

ORDINANCE NO. 11-14 N.S.

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF RICHMOND
AMENDING ARTICLE VII OF THE MUNICIPAL CODE TO REQUIRE THE
PAYMENT OF A CITY-WIDE MINIMUM WAGE**

WHEREAS, families and workers need to earn a living wage, and public policies which help achieve that goal are beneficial; and

WHEREAS, payment of a minimum wage advances the City of Richmond's interest by creating jobs that help workers and their families avoid poverty and economic hardship and enable them to meet basic needs; and

WHEREAS, payment of a minimum wage advances the City's interest by improving the quality of services provided in the City to the public by reducing high turnover, absenteeism, and instability in the workplace; and

WHEREAS, the current Federal and State hourly minimum wage are both below the minimum wage of 1979 in current dollars; and

WHEREAS, the cost of living in the City of Richmond is estimated at 20% greater than the overall national average; and

WHEREAS, households supported by a single full-time current minimum wage earner are at or below the official national poverty line; and

WHEREAS, increasing the minimum wage increases consumer purchasing power, increases workers' standards of living, reduces poverty, and stimulates the economy; and

WHEREAS, the Chicago Federal Reserve Bank conducted a study in 2011 estimating that every dollar increase in the minimum wage results in \$2,800 in new consumer spending by that household the following year, and this revenue is injected into the local economy, which creates jobs; and

WHEREAS, a 2011 study by the Center for Economic and Policy Research concluded that a citywide minimum wage can raise the earnings of low-wage workers without a discernible impact on their employment; and

WHEREAS, by raising the standard of living through a higher minimum wage, the City would likely realize various societal benefits such as improved education, safer communities, greater opportunity for upward mobility, and more financial stability for families; and

WHEREAS, the City wishes to support businesses that pay for medical coverage for their employees by allowing up to \$1.50 per hour of that payment to count as part of the employer's obligation under the City-wide minimum wage; and

WHEREAS, many small businesses do not have a large payroll and often cannot afford to pay as high wages as larger companies; and

WHEREAS, employers who operate by using Federal or State grant money, such as employers in home health care services, may no longer be able to provide services if they cannot meet the City's Minimum Wage;

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF RICHMOND does ordain as follows:

SECTION I. Article VII of the Richmond Municipal Code is hereby amended to add a new Chapter to be numbered and to read as follows:

Chapter 7.108 – MINIMUM WAGE ORDINANCE

Sections:

7.108.010 Title.

7.108.020 Authority.

7.108.030 Definitions.

7.108.040 Minimum Wage.

7.108.050 Waiver through Collective Bargaining.

7.108.060 Notice, Posting, and Payroll Records.

7.108.070 Retaliation Prohibited.

7.108.080 Implementation and Enforcement.

7.108.090 Relationship to Other Requirements.

7.108.100 Application of Minimum Wage to Welfare-to-Work Programs.

7.108.110 Fees.

7.108.010 Title.

This chapter shall be known as the “Minimum Wage Ordinance.”

7.108.020 Authority.

This chapter is adopted pursuant to the powers vested in the City of Richmond under the laws and Constitution of the State of California and the City Charter, 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 Law.

7.108.030 Definitions.

The following terms shall have the following meanings:

A. “City” shall mean City of Richmond, California.

B. “Department” shall mean the Employment and Training Department of the City of Richmond or such other City department as the City Manager shall designate.

C. “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 within the geographic boundaries of the City; and

2. Qualifies as an employee entitled to payment of a minimum wage from any Employer as defined below 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. An employee who is exempt from payment of a minimum wage under California minimum wage law is not an Employee for purposes of this Chapter. Employees in California who are exempt from California minimum wage law are not Employees subject to this Chapter. This includes, but is not limited to, learners as defined by the Division of Labor Standards Enforcement.” Employees in California who are exempt from payment of a minimum wage or are entitled to a reduced minimum wage under California minimum wage law are not Employees subject to this Chapter. This includes, but is not limited to, learners as defined by the Division of Labor Standards Enforcement and the California Code of Regulations.

3. Employee shall not include any person who is employed through the YouthWORKS Youth Summer Employment Program, which is the City of Richmond program that offers Richmond youth, ages 15 to 21, the chance to work in a variety of local jobs to gain professional working experience during the summer months. Employee shall also not include any Employee that receives 50% or more of his or her income from government grants, reimbursement programs, or vouchers, where the funding agency providing the grants, reimbursement programs, or vouchers specifies the amount of funding being provided for the Employee's compensation.

D. “Employer” shall mean any person, 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 or similar entity, employs or exercises control over the wages, hours or working conditions of any Employee. Employer, however, shall not include any small business Employer who pays for less than 800 hours of Employee labor during a given two-week period, including all persons performing work for compensation on a full-time, part-time, or temporary basis. An Employer that pays for 800 or more hours of Employee labor during any two-week period at all business locations, whether inside or outside the City of Richmond, shall be deemed to be a covered Employer for the entirety of that two-week period and the remainder of that calendar year quarter. In determining how many hours of Employee labor an Employer pays for, all labor performed by businesses with substantial overlapping ownership or control shall be aggregated.

