

ORDINANCE NO. 648

AN ORDINANCE OF THE CITY OF FOSTER CITY ADDING CHAPTER 5.73 (MINIMUM WAGE) TO THE FOSTER CITY MUNICIPAL CODE

CITY OF FOSTER CITY

WHEREAS, the State of California has enacted a minimum wage that reached \$15.00 per hour in January of 2022; and

WHEREAS, recognizing the higher cost of living on the Peninsula and in an effort to support the stability of the community and economic security of local workers, the City Council of the City of Foster City wishes to enact a citywide minimum wage to reach no less than \$15.75 per hour starting July 1, 2022, followed by \$16.50 per hour by January 1, 2023, with increases occurring on January 1 thereafter based on the Regional Consumer Price Index not to exceed three percent (3.0%); and

WHEREAS, the City of Foster City 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;

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF FOSTER CITY DOES ORDAIN AS FOLLOWS:

Section 1. Purpose and Intent. The purpose and intent of this Ordinance is to adopt a new Chapter 5.73 of the Foster City Municipal Code to provide a minimum wage of \$15.75 per hour starting July 1, 2022 and a minimum wage of \$16.50 per hour on January 1, 2023, and increases on January 1 thereafter based on the Regional Consumer Price Index, not to exceed three percent (3.0%).

Section 2. Adding Chapter 5.73 to the Foster City Municipal Code. Chapter 5.73 "Minimum Wage" is added the Foster City Municipal Code to read as follows:

"Chapter 5.73

MINIMUM WAGE

SECTIONS

5.73.010 Definitions.

5.73.020 Minimum Wage.

- 5.73.030 Notice and Posting.
- 5.73.040 Implementation.
- 5.73.050 Enforcement.
- 5.73.060 Waiver through Collective Bargaining.
- 5.73.070 No Pre-Emption of Higher Standards.
- 5.73.080 Federal or State Funding.

5.73.010 **Definitions.**

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

- A. "Calendar week" shall mean a period of seven consecutive days starting on Sunday.
- B. "City" shall mean the City of Foster City.
- C. "Employee" shall mean any person who in a Calendar Week performs at least two (2) hours of work for an Employer within the geographic boundaries of the City, and 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 State of California Industrial Welfare Commission. Employees shall include Learners, as defined by the California Industrial Welfare Commission.
- D. "Employer" shall mean any person (including a natural person, corporation, non-profit corporation, general 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), who receives or holds a business license from the City, and 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.
- E. "Minimum Wage" shall have the meaning set forth in Section 5.73.020 of this Chapter.

5.73.020 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 paid shall be as follows: Beginning July 1, 2022, the Minimum Wage shall be an hourly rate of \$15.75 and beginning January 1, 2023, the Minimum Wage shall be an hourly rate of \$16.50.
- C. Beginning on January 1, 2024, and each January thereafter, the minimum wage shall increase by an amount corresponding to the prior year's increase, if any, in the cost of living, not to exceed three percent (3.0%). The prior year's increase in the cost of living shall be measured by the percentage increase, if any, as of August of the immediately preceding year of the Bay Area Consumer Price Index (Urban Wage Earners and Clerical Workers, San Francisco-Oakland-Hayward, CA for All Items) or its successor index as published by the U.S. Department of Labor or its successor agency. The change shall be calculated by using 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 in the minimum wage.
- D. An Employee who is a Learner, as defined by California Industrial Welfare Commission Order No. 4-2001, shall be paid no less than 85 percent of the applicable Minimum Wage for the first 160 hours of employment. Thereafter, the Employee shall be paid the applicable Minimum Wage rate.
- E. An Employer may not deduct an amount from wages due an Employee on account of any tip or gratuity, or credit the amount or any part thereof, of a tip or gratuity, against, or as a part of, the wages due the Employee from the Employer.

5.73.030 Notice and Posting.

- A. By December 1 of each year, the City shall publish and make available to Employers a bulletin announcing the adjusted Minimum Wage rate, to take effect January 1 of the following year. In conjunction with this bulletin, the City shall, by December 1 of each year, publish and make available to Employers, in English and other languages as provided in any implementing regulations, 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. Each Employer shall give written notification to each current Employee, and to each new Employee at time of hire, of his/her/their rights under this Chapter. The notification shall be in English and other languages as provided in any implementing regulations, and shall also be posted prominently in areas at the work site where it will be seen by all Employees. Every Employer shall also provide each Employee, at the time of hire, with the Employer's name, address, and telephone number in writing. Failure to post such notice shall constitute a violation

of this Municipal Code. The City is authorized to prepare sample notices and Employers' use of such notices shall constitute compliance with this subsection.

5.73.040 **Implementation.**

City may promulgate regulations for the implementation and enforcement of this Chapter. Any regulation promulgated by City 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. Any regulations may establish procedures for ensuring fair, efficient and cost-effective implementation of this Chapter, including supplementary procedures for informing Employees of their rights under this Chapter, for monitoring Employer compliance with this Chapter, and for providing administrative hearings or determining whether an Employer has violated the requirements of this Chapter.

