

CITY COUNCIL OF THE CITY OF NOVATO

ORDINANCE NO.

**AN ORDINANCE OF THE CITY COUNCIL OF THE
CITY OF NOVATO ESTABLISHING A MINIMUM WAGE**

THE CITY COUNCIL OF THE CITY OF NOVATO DOES ORDAIN AS FOLLOWS:

Chapter 2-30 is added to the City of Novato Municipal Code to read as follows:

2-30 - Minimum Wage

2-30.1 - *Definitions*. As used in this Chapter, the following capitalized terms shall have the following meanings:

- A. “City” shall mean the City of Novato.
- B. “Employee” shall mean any person who:
 - 1. In a particular week performs more than two (2) 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 1182.12 and Section 1197 of the California Labor Code.
- C. “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.
- D. “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.
- D. “Franchisee” means a person to whom a franchise is offered or granted.
- E. “Franchisor” means a person who grants a franchise to another person.

- F. “*Governmental Agencies*” shall include federal agencies, state agencies, school districts and auxiliary organizations as defined under Education Code Sections 72670(c) and 89901. Governmental agency does not include the City.
- G. “*Large Employer*” shall mean an employer for which normally **twenty-six (26) to ninety nine (99)** persons work for compensation during a given week, including persons employed outside the City.
- H. “*Minimum wage*” shall have the meaning set forth in Section 2-30.3 of this chapter.
- I. “*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.
- J. “*Small Employer*” shall mean an employer for which normally **twenty-five (25) or fewer** persons work for compensation during a given week, including persons employed outside the City.
- K. “*Very Large Employer*” shall mean an employer for which normally **one hundred (100) or more persons work for compensation during a given week, including persons employed outside the City.**
- L. 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 Employer*” shall not include a franchisee associated with a franchisor or a network of franchises with franchisees that employ more than 25 employees in aggregate.

2-30.2 - *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 (2) 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 (2) 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.
 - 2. 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.

2-30.3 - *Minimum Wages.*

- A. A **Very Large Employer** shall pay an employee a wage of no less than the following hourly rate:
 - 1. On and after **January 1, 2020**, the hourly wage shall be no less than **\$13.00 per hour**.
 - 2. On and after **July 1, 2020**, the hourly wage shall be no less than **\$15.00 per hour**.
 - 3. On and after **January 1, 2021**, and annually thereafter the hourly wage shall be no less than the amount set forth in Section 2-30.3(D).
- B. A **Large Employer** shall pay an employee a wage of no less than the following hourly rate:
 - 1. On and after **January 1, 2020**, the hourly wage shall be no less than **\$13.00 per hour**.
 - 2. On and after **July 1, 2020**, the hourly wage shall be no less than **\$14.00 per hour**.
 - 3. On and after **January 1, 2021**, the hourly wage shall be no less than **\$15.00 per hour**.
 - 4. On and after **January 1, 2022**, and annually thereafter the hourly wage shall be no less than the amount set forth in Section 2-30.3(D).
- C. A **Small Employer** shall pay an employee a wage of no less than the following hourly rate:
 - 1. On and after **January 1, 2020**, the hourly wage shall be no less than **\$12.00 per hour**.

2. On and after **July 1, 2020**, the hourly wage shall be no less than **\$13.00 per hour**.
 3. On and after **January 1, 2021**, the hourly wage shall be no less than **\$14.00 per hour**.
 4. On and after **January 1, 2022**, the hourly wage shall be no less than **\$15.00 per hour**.
 5. On and after **January 1, 2023**, and annually thereafter the hourly wage shall be no less than the amount set forth in Section 2-30.3(D).
- D. On each January 1, immediately following the year in which the minimum wage for a given employer group has reached \$15.00 per hour, and annually thereafter, the minimum wage all Employers in that group must pay to their Employees (except as otherwise provided in this section), regardless of the number of Employees each Employer employs, will be adjusted 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 (“Index”) which is published by the U.S. Department of Labor, **or 3.5%, whichever is less**.
1. If the rate of change in the Index for the period which ends the closest to October 1 of any given year and for which said Index’s data is available as of October 1 of that year is negative, there shall be no increase or decrease in the minimum wage pursuant to this Chapter on the immediately following January 1.
 2. The City Manager or his/her designee shall announce the adjusted rates and publish a bulletin on the City’s website announcing the adjusted rates, which shall take effect on the following January 1st of each year. In calculating the adjusted rates, the City Manager shall use the most recent Index information available prior to October 1st.
- E. If the Governor of the state makes a final determination to temporarily suspend the state scheduled minimum wage increases pursuant to California Labor Code Section 1182.12 (or its successor statute) for the following year, all dates specified in subsections A and B, above, that are subsequent to the date of the Governor’s final determination, shall be postponed by an additional year.

2-30.4 - Exemptions

- A. 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 Section 2-30.3 and rounded to the nearest nickel during his/her 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 Section 2-30.3.
- B. An Employer may not deduct any amount from wages due an employee pursuant to this Chapter 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 Chapter.

