ORDINANCE NO. 1559

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SAN CARLOS
ADDING CHAPTER 8.10 - MINIMUM WAGE, TO TITLE 8 OF THE
CITY OF SAN CARLOS MUNICIPAL CODE.

WHEREAS, the State of California has enacted a minimum wage that will reach $15.00 per hour for all employees in January 2023; 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 of the City of San Carlos wishes to enact a citywide minimum wage that reaches $15.00 per hour before 2023; 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 adopt a new Chapter 8.10 to Title 8 of the San Carlos Municipal Code to provide a minimum wage that reaches a level of no less than $15.00 per hour on July 1, 2020 and increases annually on January 1 thereafter.

SECTION 2. The recitals set forth above 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. CEQA. 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 a new Chapter 8.10 to Title 8 is added to the Municipal Code of the City of San Carlos to be numbered and entitled and to read in its entirety as follows:
CHAPTER 8.10 MINIMUM WAGE ORDINANCE

8.10.010 Application of Chapter.

The provisions of this Chapter shall apply within the City of San Carlos.

8.10.020 Definitions.

For the purposes of this Chapter, the following definitions shall govern unless the context clearly requires otherwise:

(a) "Calendar Week" shall mean a period of seven consecutive days starting on Sunday.

(b) "Employee" means any person who:

   i. In a Calendar Week performs at least two hours of work within the geographic boundaries of San Carlos for any Employer (as defined below); and

   ii. Qualifies as an Employee entitled to payment of a minimum wage from any Employer under the California minimum wage law, as provided in Section 1197 of the California Labor Code and wage orders published by the California Industrial Welfare Commission. Employees shall contain Learners as defined in this section.

(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 exercise control over the wages, hours, or working conditions of any Employee and who is either subject to the City's business registration requirements or maintains a business facility in the city. "Learner" shall mean an Employee who is a Learner as defined by California Welfare Commission Order No. 4-2001.

(d) "Minimum Wage" shall mean the minimum wage set forth in Section 8.10.030 of this Chapter.

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 July 1, 2020, the Minimum Wage shall be an hourly rate of fifteen dollars ($15.00). On January 1, 2021, 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 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 cannot be decreased even if there is a decrease in the CPI. The City minimum wage schedule is as follows:

   i. Beginning July 1, 2020, an hourly rate of $15.00;
ii. Beginning January 1, 2021, an hourly rate of $15.00 plus CPI up to 3.5%; and

iii. Beginning each January 1 thereafter, an hourly rate of the previous rate 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) Within 30 days of adoption of this Ordinance, and by November 1 of each year thereafter, 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.
8.10.050 Retaliation Prohibited.

(a) It shall be unlawful for an Employer or any other party to discriminate in any manner of 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 following: the right to file a complaint or inform any person about any party's alleged noncompliance with this Chapter; and the right to inform any person of his or her potential rights under this Chapter and to assist him or her in asserting such rights. Protections of this Chapter shall apply to any person who mistakenly, but in good faith, alleges noncompliance with this Chapter.

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

8.10.060 Implementation.

(a) Regulations. The City Manager may promulgate regulations for the implementation and enforcement of this Chapter. Any regulations promulgated by the City Manager shall have the force and effect of law and may be relied upon by Employers, Employees, and other parties to determine their rights under this Chapter. Any regulations may establish procedures for ensuring the fair, efficient, and cost effective implementation of this Chapter, including supplementary procedures for helping inform Employees of their rights under this Chapter, for monitoring Employer compliance with this Chapter, and for providing administrative hearings or determining whether an Employer or other person has violated the requirements of this Chapter.

(b) Reporting Violations. An Employee or any other person may report to the City, or the City's enforcement service provider, in writing any suspected violation of this Chapter. The City shall encourage reporting pursuant to this subsection by keeping confidential, to the maximum extent permissible by applicable laws, the name and other identifying information of the Employee or person reporting the violation, provided however, that with the authorization of such person, the City may disclose his or her name and identifying information as necessary to enforce this Chapter or other Employee protection laws.

(c) Investigation. The City, or its enforcement service provider, shall be responsible for investigating any possible violations of this Chapter. The City shall have the authority to inspect workplaces, interview persons, and request the City Attorney subpoena books, papers, records or other items relevant to the enforcement of this Chapter.

(d) Informal Resolution. The City shall make every effort to resolve complaints related to this Chapter informally and in a timely manner.

8.10.070 Enforcement.

(a) Where prompt compliance is not forthcoming, the City shall take any appropriate enforcement action necessary to secure compliance with this Chapter. In addition to other civil remedies, the City may enforce this Chapter pursuant to the City of San
Carlos Municipal Code 1.20. In addition to the applicable code enforcement procedures available in Chapter 1.20 or state law, to secure compliance, the City may use one of the following enforcement measures:

i. The City may issue an administrative citation with a fine of not more than fifty dollars ($50) for each day or portion thereof and for each Employee or person as to whom the violation occurred or continued.

ii. The City may issue an administrative compliance order.

iii. The City may initiate a civil action for injunctive relief and damages and civil penalties in a court of competent jurisdiction.

(b) Any person aggrieved by a violation of this Chapter, any entity a member of 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. Upon prevailing, the party(s) shall be awarded reasonable attorneys' fees and costs and shall be entitled to such legal or equitable relief as may be appropriate to remedy the violation including, without limitation, the payment of any back wages unlawfully withheld, the payment of an additional sum as a civil penalty in the amount of fifty dollars ($50) to each Employee or person whose rights under this Chapter were violated for each day that the violation occurred or continued, reinstatement in employment, and/or injunctive relief, provided, however, that any person or entity enforcing this Chapter on behalf of the public as provided under applicable State law shall, upon prevailing, be entitled only to equitable injunctive or restitution to Employees and reasonable attorneys' fees and costs.

(c) This Section 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, nor shall exhaustion of remedies under this Chapter be a prerequisite to the assertion of any right.

(d) 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.

(e) Relief. The remedies available to Employees for violation of this Chapter include, but are not limited to:

i. Reinstatement, and the payment of back wages unlawfully withheld, and the payment of an additional sum as a civil penalty in the amount of fifty dollars ($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.

ii. 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.

(f) Posted Notice. If a repeated violation of this Chapter has been finally determined, the City may require the Employer to post public notice of the Employer’s failure to comply in a form determined by the City.

8.10.080 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. This Chapter shall not be construed to limit a discharged Employee’s right to bring a common law cause of action for wrongful termination.

8.10.090 Fees.

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

SECTION 7. 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 8. 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 24th day of February, 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 9th day of March, 2020 by the following vote:

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

NOES, COUNCILMEMBERS: NONE

ABSENT, COUNCILMEMBERS: NONE

ABSTAIN, COUNCILMEMBERS: NONE

CITY CLERK of the City of San Carlos

APPROVED:

MAYOR of the City of San Carlos