5.73.050 **Enforcement.**

- A. Enforcement by the City. City may take any enforcement action set forth in Title 1 of this Municipal Code to address violations of this Chapter. Alternatively, City may elect to contract for enforcement services with a third party. If City elects to enter into such a contract, the City shall provide public, written procedures for such enforcement and any such enforcement shall be consistent with the due process rights established by Title 1 of this Code and relevant law.
- B. Private Rights of Action. An Employee claiming harm from a violation of this Chapter may bring an action against the Employer in court to enforce the provisions of this Chapter and shall be entitled to all remedies available to correct any violation of this Chapter, including but not limited to, back pay, reinstatement, injunctive relief, or civil penalties as provided herein. An Employee who is a prevailing party in an action to enforce this Chapter is entitled to an award of reasonable attorney fees, witness fees, and costs.
- C. Remedies.
 - 1) The remedies for violation of this Chapter include but are not limited to:
 - (A) Reinstatement, the payment of back wages unlawfully withheld, and payment of an additional sum as a civil penalty in the amount of \$50 to each Employee whose rights under this Chapter were violated for each day or portion thereof that the violation occurred or continued, and fines imposed pursuant to other provisions of this Code or state law.

- (B) 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.
 - (C) Reimbursement of the City's administrative costs of enforcement and reasonable attorney fees.
 - (D) The City may require the Employer to pay an additional sum as a civil penalty in the amount of \$50 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 fines imposed pursuant to other provisions of this Code or state law, where there has been a previous violation of this Chapter.
- 2) 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.

D. Retaliation Barred.

- 1) An Employer shall not discharge, reduce the compensation or otherwise retaliate against any Employee for making a complaint to the City, participating in any of the City's proceedings, using any civil remedies to enforce his or her rights, or otherwise asserting his or her rights under this Chapter. Within 120 days of an Employer being notified of such activity, it shall be unlawful for the Employer to discharge any Employee who engaged in such activity unless the Employer has clear and convincing evidence of just cause for such discharge.
- 2) 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, nor by reducing the citation or other non-wage benefits of any such Employee, except to the extent such prohibition would be pre-empted by the Federal Employee Retirement Income Security Act.

E. Retention of Records. Each Employer shall maintain for at least three years for each Employee, a record of his or her name, hours worked and pay rate. Each

Employer shall provide each Employee a copy of the records relating to such Employee upon the Employee's reasonable request.

5.73.060 Waiver through Collective Bargaining.

The provisions of this Chapter may be waived in whole or in part with respect to employees covered under a collective bargaining agreement if all of the following circumstances apply: (a) Both parties to the collective bargaining agreement agree in writing to such waiver in whole or in part; and (b) the collective bargaining agreement contains provisions which specifically allow waivers of municipal minimum wage rates in excess of the contractually required wage rates for any group or groups of covered employees.

5.73.070 No Pre-Emption 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.

5.73.080 Federal or State Funding.

This Chapter shall not be applied to the extent it will cause the loss of any federal or State funding of City activities.

Section 3. Severability.

If any section, subsection, sentence, clause or phrase of this Ordinance is for any reason held to be invalid, such decision shall not affect the validity of the remaining portions of this Ordinance. The City Council does hereby declare that it should have adopted the Ordinance and each section, subsection, sentence, clause or phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared invalid or unconstitutional.

Section 4. Environmental Determination.

The Ordinance is not a project within the meaning of Section 15378 of 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.

Section 5. Publication.

This Ordinance shall be published in a newspaper of general circulation in accordance with California Government Code Section 36933, published, and circulated in the City of Foster City, and shall be in full force and effect at a minimum thirty (30) days after its final passage.

Section 6. Effective Date.

This Ordinance shall take effect and be in force starting on July 1, 2022, which is forty-six (46) days from and after its adoption.

Section 7. Posting.

Within fifteen (15) days after the adoption of this Ordinance, the City Clerk shall have it posted in three (3) public places designated by the City Council.

City Ordinance No. 648

This Ordinance was introduced and read on the 9th day of May, 2022, and passed and adopted on the 16th day of May, 2022, by the following vote:

AYES: Councilmembers Hindi, Sullivan, and Mayor Awasthi

NOES: None

ABSENT: None

ABSTAIN: Councilmember Froomin

DocuSigned by:

Richa Awasthi

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RICHA AWASTHI, MAYOR

ATTEST:

DocuSigned by:

Priscilla Schaus

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PRISCILLA SCHAUS, CITY CLERK

*Councilmember Gehani recused himself due to owning a business within Foster City.

CERTIFICATE OF POSTING

I, Priscilla Schaus, hereby certify as follows:

That I am, and at all time herein mentioned, was the duly acting and qualified City Clerk/District Secretary of the **City of Foster City**, Foster City, San Mateo County, California.

I further certify to the proper posting of:

Ordinance No. 648, "An Ordinance of the City of Foster City Adding Chapter 5.73 (Minimum Wage) to the Foster City Municipal Code"

in the following three public places of the **City of Foster City**, Foster City, San Mateo County, California:

1. Recreation Center Lobby
650 Shell Boulevard
2. Council Chambers
620 Foster City Boulevard
3. Foster City Public Library
1000 E. Hillsdale Boulevard

Executed at the **City of Foster City**, Foster City, San Mateo County, California this 19th day of May 2022.

DocuSigned by:

Priscilla Schaus

Priscilla Schaus
City Clerk