- C. Governmental agencies are exempt from the minimum wage requirements set forth in this chapter under the principle of governmental immunity when the work performed is related to the agency's governmental function.
- D. Commissions or guaranteed gratuities, not including discretionary tips or gratuities, may be counted toward payment of the minimum wage specified herein when the commissions or guaranteed gratuities or tips are earned and paid together with other compensation paid to an employee (if any) and together are equal to or greater than the current minimum wage. For each pay period, employers shall pay the employee an amount that equals or exceeds the current hourly minimum wage set forth herein.
- E. The employer may not offset a portion of the minimum wage otherwise owed to an employee hereunder for housing and meal costs paid for or provided by the employer.
- F. **If the Employer pays at least \$1.00 per hour per employee towards an employee medical benefits plan**, which allows the employee to receive care from a licensed physician or other medical-care provider paid for by said medical benefits plan, **the employer may pay the employee the minimum wage as specified in Section 2-30.3, less \$1.00.** The immediately preceding sentence shall take effect on **July 1, 2020.** In promulgating rules and regulations implementing this chapter, the City Manager may include guidelines for calculating this medical plan credit, as well as address any procedures required for obtaining this credit.

2-30.5 - *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 Chapter.

2-30.6 - *No Waiver of Rights.* Any waiver by an employee of any or all of the provisions of this chapter 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.

2-30.7 - *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 chapter, for seeking to enforce his or her rights under this chapter by any lawful means, or for otherwise asserting rights under this chapter. Rights protected under this chapter include, but are not limited to: the right to file a complaint or inform any person about any party's alleged noncompliance with this chapter; and the right to inform any person of his or her potential rights under this chapter and to assist him or her in asserting such rights. Protections of this chapter shall apply to any person who mistakenly, but in good faith, alleges noncompliance with 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 chapter shall raise a rebuttable presumption of having done so in retaliation for the exercise of such rights.
- 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 him/her for parking, meals, uniforms or other items.

2-30.8 - *Enforcement.*

- A. 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, the payment of an additional sum as a civil penalty in the amount of **one hundred dollars (\$100.00)** to each employee or person whose rights under this chapter were violated for each day that the violation occurred or continued, reinstatement in employment and/or injunctive relief. Provided, however, that any person or entity enforcing this chapter on behalf of the public as provided for under applicable state law shall, upon prevailing, be entitled only to equitable, injunctive or restitution relief to Employees, and reasonable attorneys' fees and costs. 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. 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 **one hundred dollars (\$100.00)** 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 2-30.7(A), triple the wages lost due to the violation.

(OR – Petaluma Version below)

2-30.8 - *Enforcement.*

- A. **Statute of Limitations.** The city and any person 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 paragraph shall be entitled to such remedies specified in Paragraph E 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 of this chapter.
3. Violations a Nuisance. Violations of this chapter are hereby declared to be public nuisances in accordance with Chapter 1-6 of this code, and subject to enforcement in accordance with Chapter 1-6.12, and Administrative Citation and Penalty Chapter 1-7.
4. Business License Revocation. The city business licenses of Employers in violation of this chapter are subject to suspension or revocation in accordance with Chapter VIII Section 8-1 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 one hundred dollars (\$100.00) 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 (10) percent per annum; or, if award of interest at the rate of ten (10) percent per annum is not legally permitted, award of interest at the maximum legally permitted rate up to but not exceeding ten (10) percent 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 an Employee found to have been unlawfully retaliated against in violation of 2-30.7(A), triple the wages lost due to the 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.

2-30.9 - *Notifications and Retention of Records.*

- A. The City shall publish on the City's website a bulletin or notice announcing the adjusted minimum wage rate for the upcoming 12-month period, at least two months prior to the date the adjusted rate will take effect. In conjunction with and at the same time the City publishes this bulletin, the City shall publish on its website a downloadable notice suitable for posting by Employers in the workplace informing Employees of the adjusted minimum wage rate for the upcoming 12-month period 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 2-30.13. 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 the employer's 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, and pay rate. 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 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.

2-30.10 - *Co-existence 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.

2-30.11 - *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.

2-30.12 - *Conflicts*. 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.

2-30.13 - *Regulations*. The City Manager or designee may promulgate regulations for the implementation and enforcement of this chapter. Any regulations promulgated by the City Manager or designee 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.

2-30.14 - *CEQA Statement*. This 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.

2-30.15 - *Severability*. If any subsection, sentence, clause or phrase of this ordinance 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 ordinance, 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.

2-30.16 - *Effective Date and Duration*. This ordinance shall become effective thirty days after its adoption.

2-30.17 - *Publishing*. The City Clerk shall cause this ordinance to be published within fifteen days after its adoption.

* * * * *

THE FOREGOING ORDINANCE was first read at a regular meeting of the Novato City Council on the 24th day of September, 2019, and was passed and adopted at a regular meeting of the Novato City Council on the _____ day of _____, 2019:

AYES: Councilmembers
NOES: Councilmembers
ABSTAIN: Councilmembers
ABSENT: Councilmembers

City Clerk of the City of Novato

Approved as to Form:

City Attorney of the City of Novato

DRAFT