – Private Rights Of Action.**
- 6.95.110 – Remedies.**
- 6.95.120 – No Preemption of Higher Standards.**
- 6.95.130 – Fees.**

**6.95.010 Title.** This Chapter shall be known as the "City Minimum Wage Standards."

**6.95.020 Authority.** This Chapter is adopted pursuant to the powers vested in the City of El Cerrito under the laws and Constitution of the State of California, including but not limited to, the police powers vested in the City pursuant to Article XI Section 7 of the California Constitution and Section 1205(b) of the California Labor Code.

**6.95.030 Definitions.** As used in this Chapter, the following capitalized terms shall have the following meanings:

A. "City" shall mean the City of El Cerrito or any person, business, or public agency designated by the city council or city manager to perform various investigative, enforcement and informal resolution functions pursuant to this chapter.

B. "CPI" shall mean the Consumer Price Index for urban wage earners and clerical workers for the San Francisco-Oakland-San Jose, CA metropolitan statistical area (or if such index is discontinued, then in the most similar successor index).

C. "Employee" shall mean any person who:

1. In a particular week performs at least two 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 1197 of the California Labor Code and wage orders published by the California Industrial Welfare Commission.

D. "Employer" shall mean any Person who conducts business in the City, or maintains a business facility in the City, and directly or indirectly (including through the services of a temporary services, staffing agency or similar entity) employs or exercises control over the wages, hours or working conditions of any Employee. Any person exempt from payment of the California minimum wage is not an Employer for the purposes of this Chapter.

E. "Minimum Wage" shall have the meaning set forth in Section 6.95.040.

F. "Person" shall mean any individual, association, organization, partnership, business trust, limited liability company, corporation or other legal entity.

G. "Particular week" shall mean any seven consecutive days, starting with the same calendar day each week beginning at any hour on any day, so long as it is fixed and regularly occurring.

1. An employer may establish the day of week when an employee's "particular week" starts, but once an employee's workweek is established, it remains fixed regardless of his/her working schedule.

2. An employer may change an employee's workweek only if the change is intended to be permanent and is not designed to evade an employer's obligations to this chapter.

#### **6.95.040 Minimum Wage.**

A. Employers shall pay Employees no less than the Minimum Wage for each hour worked within the geographic boundaries of the City.

B. The Minimum Wage rate shall be as follows:

1. Beginning on July 1, 2016, the Minimum Wage shall be an hourly rate of \$11.60 per hour.

2. Beginning on January 1, 2017, the Minimum Wage shall be an hourly rate of \$12.25 per hour.

3. Beginning on January 1, 2018, the Minimum Wage shall be an hourly rate of \$13.60 per hour.

4. Beginning on January 1, 2019, the Minimum Wage shall be an hourly rate of \$15.00 per hour.

5. Beginning on January 1, 2020, and each January 1 thereafter, the Minimum Wage shall increase by an amount equal to the prior year's increase, if any, in the CPI, as determined by the United States Department of Labor. The City shall use the August to August change in the CPI to calculate the annual increase, if any. A decrease in the CPI shall not result in a decrease of the Minimum Wage.

C. An Employer may not count an Employee's tips or gratuities as a credit toward the Employer's obligation to pay the Employee the Minimum Wage.

D. An Employer who compensates Employees, in whole or in part, on a commission basis that is consistent with State and Federal law, may count commission earnings toward its obligation to pay the Minimum Wage.

E. Whenever the California Labor Code requires an employee to be paid at a rate using a formula based on the state minimum wage, the same formula shall be used to calculate the payment of an employee under this Chapter, except that the local Minimum Wage shall be used. This section shall also apply to learners and apprentices eligible to be paid less than the minimum wage under the provisions of the Labor Code and the regulations of the Department of Industrial Relations.

#### **6.95.050 Exemptions and Waivers.**

A. Individual Waiver Prohibited.

Any waiver by an individual Employee of any of the provisions of this Chapter shall be deemed contrary to public policy and shall be void and unenforceable. Any request to an individual Employee by an Employer to waive his or her rights under this Chapter shall constitute a violation of this Chapter.

**B. Waiver through Collective Bargaining.**

To the extent required by federal law, all or any portion of the applicable requirements of this chapter may be waived in a bona fide collective bargaining agreement, provided that such waiver is explicitly set forth in such agreement in clear and unambiguous terms.

**6.95.060 Notice, Posting And Payroll Records.**

A. By November 1 of each year, the City shall publish and make available to Employers a bulletin announcing the adjusted Minimum Wage rate for the upcoming year, which shall take effect on January 1. In conjunction with this bulletin, the City shall publish and make available to Employers, in all languages spoken by at least ten percent of the workforce in the City, a notice suitable for posting by Employers in the workplace informing Employees of the current Minimum Wage rate and of their rights under this Chapter.

