ORDINANCE NO. 1561


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 of the City of San Carlos enacted Ordinance Number 1559, adding Chapter 8.10 – Minimum Wage to the San Carlos Municipal Code; and

WHEREAS, on March 3, 2020, and pursuant to Section 101080 of the California Health and Safety Code, the San Mateo County Health Officer (the "Health Officer") declared a local health emergency throughout San Mateo County related to the novel coronavirus ("COVID-19"); and

WHEREAS, on March 10, 2020, the City Manager, acting as the Emergency Services Director, proclaimed the existence of an emergency in San Carlos related to COVID-19; and

WHEREAS, on March 12, 2020 the City Council ratified and extended the emergency; and

WHEREAS, on March 14, 2020, the Health Officer prohibited all public or private gatherings of 50 or more people and urged the cancelation of all gatherings of 10 or more people in a single confined space; and

WHEREAS, on March 16, 2020, the Health Officer issued an order that, among other things, directed all individuals currently living within San Mateo County to shelter in their places of residence ("Shelter-in-Place Order"), and authorized individuals to leave their residences only for certain "Essential Activities," "Essential Governmental Functions," or to operate "Essential Businesses," all as defined in the Shelter-in-Place Order; and

WHEREAS, on March 19, 2020, Governor Newsom issued Executive Order N-33-20, which, among other things, directs all California residents to immediately heed current State public health directives, including the March 19, 2020 directive of the State Public Health Officer to all state residents to stay home or at their places of residence, subject to certain exceptions; and

WHEREAS, on March 31, 2020, the Health Officer issued an amended order that, among other things, further restricted and directed all individuals currently living within San Mateo County to shelter in their places of residence ("Shelter-in-Place Order"), and authorized individuals to leave their residences only for newly defined "Essential Activities," "Essential Governmental Functions," or to operate "Essential Businesses," as defined in the Shelter-in-Place Order; and

WHEREAS, as a result of the State of Emergency, and the issuance of the Shelter-in-Place Orders, locally and state-wide, many businesses located in San Carlos have been adversely impacted by the effect of these orders and many continue to pay their employees, even though many were not considered an Essential Business and were required to close; and

WHEREAS, although such businesses and their employees may be entitled to benefits under federal and state programs or deferrals, the 2020 Cares Act provisions for Small Business
Administration forgivable loan limits such loans based on payroll that existed on February 15, 2020, which is before the increase in minimum wage contemplated by Ordinance 1559, the date when they are able to reopen and employees are able to return to work is unknown at this time, and it is likely that business will only slowly return to the levels that existed before the COVID-19 emergency; and

WHEREAS, an amendment to Ordinance 1559 postponing the implementation of the proposed minimum wage increase to January 1, 2021 is reasonable and justified to avoid the potential adverse impacts, such as a permanent closure of the business or a loss in ability retain employees; and

WHEREAS, a higher minimum wage 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 within the city of San Carlos; and

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

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

SECTION 1. The purpose and intent of this Ordinance is to amend Chapter 8.10 of the San Carlos Municipal Code, Section 8.10.030 and 8.10.040, to delay the implementation of the minimum wage increase to January 1, 2021, to the same level it would have been absent this amendment and to provide for annual increases thereafter.

SECTION 2. The recitals set forth above and in Ordinance 1559 are true and correct and are hereby incorporated herein by this reference as if full set forth in their entirety.

SECTION 3. The City Council hereby finds that the proposed Ordinance is in the public interest.

SECTION 4. The proposed Ordinance is not a project within the meaning of Section 15378 of the California Environmental Quality Act ("CEQA") Guidelines because it has no potential for resulting in either a direct or a reasonably foreseeable indirect physical change in the environment.

SECTION 5. Severability. If any section, subsection, clause or phrase of this Ordinance is for any reason held to be invalid, such decision shall not affect the validity of the remaining portion or sections of the Ordinance. The City Council of the City of San Carlos hereby declares that it would have adopted the Ordinance and each section, subsection, clause or phrase thereof irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared unconstitutional.

SECTION 6. IT IS HEREBY ORDAINED that Chapter 8.10, Section 8.10.30 and 8.10.040 is amended in its entirety as follows:

CHAPTER 8.10 MINIMUM WAGE ORDINANCE

8.10.030 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, 2021, the Minimum Wage shall be an hourly rate of fifteen dollars plus the lesser of 3.5 percent (3.5%) or the Consumer Price Index for San Francisco-Oakland-San Jose as determined by the United States Department of Labor ("CPI"). On January 1, 2022, and each January 1 thereafter, the prior Minimum Wage shall be increased by the lesser of 3.5 percent (3.5%) or a percentage amount equal to the prior year’s increase, if any, in the CPI. The change is calculated by using the August to August change in the CPI to calculate the annual increase, if any. The hourly rate cannot be decreased even if there is a decrease in the CPI. The City Minimum Wage schedule is as follows:

i. Beginning on January 1, 2021, an hourly rate of $15.00 plus CPI up to 3.5%;
ii. Beginning on January 1, 2022, the hourly rate of the previous year, plus CPI up to 3.5%.

(c) An Employee who is a Learner shall be paid no less than eighty-five percent (85%) of the applicable Minimum Wage for the first 160 hours of employment. Thereafter, the Employee shall be paid the applicable Minimum Wage.

(d) An Employer may not deduct an amount from wages due to an Employee on account of any tip or gratuity, or credit the amount of any part thereof, of a tip or gratuity, against, or as part of, the wages due the Employee from the Employer.

(e) 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 any Employee for parking, meals, uniforms or other items, nor by increasing the share any Employee pays towards his/her benefits, except to the extent such prohibition would be pre-empted by the Federal Employee Retirement Income Security Act or State law.

(f) 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.

8.10.040 Notices, Posting and Payroll Records.

(a) By November 1 of each year, the City shall publish a bulletin announcing the adjusted Minimum Wage rate for the upcoming year and Employee rights under this Chapter on the City’s website and by mailing a notice suitable for posting in the workplace to each Employer in the city.

(b) Every Employer must give written notification to each current Employee, and to each new Employee at the time of hire, of his or her rights under this Chapter. The notification shall be posted in a conspicuous place at any workplace or job site where any Employee works. Failure to post such notice shall constitute a violation of this
Chapter. The City may provide sample notices for use by Employers to comply with this Section.

(c) Employers shall retain payroll records pertaining to Employees for a period of three (3) years, and shall allow the City or its contractor to access such records, with appropriate notice and a mutually agreeable time, to monitor compliance with the requirements of this Chapter. Where an Employer does not maintain adequate payroll records 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.

SECTION 7. No Other Changes. In all other respects, Ordinance 1559 shall remain in full force and effect.

SECTION 8. Effective Date. Pursuant to Section 36937 of the Government Code of the State of California, this Ordinance shall take effect and be in full force and effect thirty (30) days after its final passage.

SECTION 9. Publication. The City Clerk shall cause this Ordinance to be published and posted in accordance with the requirements of Section 36933 of the Government Code of the State of California.

I, Crystal Mui, hereby certify that the foregoing Ordinance was introduced the 27th day of April, 2020 and passed and adopted as an Ordinance of the City Council of the City of San Carlos at a regular meeting thereof held on the 11th day of May, 2020 by the following vote:

AYES, COUNCILMEMBERS: MCDOWELL, PARMER-LOHAN, RAK, COLLINS

NOES, COUNCILMEMBERS: OLBERT

ABSENT, COUNCILMEMBERS: NONE

ABSTAIN, COUNCILMEMBERS: NONE

CITY CLERK of the City of San Carlos

APPROVED:

MAYOR of the City of San Carlos