ORDINANCE NO. 2020-XXXX

AN ORDINANCE OF THE CITY OF HALF MOON BAY, CALIFORNIA ADDING CHAPTER 3.300 “MINIMUM WAGE” TO TITLE 3 OF THE HALF MOON BAY MUNICIPAL CODE

THE CITY COUNCIL OF THE CITY OF HALF MOON BAY DOES ORDAIN AS FOLLOWS:

Section 1. Findings. The City Council finds and declares as follows:

(a) The State of California has enacted a minimum wage that will reach $15.00 per hour for all Employers in January of 2023; and

(b) In an effort to help working households achieve economic security and acknowledging the higher relative cost of living in San Mateo County, the City Council wishes to enact a citywide minimum wage that reaches $15.00 per hour before 2023; and

(c) A higher minimum wage rate protects public health, safety, and welfare by enabling employees to meet basic needs and avoid economic hardship; and

(d) The City of Half Moon Bay 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

(e) The purpose and intent of this Ordinance is to adopt a new chapter 3.300 to Title 3 of the City of Half Moon Bay Municipal Code to provide a minimum wage of $15.00 per hour starting on January 1, 2021 for all employers and increases annually by the consumer price index (CPI); and

(f) The City Council hereby finds that the proposed Ordinance is in the public interest;


Section 3. Severability. If any section, sentence, clause or phrase of this Ordinance is for any reason held to be invalid or unconstitutional by a decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance. The City Council hereby declares that it would have passed this Ordinance and adopted this Ordinance and each section, sentence, clause or phrase thereof, irrespective of the fact that any one or more section, subsections, sentences, clauses or phrases be declared invalid or unconstitutional.
Section 4. CEQA. The City Council finds that this ordinance is not subject to the California Environmental Quality Act (“CEQA”) pursuant to CEQA Guidelines (Title 14 of the California Code of Regulations) Sections 15060(c)(2) (the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment) and 15060(c)(3) (the activity is not a project as defined in Section 15378) because it has no potential for resulting in physical change in the environment, directly or indirectly; it prevents changes in the environment. Further, this action is exempt from CEQA under CEQA Guidelines section 15061(b)(3) (the amendments are exempt because it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment).

Section 5. Publication. The City Clerk shall publish a summary of this Ordinance in a newspaper of general circulation for the City of Half Moon Bay within fifteen days after its adoption.

Section 6. Effective date. This ordinance shall take effect 30 days after adoption.

INTRODUCED at a regular meeting of the City Council of the City of Half Moon Bay, California, held on the 21st of January 2020.

PASSED AND ADOPTED at a regular meeting of the City Council of the City of Half Moon Bay, California, held on the 4th day of January, 2020, by the following vote:

Ayes, Councilmembers:  
Noes, Councilmembers:  
Absent, Councilmembers:  
Abstain, Councilmembers:  

ATTEST:  APPROVED:

________________________________ ______________________________  
Jessica Blair, City Clerk  Adam Eisen, Mayor
Chapter 3.300 MINIMUM WAGE

Sections:

3.300.010 Title

3.300.020 Definitions

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3.300.100 Federal or State Funding

3.300.110 No Pre-Emption of Higher Standards

3.300.010 Title

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

3.300.020 Definitions

The following words and phrases shall have the meanings set forth below when used in this Chapter. The singular shall include the plural, and the plural shall include the singular.

a. “Calendar Week” shall mean a period of seven consecutive days starting on Sunday.

b. “City” shall mean the City of Half Moon Bay.

c. “Employee” shall mean any person who
1. In a calendar week performs at least two (2) hours of work for any Employer (as defined below); 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 Sec. 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 corporate officers or executives, as defined in Sec. 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 exercises control over the wages, hours, or working conditions of any employee and who is either subject to the City’s business license requirements, or maintains a business facility in the City.

e. “Learner” shall mean an employee who is a Learner as defined by California Welfare Commission Order No. 4-2001.

f. “Minimum Wage” shall mean the minimum wage set forth in Section 3.300.030 of this chapter.