E. Minimum Wage:

1. “Minimum Wage” shall have the meaning set forth in Section 7.108.040 of this Chapter.

2. “Intermediate Minimum Wage” shall mean an amount equal to the midpoint between the Minimum Wage as set forth in Section 7.108.040 of this Chapter, and the minimum wage required by State Law, rounded up to the nearest penny.

F. “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.

7.108.040 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. The Minimum Wage shall be as follows:

1. For a transition period beginning on January 1, 2015 and ending on December 31, 2015, the Minimum Wage shall be an hourly rate of nine dollars and sixty cents (\$9.60). For a transition period beginning on January 1, 2016 and ending on December 31, 2016, the Minimum Wage shall be an hourly rate of eleven dollars and fifty-two cents (\$11.52). For a transition period beginning on January 1, 2017 and ending on December 31, 2017, the Minimum Wage shall be an hourly rate of twelve dollars and thirty cents (\$12.30).

2. Beginning on January 1, 2018, the Minimum Wage shall be an hourly rate of thirteen dollars (\$13.00).

3. To prevent inflation from eroding its value, beginning on January 1, 2019, and each year thereafter, the Minimum Wage shall increase by an amount corresponding to the prior year's increase, if any, in the Consumer Price Index for Urban Wage Earners and Clerical Workers for the San Francisco-Oakland-San Jose, CA metropolitan statistical area, or any successor index as published by the U.S. Department of Labor or its successor agency.

4. 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.

5. If the Employer pays at least \$1.50 per hour per Employee towards an Employee medical benefits plan, which allows the Employee to receive Employer-compensated care from a licensed physician, the Employer shall pay Employees the Minimum Wage as defined in this section, less \$1.50, so long as such deduction is consistent with Section 7.108.100. The Department Guidelines established pursuant to this Chapter shall include rules for calculating this medical benefits plan credit, as well as address any procedures required for obtaining this credit.

6. Employer shall pay its Employees no less than the Intermediate Minimum Wage for each hour worked if Employer derives more than 50% of its income from transactions where the Employer's goods and services produced by the Employer in Richmond are delivered or shipped outside the City of Richmond. In determining whether this 50% threshold is met, the

Employer shall only consider operations within the City of Richmond, and the income shall be based on the combined value of goods and services.

B. 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.

7.108.050 Waiver through collective bargaining.

To the extent required by 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.

7.108.060 Notice, posting and payroll records.

A. By December 1 of each year, the Department shall publish and make available to Employers a bulletin announcing the adjusted Minimum Wage rate for the upcoming year. In conjunction with this bulletin, the Department shall by December 1 of each year publish and make available to Employers, in all languages spoken by more than five percent of the work force 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 Department 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 five percent of the Employees at the work-place or job site.

C. Employers shall retain payroll records pertaining to Employees for a period of four years, and shall allow the City access to such records, with appropriate notice and at a mutually agreeable time, to monitor compliance with the requirements of this Chapter. 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.

7.108.070 Retaliation prohibited.

It shall be unlawful for an Employer or any other party to discriminate in any manner or take adverse action against any person in retaliation for exercising rights protected under this Chapter. Rights protected under this Chapter include, but are not limited to: the right to file a complaint, or the right to inform any person about any party's alleged noncompliance with this Chapter or any person's potential rights under this Chapter. Protections of this Chapter shall apply to any person who in good faith alleges noncompliance with this Chapter.

Taking adverse action against a person within ninety (90) 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.

7.108.080 Implementation.

A. Guidelines. The Department shall be authorized to coordinate implementation and enforcement of this Chapter and shall promulgate appropriate guidelines or rules for such purposes. Any guidelines or rules promulgated by the Department may be relied on by Employers, Employees and other parties to determine their rights and responsibilities under this Chapter. Any guidelines or rules may establish procedures for ensuring fair, efficient and cost-effective implementation of this Chapter. Any guidelines or rules shall require that Employers claiming a reduction of the Minimum Wage based on payment of Employee Benefits, a right to pay the Intermediate Minimum Wage, small business Employer status, or any other exemption or reduction in this Chapter bear the burden of demonstrating that such exemption or reduction applies to the satisfaction of the Department when a violation of this Chapter is reported; and shall set forth procedures for claiming such a reduction.

B. Reporting Violations. An Employee or any other person may report to the Department in writing any suspected violation of this Chapter. The Department 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 the Department may disclose his or her name and identifying information as necessary to enforce this Chapter or other employee protection laws. In order to further encourage reporting by Employees, if the Department notifies an Employer that the Department is investigating a complaint, the Department may require the Employer to notify its Employees that the Department is conducting an investigation, using a form provided by the Department.

