



Legislation Text

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**File #:** 19-765, **Version:** 1

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Ordinance adding Chapter 8.71 of the South San Francisco Municipal Code relating to a citywide minimum wage.

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 to reach \$15.00 per hour before 2022; and

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

WHEREAS, the City of South San Francisco 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; and

WHEREAS, based upon the recitals above, the City Council finds that the proposed amendments are necessary for the protection of the public health, safety, and welfare of employees within the City; and

WHEREAS, based on all of the information presented at the August 28, 2019 City Council meeting, both written and oral, including without limitation the public comment, staff reports, minutes, and other relevant materials (hereafter the "Record"), the City Council finds that this ordinance is not subject to the California Environmental Quality Act ("CEQA") pursuant to Section 15060(c)(2) of the CEQA Guidelines because the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment, and Section 15060(c)(3) of the CEQA Guidelines because the activity is not a "project" as defined in Section 15378 of the CEQA Guidelines, because it has no potential for resulting in physical change to the environment, directly or indirectly.

NOW, THEREFORE, BE IT ORDAINED that based on the entirety of the record before it, as described below, the City Council of the City of South San Francisco does hereby ORDAIN as follows:

**SECTION 1. Incorporation of Recitals.**

The City Council of South San Francisco finds that all Recitals are true and correct and are incorporated herein by reference.

## **SECTION 2. Amendments**

Chapter 8.71 is hereby added to the South San Francisco Municipal Code to read as follows. Sections and subsections that are not amended by this Ordinance are not included below, and shall remain in full force and effect.

<b>Chapter 8.71</b>	<b>Minimum Wage</b>
Section 8.71.010	Title and Purpose
Section 8.71.020	Definitions
Section 8.71.030	Minimum Wage
Section 8.71.040	Notice and Posting
Section 8.71.050	Implementation
Section 8.71.060	Enforcement
Section 8.71.070	No Preemption of Higher Standard

### **Section 8.71.010 Title and Purpose**

This ordinance shall be known as the "Minimum Wage Ordinance."

The purpose of this ordinance is to protect the public health, safety and welfare. It does this by requiring that employees are compensated by their employers or respective subcontractors in such a manner as to enable and facilitate their individual self-reliance within the City of South San Francisco.

### **Section 8.71.020 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" means the City of South San Francisco.
- (c) "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, as provided by the State of California Industrial Welfare Commission.
- (d) "Employer" means 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 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) “Learner” shall mean an employee who is a Learner as defined by California Welfare Commission Order No. 4-2001.

(f) “Minimum wage” shall have the meaning set forth in Section 8.71.030 of this chapter.

### **Section 8.71.030 Minimum Wage**

(a) Employers shall pay Employees no less than the minimum wage set forth in this Chapter for each hour worked within the geographic boundaries of the City.

(b) On January 1, 2020, the Minimum Wage shall be an hourly rate of fifteen dollars (\$15.00).

(c) Beginning on January 1, 2021, and each January thereafter, the minimum wage shall increase by 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 shall be calculated by using the August to August change in the CPI to calculate the annual increase, if any, and rounded to the nearest nickel. A decrease in the CPI shall not result in a decrease in the minimum wage.

(d) 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 part of, the wages due the Employee from the Employer.

(e) 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.

(f) All requirements and provisions of this Chapter shall be preempted and ineffective if the State minimum wage is or becomes greater than the minimum wage established by this Chapter.

### **Section 8.71.040 Notice and Posting**

(a) Following the effective date of this ordinance, 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 November 1 of each year, publish and make available to employers 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 or her rights under this chapter. Failure to post such notice shall constitute a violation of this chapter. Employers’ use of such notice shall constitute compliance with this subsection.

(c) The City is authorized to prepare and make available to employers, in the top three (3) languages spoken by residents of the City as determined by the City Manager or designee after reviewing the most recent United States Census Data, 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.

### **Section 8.71.050 Implementation**

The City Manager, or designee, may promulgate regulations for the implementation and enforcement of this chapter. Any regulation promulgated by the 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, for monitoring employee compliance with this chapter, and for providing administrative hearings or determining whether an employer has violated the requirements of this chapter.

**Section 8.71.060 Enforcement**

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

(b) Private Right 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's fees, witness fees and costs.

(c) Remedies. The remedies for violation of this chapter include, but are not limited to:

(1) Reinstatement, the payment of back wages unlawfully withheld, and payment of an additional sum as a civil penalty in the amount of fifty dollars (\$50.00) 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 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, as amended by state law, 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, as amended by state law, to the date the wages are paid in full.

(3) Reimbursement of the City's administrative costs of enforcement and reasonable attorney fees. 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.

(d) Retention of Records. Each employer shall maintain for at least three (3) years for each employee, a record of his or her name, hours worked and pay rate. Each employer shall provide each employee with a copy of the records relating to such employee upon the employee's reasonable request.

**Section 8.71.070 No Preemption of Higher Standard**

Violation of, or noncompliance with, any of the requirements of this chapter or applicable provisions of this code, shall be subject to any enforcement remedies available under the law and/or the City's Municipal Code. In addition, the City may enforce the violation of this chapter by means of civil enforcement through a restraining order, a preliminary or permanent injunction or by any other means authorized by the law.

**SECTION 3. Severability**

If any provision of this ordinance or the application thereof to any person or circumstance is held invalid, the remainder of the ordinance and the application of such provision to other persons or circumstances shall not be affected thereby.

**SECTION 4.            Publication and Effective Date**

Pursuant to the provisions of Government Code Section 36933, a summary of this Ordinance shall be prepared by the City Attorney. At least five (5) days prior to the Council meeting at which this Ordinance is scheduled to be adopted, the City Clerk shall (1) publish the Summary, and (2) post in the City Clerk’s Office a certified copy of this Ordinance. Within fifteen (15) days after the adoption of this Ordinance, the City Clerk shall (1) publish the summary, and (2) post in the City Clerk’s Office a certified copy of the full text of this Ordinance along with the names of those City Council members voting for and against this Ordinance or otherwise voting.

This Ordinance shall become effective thirty (30) days from and after its adoption.

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Introduced at a regular meeting of City Council of the City of South San Francisco held the 28<sup>th</sup> day of August 2019.