B. Every Employer shall post, in a conspicuous place at any workplace or job site where any Employee works, the notice published each year by the City informing Employees of the current Minimum Wage rate and of their rights under this Chapter. Every Employer shall post such notices in any language spoken by at least ten percent of the Employees at the workplace or job site. In the event that at least ten percent of the Employees at a workplace or job site speak a language for which the City does not publish and make available a notice, the Employer shall be responsible for accurately translating the notice published by the City. Every Employer shall also provide each Employee at the time of hire with the Employer's name, address, and telephone number in writing.

C. Employers shall maintain for at least three years a record for each Employee, which shall include the Employee's name, hours worked, pay rate, and service charges collected and distributed. Upon an Employee's reasonable request, Employers shall provide that Employee with a copy of his or her records within ten calendar days.

D. Employers shall permit access to work sites and relevant records for authorized City representatives, with appropriate notice and during normal business hours or at a mutually agreeable time, for the purpose of monitoring compliance with this Chapter and investigating employee complaints of noncompliance, including production for inspection and copying of its employment records, but without allowing social security numbers to become a matter of public record. Relevant payroll records may include all time cards, cancelled checks, cash receipts, books, documents, schedules, forms, reports, receipts or other evidences which reflect job assignments, work schedules by days and hours, and the disbursement of payments to an employee(s). Where an Employer does not maintain or retain adequate records documenting wages paid, or does not allow the City reasonable access to such records, the Employee's account of how much he or she was paid shall be presumed to be accurate, absent clear and convincing evidence otherwise. Any Employer who fails to maintain or retain adequate records may be subject to a fine or penalty pursuant to Section 6.95.090.

**6.95.070 Retaliation Barred.**

It is unlawful for an Employer to discriminate in any manner or take adverse action against any Employee, including but not limited to termination, reduction in compensation or number of hours worked, or reassignment of duties, in retaliation for the Employee exercising his

or her rights under this Chapter, including for making a complaint to the City, participating in any of its proceedings, using any civil remedies to enforce his or her rights, or otherwise asserting his or her rights under this Chapter. Taking adverse action against an Employee within 120 days of that Employee's exercise of rights protected by this Chapter shall raise a rebuttable presumption that the Employer acted in retaliation. The Employer may overcome this presumption by establishing, with clear and convincing evidence, a non-retaliatory reason for the adverse action.

#### **6.95.080 Implementation.**

A. Guidelines. The city manager or designee is authorized to establish an administrative procedure for receiving and investigating complaints of noncompliance with this Chapter and rendering the City's decisions on the merits of such complaints. The city manager or designee shall coordinate implementation and enforcement of this chapter and may promulgate appropriate guidelines or rules for such purposes. The city manager or designee is also authorized to establish administrative procedures and guidelines for the City initiating investigation and enforcement of noncompliance with this Chapter on its own accord and in the absence of a specific complaint.

B. Investigation. The City shall be responsible for investigating any possible violation of this chapter by an Employer or other person. The City shall have the authority to inspect workplaces, interview persons and request the city attorney to subpoena books, papers, records or other items relevant to the enforcement of this chapter.

C. Reporting Violations. 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 person, the City may disclose his or her name and identifying information as necessary to enforce this chapter or other labor laws. In order to further encourage reporting by Employees, if the City notifies an Employer that the City is investigating a complaint, the City shall require the employer to post or otherwise notify its Employees that the City is conducting an investigation, using a form provided by the City.

D. Informal Resolution. The City shall make every effort to resolve complaints informally, in a timely manner, and shall have a policy that the City shall take no more than one year to resolve any matter before initiating an enforcement action. However, the failure of the City to meet this one year deadline shall not be grounds for closure or dismissal of the complaint.

E. The City is authorized to award the same relief in its proceedings as a court may award. Employees are not required to pursue administrative remedies as a prerequisite for pursuing a civil action under this Chapter.

F. The city manager, upon approval by the City Council, may designate another agency or entity to administer this Chapter.

#### **6.95.090 Enforcement.**

Where compliance with the provisions of this Chapter is not forthcoming, as determined by the City in its sole discretion, the City may take any appropriate enforcement action to ensure compliance, including but not limited to the following:

A. The City may issue an Administrative Citation pursuant to provisions of the City's Municipal Code, El Cerrito Municipal Code Chapter 1.14. The amount of this fine shall vary based on the provision of this Chapter violated, as specified below:

1. A fine may be assessed for retaliation by an Employer against an Employee for exercising rights protected under this Chapter. The fine may be up to one thousand dollars (\$1,000.00) for each Employee retaliated against.

2. A fine of up to five hundred dollars (\$500.00) may be assessed for any of the following violations of this Chapter:

a. Failure to post notice of the Minimum Wage rate.

b. Failure to maintain payroll records for the minimum period of time as provided in this Chapter.

c. Failure to allow the City access to payroll records.