C. Investigation. The Department shall be responsible for investigating any possible violations of this Chapter by an Employer or other person. The Department 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.

D. Report. The City Manager or his designee shall present a report to the City Council regarding the effectiveness and implementation of this Chapter on or about January 1, 2016, and on an annual basis thereafter.

7.108.090 Enforcement.

A. When a violation is reported under this Chapter, the Department shall investigate the report of violation and provide the Employer with an opportunity to abate the violation through a notice of violation and demand to abate. The notice and demand shall set forth a description of the alleged violation, date(s) of violation, the specific action(s) needed to correct the violation, and the date by which to correct the violation. The notice and demand shall provide no more than thirty (30) days to abate and correct the violation.

B. Failure to comply with a notice of violation and demand to abate issued pursuant to this Chapter shall constitute a nuisance and violation of the Richmond Municipal Code, subject to all penalties and legal actions as set forth in Sections 1.04.100 through 1.04.160 of this Code, the Department shall take any appropriate enforcement action to secure compliance.

C. In addition to legal actions, the Department may issue an Administrative Citation as set forth in Chapter 2.62 of this Code, with the following exceptions:

1. The Administrative Citation Fine shall not exceed \$50 per each day or portion of a day that the violation occurs, and for each Employee as to whom the violation occurred or continued; and

2. Section 2.62.105 of this Code shall not apply; and

3. The Hearing Officer's decision issued pursuant to Chapter 2.62 shall be final, and a person aggrieved by the Hearing Officer's decision may seek judicial review in the superior court pursuant to Government Code Section 53069.4.

D. Any person aggrieved by a violation of this Chapter, any entity with a member which is aggrieved by a violation of this Chapter, or any other person or entity acting on behalf of the public as provided for under applicable state law, may bring a civil action in a court of competent jurisdiction against the Employer or other person violating this Chapter and, upon prevailing, shall be awarded reasonable attorneys' fees and costs and shall be entitled to such legal or equitable relief as may be appropriate, including, without limitation, the relief set forth in this Section below. 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 restitutionary relief to employees, and reasonable attorneys' fees and costs.

E. This Chapter shall not be construed to limit an Employee's right to bring legal action for a violation of any other laws concerning wages, hours, or other standards or rights. Nothing in this Chapter shall be construed to authorize a right of action against the City.

F. Except where prohibited by state or federal law, City agencies or departments may revoke or suspend any registration certificates, permits or licenses held or requested by the Employer until such time as the violation is remedied, including but not limited to business licenses as defined by Chapter 7.04 of this Code.

G. Relief in Civil Action Brought Under this Chapter. The remedies for violation of this Chapter include but are not limited to:

1. Reinstatement in employment and/or injunctive relief, the payment of back wages unlawfully withheld, and the payment of an additional sum as a civil penalty in the amount of \$50 to 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.

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 costs of enforcement and reasonable attorneys' fees.

7.108.100 Relationship to other requirements.

This Chapter provides for payment of a local Minimum Wage and shall not be construed to preempt or otherwise limit or affect the applicability of any other law, regulation, requirement, policy or standard that provides for payment of higher or supplemental wages or benefits, or that extends other protections.

7.108.110 Application of minimum wage to welfare-to-work programs

The Minimum Wage established pursuant to this Chapter shall apply to the Welfare-to-Work programs under which persons must perform work in exchange for receipt of benefits. Participants in Welfare-to-Work Programs shall not, during a given benefits period, be required to work more than a number of hours equal to the value of all cash benefits received during that period, divided by the Minimum Wage.

7.108.120 Fees.

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

SECTION II. Severability.

If any part or provision of this ordinance, or the application of this ordinance to any person or circumstance, is held invalid, the remainder of this ordinance, including the application of such part or provision to other persons or circumstances, shall not be affected by such a holding and shall continue in full force and effect. To this end, the provisions of this ordinance are severable.

SECTION III. Effective Date. This Ordinance shall become effective thirty (30) days after its final passage and adoption. This Ordinance is intended to have prospective effect only.

First read at a regular meeting of the Council of the City of Richmond held on June 3, 2014, and finally passed and adopted at a regular meeting thereof held on June 17, 2014, by the following vote:

AYES: Councilmembers Bates, Boozé, Butt, Myrick, Rogers, Vice Mayor Beckles, and Mayor McLaughlin.
NOES: None.
ABSTENTIONS: None.
ABSENT: None.

DIANE HOLMES
CLERK OF THE CITY OF RICHMOND
(SEAL)

Approved:

GAYLE McLAUGHLIN
Mayor

Approved as to form:

BRUCE GOODMILLER
City Attorney

State of California }
County of Contra Costa } : ss.
City of Richmond }

I certify that the foregoing is a true copy of **Ordinance No. 11-14 N.S.**, finally passed and adopted by the City Council of the City of Richmond at a regular meeting held on June 17, 2014.