

**ORDINANCE NO. 19-**

**AN ORDINANCE OF THE CITY OF EMERYVILLE AMENDING SECTIONS 5-37.01 AND 5-37.02 OF CHAPTER 37 OF TITLE 5 OF THE CITY OF EMERYVILLE MUNICIPAL CODE WITH RESPECT TO THE MINIMUM WAGE FOR EMPLOYEES OF SMALL INDEPENDENT RESTAURANTS**

**WHEREAS**, on June 2, 2015, the Emeryville City Council adopted Ordinance No. 15-004, the Minimum Wage, Paid Sick Leave, And Other Employment Standards Ordinance, codified at Chapter 37 of Title 5 of the Emeryville Municipal Code (the “Minimum Wage Ordinance”); and

**WHEREAS**, on May 7, 2019 the City Council received a report on business conditions related to implementation of the City’s labor standards ordinances, including the Minimum Wage Ordinance (“Report”); and

**WHEREAS**, the Minimum Wage Ordinance includes a scheduled increase in the minimum wage for all businesses to \$16.30 per hour on July 1, 2019; and

**WHEREAS**, following the presentation and discussion of the Report, the City Council directed staff to draft an amendment to the Minimum Wage Ordinance to provide that the minimum wage for employees of small, independent restaurants would remain at \$15.00 per hour as of July 1, 2019 because, according to the Report, these businesses have been the most impacted by the Minimum Wage Ordinance; and

**WHEREAS**, the definition of “Small Independent Restaurants” set forth below is narrowly tailored to achieve the City’s interest in encouraging the continued viability of small, independent eating and drinking establishments and their contribution to the broader economy of Emeryville; and

**WHEREAS**, on May 21, 2019, at a duly noticed public meeting, after receiving public comment, the City Council considered amendments to the Minimum Wage Ordinance; and adopted the first reading of an ordinance to amend the Minimum Wage Ordinance to add a definition of Small Independent Restaurant; and to provide for a different minimum wage rate for Small Independent Restaurants.

**NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF EMERYVILLE HEREBY ORDAINS AS FOLLOWS:**

**SECTION ONE. RECITALS AND FINDINGS**

The above recitals and findings are true and correct, are material to the adoption of this Ordinance, and are incorporated herein by reference.

## **SECTION TWO. AMENDING SECTION 5-37.01 OF CHAPTER 37 OF TITLE 5 OF THE CITY OF EMERYVILLE MUNICIPAL CODE**

Section 5-37.01 of the City of Emeryville Municipal Code, "Definitions", is hereby amended as follows. Additions are in double underline text. Those portions not specifically amended remain unchanged:

### **5-37.01 Definitions.**

As used in this chapter, the following terms shall have the following meanings:

- (a) "Calendar week" shall mean a period of seven (7) consecutive days starting on Sunday.
- (b) "City" shall mean the City of Emeryville.
- (c) "Employee" shall mean any person who:
  - (1) In a calendar week performs at least two (2) 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 under Section 1197 of the California Labor Code and wage orders published by the California Industrial Welfare Commission. Employees shall include learners, as defined by the California Industrial Welfare Commission.
- (d) "Employer" shall mean any person (including a natural person, corporation, nonprofit 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) "Paid sick leave" shall mean paid "sick leave" as defined in California Labor Code Section 233(b)(4), except that the definition here extends beyond the employee's own illness, injury, medical condition, need for medical diagnosis or treatment, or medical reason to also encompass time taken off work by an employee for the purpose of providing care or assistance to other persons specified below with an illness, injury, medical condition, or need for medical diagnosis or treatment.
- (f) "Minimum wage" shall have the meaning set forth in Section 5-37.02.
- (g) "Small business" shall mean an employer for which normally fifty-five (55) or fewer employees work for compensation during a given week. In determining the number of employees performing work for an employer during a given week, all employees performing work for the employer for compensation on a full-time, part-time, or temporary

basis shall be counted, including employees made available to work through the services of a temporary services or staffing agency or similar entity.

(h) "Small independent restaurant" shall mean an employer that is a small business meeting the definition of a Restaurant pursuant to Section 9-2.319(b) and that has 20 or fewer locations globally. For purposes of this definition, small independent restaurant shall exclude any franchisee associated with a franchisor or a network of franchises with franchisees, that has more than 20 locations globally.

### **SECTION THREE. AMENDING SECTION 5-37.02 "MINIMUM WAGE" OF CHAPTER 37 OF TITLE 5 OF THE EMERYVILLE MUNICIPAL CODE**

Section 5-37.02 of the City of Emeryville Municipal Code titled "Minimum Wage" is hereby amended as follows. Additions are in double underline text. Those portions not specifically amended remain unchanged:

#### **5-37.02 Minimum Wage.**

(a) Employers shall pay employees no less than the minimum wage for each hour worked within the geographic boundaries of the City.

(b) Beginning on July 2, 2015, the minimum wage paid by employers which are not small businesses shall be an hourly rate of fourteen dollars and forty-four cents (\$14.44). To prevent inflation from eroding its value, beginning on July 1, 2016, and then each year thereafter on July 1, the minimum wage shall increase by an amount corresponding to the prior calendar year's increase, if any, in the Consumer Price Index for all urban consumers for the San Francisco-Oakland-San Jose, California, metropolitan statistical area (or if such index is discontinued, then in the most similar successor index).