B. A fine equal to the total amount of appropriate remedies, pursuant to Section 6.95.110 of this Chapter. Any and all money collected in this way that is the rightful property of an Employee, such as back wages, interest, and civil penalty payments, shall be disbursed by the City in a prompt manner.

C. If a repeated violation of this Chapter has been finally determined, the City may require the employer to post public notice of the employer's failure to comply in a form determined by the city.

D. The City has the authority to waive or decrease the amount of any fee or civil penalty an Employer owes to the City under this Chapter.

E. The City Attorney may initiate a civil action for injunctive relief and damages and civil penalties in a court of competent jurisdiction.

F. Any Employer who receives an Administrative Citation under this Section may appeal such station pursuant to the provisions of El Cerrito Municipal Code Chapter 1.14.

#### **6.95.100 Private Rights of Action.**

Any Person claiming harm from a violation of this Chapter may bring an action against the Employer 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. Any Person who negligently or intentionally violates this Chapter shall be also liable for civil penalties up a maximum of \$1,000 for each violation, in addition to any other remedies provided.

**6.95.110 Remedies.**

A. The remedies for violation of this Chapter include but are not limited to:

1. Reinstatement, the payment of back wages unlawfully withheld, and the payment of an additional sum as a civil penalty in the amount of at least \$50 to each Employee whose rights under this Chapter were negligently or intentionally violated for each day or portion thereof that the violation occurred or continued, and fines imposed pursuant to other provisions of this Chapter or state law.

2. Interest on all due and unpaid wages at the rate of interest specified in subdivision (b) of 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 Section 200) of Division 2 of the California Labor Code, to the date the wages are paid in full.

3. Reimbursement of the City's administrative costs of enforcement and reasonable attorney's fees.

4. The City may require the Employer to pay an additional sum as a civil penalty in the amount of \$100 to the City for each Employee or person whose rights under this Chapter were violated for each day or portion thereof that the violation occurred or continued, and other penalties imposed pursuant to other provisions of this Code or state law.

B. The remedies, penalties and procedures provided under this Chapter are cumulative and are not intended to be exclusive of any other available remedies, penalties and procedures established by law which may be pursued to address violations of this Chapter. Actions taken pursuant to this Chapter shall not prejudice or adversely affect any other action, administrative or judicial, that may be brought to abate a violation or to seek compensation for damages suffered.

C. No criminal penalties shall attach for any violation of this Chapter, nor shall this Chapter give rise to any cause of action for damages against the City.

D. The city may place a lien or special assessment on an Employer's property for the recovery of any unpaid fines of penalties under this Chapter, pursuant to the procedures provided for in Chapter 1.08 of this Code.

**6.95.120 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. In the event that the state or federal minimum wage is greater than the Minimum Wage provided for in this Chapter, the greater minimum wage shall apply.



**6.95.130 Fees.**

Nothing herein shall preclude the City Council from imposing a fee on all Employers to recover the cost of administering this Chapter.

**SECTION 3. SEVERABILITY.**

If any provision or application of this Ordinance is declared illegal, invalid or inoperative, in whole or in part, by any court of competent jurisdiction, the remaining provisions and portions thereof and applications not declared illegal, invalid or inoperative shall remain in full force or effect. The courts are hereby authorized to reform the provisions of this Ordinance in order to preserve the maximum permissible effect of each subsection herein. The City Council of the City of El Cerrito hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause, or phrase hereof irrespective of the fact that any one or more sections, subsections, subdivisions, paragraphs, sentences, clauses, or phrases be held unconstitutional, invalid, or unenforceable. Nothing herein may be construed to impair any contractual obligations of the City. This Ordinance shall not be applied to the extent it will cause the loss of any federal or state funding of City activities.

**SECTION 4. NOTICING, POSTING AND PUBLICATION.**

This Ordinance is adopted pursuant to the procedures established by state law, and all required notices have been given and the procedure for adoption has been properly held and conducted.

**SECTION 5. EFFECTIVE DATE.**

This Ordinance shall take effect and be enforced beginning on July 1, 2016, and prior to the expiration of fifteen days from the passage thereof, the Ordinance or a summary thereof shall be posted or published as may be required by law, and thereafter the same shall be in full force and effect.

THE FOREGOING ORDINANCE was introduced and first read at a regular meeting of the El Cerrito City Council on November 3, 2015, and approved by the following vote on November 3, 2015:

AYES:	Councilmembers Abelson, Bridges, Lyman, Quinto and Mayor Friedman
NOES:	None
ABSENT:	None
ABSTAIN:	None

ADOPTED AND ORDERED published at a regular meeting of the City Council held on November 17, 2015 and passed by the following vote:

AYES:	Councilmembers Abelson, Bridges, Lyman, Quinto and Mayor Friedman
NOES:	None
ABSENT:	None
ABSTAIN:	None

APPROVED:



Mark Friedman, Mayor

ATTEST:



Cheryl Morse, City Clerk