**3.300.030 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 ($15.00). To prevent inflation from eroding its value, beginning on January 1, 2022, and each year thereafter, the Minimum Wage shall increase by an amount corresponding to the prior year’s increase, if any, in the cost of living. The increase in the cost of living for any year shall be measured by the percentage increase, if any, in the Consumer Price Index for San Francisco-Oakland-San Jose (or its successor index) as published by the U.S. Department of Labor or its successor agency (CPI). The increase shall be calculated by using the August to August change in the CPI. A decrease in the CPI shall not result in a decrease in the minimum wage.

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 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. 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 an Employee, nor by increasing charges to them for parking, meals, uniforms, or other items, nor by reducing the citation or other non-wage benefits of any such Employee, nor by increasing the share any Employee pays towards their benefits, except to the extent such prohibition would be pre-empted by the Federal Employee Retirement Income Security Act.

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 part 1 (commencing section 200) of Division 2 of the California Labor Code, to the date immediately preceding the date the wages are paid in full.

3.300.040 Exempt Organizations

State, Federal, and County agencies, including school districts, shall not be required to pay minimum wage when the work performed is related to their governmental function. However, for work that is not related to their governmental function, including but not limited to: booster or gift shops, non-k-12 cafeterias, on-site concessions, and similar operations, minimum wage shall be required to be paid. Minimum wage shall also be required to be paid by lessees or renters of facilities or space from an exempt organization.

3.300.050 Notice, Posting and Payroll Records

a. By November 1, 2020, the City shall publish and make available to Employers a bulletin announcing the minimum wage rate, to take effect on January 1, 2021. By November 1, 2020, the City shall publish and make available to Employers a notice suitable for posting in the workplace informing Employees of the Minimum Wage rate and of their rights under this Chapter.

b. By November 1, 2021, 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.

c. 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 City informing Employees of the current Minimum Wage rate and of their rights under this Chapter. Failure to post such notice shall constitute a violation of this Chapter.

d. Employers shall retain payroll records pertaining to Employees for a period of three (3) 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.

3.300.060 Retaliation Prohibited

a. An Employer shall not discharge, reduce the compensation or otherwise retaliate against any Employee for making a complaint to the City, participating in any of the City’s proceedings, using any civil remedies to enforce his or her rights, or otherwise asserting his or her rights under this chapter.

b. 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 of such rights.

3.300.070 Implementation

The City may promulgate regulations for the implementation and enforcement of this Chapter, including procedures for the fair, efficient, and cost-effective implementation of this Chapter, for informing Employees of their rights under this Chapter, for monitoring Employer compliance with this Chapter, and for providing administrative hearings or determining whether an Employer has violated the requirements of this Chapter.

3.300.080 Enforcement

a. Where prompt compliance is not forthcoming, the City shall take any appropriate enforcement action to secure compliance. In addition to all other civil remedies, the City may enforce this ordinance pursuant to Half Moon Bay Municipal Code. To secure compliance, the City may use the following enforcement measures:

1. 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.

2. The City may issue an administrative compliance order.

3. 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 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 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 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.

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 for violation of this Chapter include, but are not limited to:

   1. 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.

   2. Interest on all due and unpaid wages at the rate of interest specified in subdivision (b) of Sec. 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 Sec. 200) of Division 2 of the California Labor Code, to the date the wages are paid in full.

   3. Reimbursement of the City’s administrative costs of enforcement and reasonable attorney’s fees.

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.

3.300.090 Waiver Through Collective Bargaining

All or any portion of the applicable requirements of this Chapter may be waived in a bona fide collective bargaining agreement, provided such waiver is explicitly set forth in such agreement in clear and unambiguous terms and provided that the waiver may not be applied
retroactively. The waiver allowed by this provision does not apply to Employees in the property services industry (e.g. janitors, landscapers, groundskeepers, and security guards).

3.300.100 Federal or State Funding

This Chapter will not be applied to the extent it will cause the loss of any federal or state funding of City activities.

3.300.110 No Pre-Emption of Higher Standards

This Chapter provides for payment of 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.