(c) For employers which are small businesses, the minimum wage rate shall be as follows:

(1) Beginning July 2, 2015, the minimum wage shall be an hourly rate of twelve dollars and twenty-five cents (\$12.25) per hour.

(2) Beginning July 1, 2016, the minimum wage shall be an hourly rate of thirteen dollars (\$13.00) per hour.

(3) Beginning July 1, 2017, the minimum wage shall be an hourly rate of fourteen dollars (\$14.00) per hour.

(4) Beginning July 1, 2018, the minimum wage shall be an hourly rate of fifteen dollars (\$15.00) per hour.

(5) Beginning July 1, 2019, the minimum wage for employers which are small businesses, but not small independent restaurants, shall be the then-current

minimum wage rate for employers which are not small businesses. To prevent inflation from eroding its value, beginning on July 1, 2020, and then each year thereafter on July 1, the minimum wage shall increase by an amount corresponding to the prior calendar year's increase, if any, in the Consumer Price Index for all urban consumers for the San Francisco-Oakland-San Jose, California, metropolitan statistical area (or if such index is discontinued, then in the most similar successor index).

(6) For employers which are small independent restaurants, the minimum wage rate shall be as follows:

(i) Beginning July 1, 2019, the minimum wage shall be an hourly rate of fifteen dollars (\$15.00) per hour.

(ii) Beginning July 1, 2020, the minimum wage shall be an hourly rate equal to ninety-three percent (93%) of the minimum wage rate paid by employers which are not small businesses.

(iii) Beginning July 1, 2021, the minimum wage shall be an hourly rate equal to ninety-four percent (94%) of the minimum wage rate paid by employers which are not small businesses.

(iv) Beginning July 1, 2022, the minimum wage shall be an hourly rate equal to ninety-five percent (95%) of the minimum wage rate paid by employers which are not small businesses.

(v) Beginning July 1, 2023, the minimum wage shall be an hourly rate equal to ninety-six percent (96%) of the minimum wage rate paid by employers which are not small businesses.

(vi) Beginning July 1, 2024, the minimum wage shall be an hourly rate equal to ninety-seven percent (97%) of the minimum wage rate paid by employers which are not small businesses.

(vii) Beginning July 1, 2025, the minimum wage shall be an hourly rate equal to ninety-eight percent (98%) of the minimum wage rate paid by employers which are not small businesses.

(viii) Beginning July 1, 2026, the minimum wage shall be an hourly rate equal to ninety-nine percent (99%) of the minimum wage rate paid by employers which are not small businesses.

(ix) Beginning July 1, 2027, the minimum wage shall be an hourly rate equal to the minimum wage rate paid by employers which are not small businesses.

(d) An employee who is a learner, as defined by the California Industrial Welfare Commission, shall be paid no less than eighty-five percent (85%) of the applicable minimum wage provided in this chapter for the first one hundred sixty (160) hours of employment. Thereafter the employee shall be paid the applicable minimum wage rate provided in this chapter.

(e) Consistent with State law, an employer may not deduct any 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 and as a part of the wages due the employee from the employer. Further, the value of any employer provided benefits, including health care benefits, shall not be deducted or credited against wages due an employee.

#### **SECTION FOUR. CEQA DETERMINATION**

The City Council finds and determines that this Ordinance is exempt from environmental review under State CEQA Guidelines Section 15324, which applies to regulations of working conditions including employee wages, and the “general rule” at Section 15061(b)(3) because it can be seen with certainty that there is no possibility that the proposal may have a significant effect on the environment.

#### **SECTION FIVE. SEVERABILITY**

Every section, paragraph, clause, and phrase of this Ordinance is hereby declared severable. If, for any reason, any section, paragraph, clause, or phrase is held to be invalid or unconstitutional, such invalidity or unconstitutionality shall not affect the validity or constitutionality of the remaining sections, paragraphs, clauses, or phrases.

#### **SECTION SIX. CODIFICATION**

Sections Two and Three of this Ordinance shall be codified in the Emeryville Municipal Code. Sections One, Four, Five, Six, and Seven shall not be codified.

#### **SECTION SEVEN. EFFECTIVE DATE AND POSTING**

This Ordinance shall take effect 30 days following its final passage. The City Clerk is directed to cause copies of this Ordinance to be posted or published as required by Government Code section 33693.

This Ordinance was introduced and first read by the City Council of the City of Emeryville at a regular meeting held Tuesday, May 21, 2019, and **PASSED AND ADOPTED** by the City Council at a regular meeting held Wednesday, May 29, 2019 by the following votes:

AYES: \_\_\_\_\_  
NOES: \_\_\_\_\_  
ABSTAIN: \_\_\_\_\_  
ABSENT: \_\_\_\_\_

ATTEST:

\_\_\_\_\_  
CITY CLERK

\_\_\_\_\_  
MAYOR



\_\_\_\_\_  
CITY ATTORNEY