



City Clerk

CITY OF SAN JOSÉ, CALIFORNIA

Office of the City Clerk
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San José, California 95113
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STATE OF CALIFORNIA)
COUNTY OF SANTA CLARA)
CITY OF SAN JOSE)

I, Toni J. Taber, City Clerk & Ex-Officio Clerk of the Council of and for the City of San Jose, in said County of Santa Clara, and State of California, do hereby certify that "**Ordinance No. 29829**", the original copy of which is attached hereto, was passed for publication of title on the **29th day of November, 2016**, was published in accordance with the provisions of the Charter of the City of San Jose, and was given final reading and adopted on the **6th day of December, 2016**, by the following vote:

AYES: CARRASCO, HERRERA, JONES, KALRA, KHAMIS, M. NGUYEN, T. NGUYEN, OLIVERIO, PERALEZ, ROCHA; LICCARDO.

NOES: NONE.


ABSENT: NONE.

DISQUALIFIED: NONE.

VACANT: NONE.

Said Ordinance is effective as of **6th day of January, 2017**.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the corporate seal of the City of San Jose, this **8th day of December, 2016**.

(SEAL) 

TONI J. TABER, CMC
CITY CLERK & EX-OFFICIO
CLERK OF THE CITY COUNCIL

/rmk

ORDINANCE NO. 29829

**AN ORDINANCE OF THE CITY OF SAN JOSE AMENDING
SECTIONS 4.100.030 AND 4.100.040 AND ADDING
SECTION 4.100.045 TO CHAPTER 4.100 OF TITLE 4 OF
THE SAN JOSE MUNICIPAL CODE RELATING TO
MINIMUM WAGE**

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF SAN JOSE:

SECTION 1. Section 4.100.030 of Chapter 4.100 of Title 4 of the San José Municipal Code is amended to read as follows:

4.100.030 Definitions

The following terms shall have the following meanings:

- A. "City" shall mean City of San José.
- B. "Employee" shall mean any person who:
 - 1. In a calendar week performs at least two (2) hours of work for an Employer as defined below.
 - 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, or is a participant in a Welfare-to-Work Program.
- C. "Employer" shall mean any person, including corporate officers or executives, as defined in Section 18 of the California Labor Code, who directly or indirectly

through any other person, including through the services of a temporary employment agency, staffing agency or similar entity, employs or exercises control over the wages, hours or working conditions of any Employee and who is either subject to the Business License Tax Chapter 4.76 of the Municipal Code or maintains a facility in the City.

- D. "Minimum Wage" shall have the meaning set forth in Section 4.100.040 of this Chapter.
- E. "Office" shall mean the Office of Equality Assurance or such other City department or office as the Council shall by resolution designate.
- F. "Youth Training Program" means any temporary youth employment program serving disadvantaged youth through which persons aged seventeen (17) years or younger are employed by or engaged in employment and trained for future employment that is coordinated by a nonprofit or governmental entity.
- G. "Youth Training Program Employee" means a participant who is aged seventeen (17) years or younger who is employed by a Youth Training Program Employer for 120 days or less during a calendar year.
- H. "Welfare-to-Work Program" shall mean the CalWORKS Program, County Adult Assistance Program (CAAP) which includes the Personal Assisted Employment Services (PAES) Program, and General Assistance Program, and any successor programs that are substantially similar to them

SECTION 2. Section 4.100.040 of Chapter 4.100 of Title 4 of the San José Municipal Code is amended to read as follows:

4.100.040 Minimum Wage

- A. Employers shall pay Employees no less than the Minimum Wage set forth in this Section for each hour worked within the geographic boundaries of the City.

- B. The Minimum Wage for Youth Training Program Employees shall be an hourly rate of ten dollars (\$10). To prevent inflation from eroding its value, beginning on January 1, 2014, and each year thereafter, the Minimum Wage shall increase by an amount corresponding to the prior year's increase, if any, in the cost of living. 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 over the level as of August of the previous year of the Consumer Price Index (Urban Wage Earners and Clerical Workers, U.S. City Average for All Items) or its successor index as published by the U.S. Department of Labor or its successor agency, with the amount of the minimum wage increase rounded to the nearest multiple of five cents. The adjusted minimum wage shall be announced by October 1 of each year, and shall become effective as the new minimum wage on January 1.

- C. As of the date the ordinance enacting this Section becomes effective, the Minimum Wage shall be an hourly rate of ten dollars and fifty cents (\$10.50). Effective July 1, 2017, the Minimum Wage shall be an hourly rate of twelve dollars (\$12.00).

- D. Subject to the provisions of Subsection F, effective January 1, 2018, the Minimum Wage shall be an hourly rate of thirteen dollars and fifty cents (\$13.50) and effective January 1, 2019, the Minimum Wage shall be an hourly rate of fifteen dollars (\$15.00).

