

## **ORDINANCE NO. 2017-1123**

### **AN ORDINANCE OF THE CITY OF BELMONT ADDING CHAPTER 32 (MINIMUM WAGE) TO THE BELMONT CITY CODE**

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

WHEREAS, in an effort to help working households achieve economic security and acknowledging the higher relative cost of living on the Peninsula, the City Council wishes to enact a citywide minimum wage that reaches \$15.00 per hour before 2022; and

WHEREAS, a higher minimum wage rate protects public health, safety and welfare by requiring that employees are compensated in such a manner as to enable and facilitate their individual self-reliance; and

WHEREAS, the City of Belmont may adopt a higher minimum wage under the powers vested in the City by California Constitution Article XI, Section 7 and the laws of the State of California.

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

#### **SECTION 1. BCC CHAPTER 32 ADDED**

Chapter 32 is added the Belmont City Code to read:

#### **Chapter 32 MINIMUM WAGE**

##### **Sec. 32-1 Definitions**

As used in this Chapter:

(a) "Calendar week" means a period of seven consecutive days starting on Sunday.

(b) "Employee" means any person who:

(1) In a calendar 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, 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.

(c) "Employer" means any person 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) "City Minimum Wage" means the hourly rate set by Section 32-3.

(e) "Learner" is defined by California Industrial Welfare Commission Order No. 4-2001.

**Sec. 32-2 Payment of City Minimum Wage Required**

(a) Except as provided in subsection (b), an Employer must pay an Employee no less than the City Minimum Wage for each hour worked within the geographic boundaries of the City.

(b) An Employer must pay an Employee who is a Learner no less than 85 percent of the City Minimum Wage for the first 160 hours of employment. Thereafter, the Employer must pay the Learner Employee the City Minimum Wage.

(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 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 or state law.

**Sec. 32-3 Hourly Rate**

The City Minimum Wage is:

(a) Beginning July 1, 2018, an hourly rate of \$12.50;

(b) Beginning January 1, 2019, an hourly rate of \$13.50;

(c) Beginning January 1, 2020, an hourly rate of \$15.00;

(d) Beginning January 1, 2021, an hourly rate of \$15.90; and

(e) Beginning on January 1, 2022, and each January thereafter, the prior year hourly rate increased by the lesser of 3.5 percent or a percentage amount equal to the prior year's increase, if any, in the Consumer Price Index (CPI) for San Francisco-Oakland-San Jose as determined by the United States Department of Labor. The change is calculated by using the August to August change in the CPI to calculate the annual increase, if any. The hourly rate is not decreased by a decrease in the CPI.

**Sec. 32-4 Notice and Posting**

(a) An Employer must 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 posted prominently in areas at the work site where it will be seen by all Employees. Failure to post such notice shall constitute a violation of this Chapter. The City Manager may prepare sample notices for use by Employers which will constitute compliance with this subsection.

(b) An Employer must provide each Employee, at the time of hire, with the Employer's name, address, and telephone number in writing.

**Sec. 32-5 Implementation**

(a) By April of 2018, the City Manager shall publish and make available to Employers a bulletin announcing the adjusted Minimum Wage rate, to take effect July 1, 2018. By May 1, 2018, the City Manager shall publish and make available to Employers a notice suitable for posting in the workplace informing Employees of the Minimum Wage rate and of their rights under this Chapter.

(b) Beginning October 1, 2018 and each year thereafter, the City Manager shall publish and make available to Employers a bulletin announcing the adjusted Minimum Wage rate, to take effect January 1 of the following year. Beginning November 1, 2018 and each year thereafter, the City Manager publish and make available to Employers a notice suitable for posting by Employers in the workplace informing Employees of the Minimum Wage rate and of their rights under this Chapter.

(c) The City Manager may promulgate regulations for the implementation and enforcement of this Chapter, including procedures for the fair, efficient and cost-effective implementation of this Chapter, 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.

**Sec. 32-6 Retaliation Prohibited**

(a) 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.

(b) It is unlawful for the Employer to discharge any Employee who engaged in any activity described in subsection (a) within 120 days of an Employer being notified of such activity, unless the Employer has clear and convincing evidence of just cause for such discharge.

**Sec. 32-7 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.

**Sec. 32-8 Enforcement**

(a) A violation of this Chapter by an employer may be remedied by any means available to remedy a violation of this Code.

(b) The City may require an Employer to pay a civil penalty of \$50 to the City for each Employee or person whose rights under this Chapter were violated for each day a violation occurred.

**Sec. 32-9 Waiver Through Collective Bargaining**

Except for employees in the property services industry (i.e., janitors, landscapers, groundskeepers, and security guards), the provisions of this Chapter may be waived in whole or in part with respect to employees covered under a written collective bargaining agreement if the following circumstances apply:

(a) The collective bargaining agreement contains provisions which specifically waives municipal minimum wage rates in excess of the contractually required wage rates for any group or groups of covered employees; and

(b) The entire collective bargaining agreement, including the provisions referred to in (b) above, was negotiated and entered into prior to the date or when such waiver would take effect.

**Sec. 32-10 No Pre-Emption of Higher Standards.**

The purpose of this Chapter is to ensure minimum labor standards. This Chapter does not pre-empt 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.

**Sec. 32-11 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 2. SEVERABILITY.**

In the event any section, clause or provision of this ordinance shall be determined invalid or unconstitutional, such section, clause or provision shall be deemed severable and all other sections or portions hereof shall remain in full force and effect. It is the intent of the city council that it would have adopted all other portions of this ordinance irrespective of any such portion declared to be invalid or unconstitutional.

**SECTION 3. EFFECTIVE DATE.**

This Ordinance shall take effect and will be enforced thirty (30) days after its adoption.

**SECTION 4. PUBLICATION AND POSTING**

Publication of summary. The City Clerk has caused to be published a summary of this ordinance, prepared by the City Attorney under Government Code Section 36933, subdivision (c), once, in a newspaper of general circulation printed and published in Belmont County and circulated in the City of Belmont, at least five days before the date of adoption. A certified copy of the full text of the ordinance was posted in the office of the City Clerk since at least five days before this date of adoption. Within 15 days after adoption of this ordinance, the City Clerk shall cause the summary of this ordinance to be published again with the names of those City Council members voting for and against the ordinance; and the City Clerk shall post in the office of the City Clerk a certified copy of the full text of this adopted ordinance with the names of those City Council members voting for and against the ordinance.

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The City Council of the City of Belmont, California introduced the foregoing ordinance, on October 14, 2017 and adopted the ordinance at a regular meeting held on November 28, 2017 by the following vote:

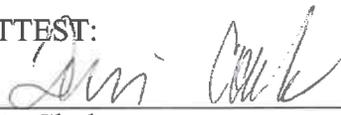
Ayes: Hurt, Kim, Lieberman, Stone

Noes:

Absent: Reed

Abstain:

ATTEST:

  
\_\_\_\_\_  
City Clerk

  
\_\_\_\_\_  
Mayor

APPROVED AS TO FORM:  
  
\_\_\_\_\_  
City Attorney