- E. To prevent inflation from eroding its value, beginning on January 1, 2020, and each January 1st thereafter, the Minimum Wage shall increase by an amount corresponding to the increase, if any, in the cost of living, not to exceed 5%. 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-San Jose, CA for All Items) or its successor index as published by the U.S. Department of Labor or its successor agency, with the amount of the Minimum Wage increase rounded to the nearest multiple of five (5) cents. If there is no net increase in the cost of living, the minimum wage shall remain unchanged for that year. The adjusted Minimum Wage shall be announced by October 1st of each year, and shall become effective as the new Minimum Wage on January 1st of the following year.
- F. On or before September 1, 2017, and on or before every September 1 thereafter until the minimum wage is fifteen dollars (\$15.00) per hour, to ensure that economic conditions can support a minimum wage increase, the Office of Equality Assurance shall annually make a determination and certify to the City Manager whether each of the conditions specified in this Subsection is met. The calculation for the condition specified in this Subsection F shall be made by the Office using data posted by the State Board of Equalization online in accordance with the procedure and requirements specified in California Labor Code Section 1182.12, as described below:
1. Total nonfarm employment for California, seasonally adjusted, decreased over the three-month period from April to June, inclusive, prior to the September 1 determination. This calculation shall compare seasonally adjusted total nonfarm employment in June to seasonally adjusted total nonfarm employment in March, as reported by the State Employment Development Department.

2. Total nonfarm employment for California, seasonally adjusted, decreased over the six-month period from January to June, inclusive, prior to the September 1 determination. This calculation shall compare seasonally adjusted total nonfarm employment in June to seasonally adjusted total nonfarm employment in December, as reported by the State Employment Development Department.

3. California state retail sales and use tax cash receipts from a 3.9375-percent tax rate for the July 1 to June 30, inclusive, period ending one month prior to the September 1 determination date is less than retail sales and use tax cash receipts from a 3.9375-percent tax rate for the July 1 to June 30, inclusive, period ending 14 months prior to the September 1 determination date.
 - (i) The State Board of Equalization shall publish by the 10th of each month on its Internet Web site the total retail sales (sales before adjustments) for the prior month derived from their daily retail sales and use tax reports.

 - (ii) The State Board of Equalization shall publish by the 10th of each month on its Internet Web site the monthly factor required to convert the prior month's retail sales and use tax total from all tax rates to a retail sales and use tax total from a 3.9375-percent tax rate.

 - (iii) The Department of Finance shall multiply the monthly total from clause (i) by the monthly factor from clause (ii) for each month.

 - (iv) The Department of Finance shall sum the monthly totals calculated in clause (iii) to calculate the 12-month July 1 to June 30, inclusive, totals needed for the comparison in this subparagraph.

- G. If, for any year, the condition in either subparagraph (a) or (b) of paragraph (D) is met, and if the condition in subparagraph (c) of paragraph (D) is met, the City Manager may, on or before September 1 of that year, make a determination to temporarily suspend the minimum wage increase scheduled for the following year.
- H. If the City Manager makes a determination to temporarily suspend the scheduled minimum wage increases for the following year, all dates specified in paragraph (B) that are subsequent to the September 1 determination date shall be postponed by an additional year.
- I. A violation for unlawfully failing to pay the Minimum Wage shall be deemed to continue from the date immediately following 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 immediately preceding the date the wages are paid in full.

SECTION 3. Chapter 4.100 of Title 4 of the San José Municipal Code is hereby amended by adding a Section to be numbered and entitled and to read as follows:

4.100.045 Exemption for Youth Training Programs

- A. Youth Training Program Employers may pay each Youth Training Program Employee an hourly wage that is the greater of the wage set forth in section 4.100.040 (B) or the rate set forth in state or federal law
- B. The Office shall establish a procedure to certify whether an Employer is a Youth Training Program Employer serving disadvantaged youth, including but not limited to consideration of the following criteria:

1. The Employer's nonprofit corporate status or government status or whether the program designated by the Employer as a Youth Training Program is coordinated with a nonprofit organization or governmental entity;
2. The components of the Employer's Youth Training program, including employment training designed to help program participants transition towards unsubsidized competitive employment; and
3. Any other criteria as may be developed by the Office as specified in the administrative regulations adopted consistent with this Chapter.

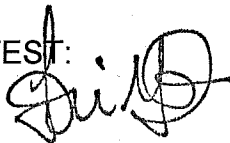
PASSED FOR PUBLICATION of title this 29th day of November, 2016, by the following vote:

AYES: CARRASCO, HERRERA, JONES, KALRA, KHAMIS, M. NGUYEN, T. NGUYEN, OLIVERIO, PERALEZ, ROCHA; LICCARDO.
NOES: NONE.
ABSENT: NONE.
DISQUALIFIED: NONE.



SAM LICCARDO
Mayor

ATTEST:



TONI J. TABER, CMC
City Clerk