

..Title

Creating Chapter 24 of the Legislative Code to implement a City Minimum wage

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The Council of the City of Saint Paul Does hereby ordain:

Section 1

WHEREAS, although since the 1970s, the United States Congress, and the Minnesota Legislature have increased the federal and state minimum wages every decade, the effective full minimum wage rate in Minnesota is still not as high as the minimum wage in 1968, when controlled for the cost of living; and

WHEREAS, increased costs of living, rising inflation and a transforming economy have forced Saint Paul workers and families to do more with less. A full-time worker earning the state-mandated minimum wage of nine dollars and sixty-five cents (\$9.65) per hour for large employers would make an annual salary that is approximately five thousand (\$5,000.00) below the poverty level for a family of four (4). A minimum wage of twelve dollars (\$12.00) per hour in Saint Paul would be comparable to the federal minimum wage paid in the late 1960s. Inaction by the federal and state governments on the minimum wage has contributed to the struggle of tens of thousands of low wage workers in the city who struggle to meet their most basic needs; and

WHEREAS, a living wage is defined as the income necessary for workers to meet their basic needs, and the living wage in Ramsey County for a single person is sixteen dollars and twenty-three cents (\$16.23) per hour; and

WHEREAS, the living wage for a household of two (2) adults and one (1) child, with one adult working full-time and the other working part-time, is twenty dollars and thirty-four cents (\$20.34) per hour; and

WHEREAS, Saint Paul has the highest percentage of residents living in poverty of any metro city with a population over one thousand (1,000) in the state, and over sixty-two thousand (62,000) Saint Paul residents have incomes below the federal poverty level; and

WHEREAS, the largest share of Saint Paul residents, both live and work in Saint Paul; and

WHEREAS, an increase in the minimum wage to fifteen dollars (\$15.00) per hour would directly impact thirty-one (31%) percent of workers in Saint Paul or approximately fifty-six thousand (56,000) people; and

WHEREAS, no person working full-time should live in poverty and Saint Paul is committed to increasing the minimum wage to \$15 an hour; and

WHEREAS, raising Saint Paul's minimum wage to \$15 an hour is a significant step towards building a city that works for all of us; now, therefore be it

RESOLVED, that the Council of the City of Saint Paul does hereby ordain:

Section 2

Chapter 224 of the Saint Paul Legislative Code is hereby created to read as follows:

Sec. 224.01 Definitions.

For purposes of this Chapter, the following definitions apply:

City means the City of Saint Paul.

Department means the Department of Human Rights and Equal Economic Opportunity or any department or office that by ordinance is designated the successor to the department.

Director means the Director of the Department of Human Rights and Equal Economic Opportunity or his or her designee.

Employee has the meaning given in Minnesota Statutes, Section 177.23. For purposes of this article, "employee" does not include the following:

- (a) Employees classified as extended employment program workers as defined in Minnesota Rules part 3300.2005, subpart 18 and participating in the Minnesota Statutes, Section 268A.15 extended employment program.
- (b) Persons with disabilities receiving home and community-based services identified in Minnesota Statutes section 245D.03, subdivision 1, paragraph (c), clauses (4) (5) (6) and (7).
- (c) Independent contractors.

Employer means any individual, partnership, association, corporation, business trust, or any person or group of persons acting directly or indirectly in the interest of an employer in relation to an employee. For purposes of this article, "employer" does not include any of the following:

- (a) The United States government.
- (b) The State of Minnesota, including any office, department, agency, authority, institution, association, society or other body of the state, including the legislature and the judiciary.
- (c) Any county or local government, except the city.
- (d) Providers with certificates issued by the United States Department of Labor or the Minnesota Department of Labor and Industry for purposes of subminimum wage payments pursuant to Minnesota Statutes, Section 177.28 and Minnesota Rules part 5200.0030, but only to the extent of the workers specifically covered by the subminimum wage certificate.

Gratuities means monetary contributions received directly or indirectly by an employee from a guest, patron, or customer for services rendered and includes an obligatory charge assessed to customers, guests, or patrons which might reasonably be construed by the guest, customer, or patron as being a payment for personal services rendered by an employee and for which no clear and conspicuous notice is given by the employer to the customer, guest, or patron that the charge will not be given to the employee as wages or gratuity.

Hourly Wage means the rate an employer is required to pay an employee per hour worked.

Macro Business means all employers that employ more than ten thousand (10,000) persons, calculated pursuant to section 224.05.

Large Business means all employers that employ more than one-hundred (100) persons, calculated pursuant to section 224.05.

Micro Business means all employers that employ five (5) or fewer persons, calculated pursuant to section 224.05.

Small Business means all employers that employ one hundred (100) or fewer persons, calculated pursuant to section 224.05.

Wage means compensation due to an employee by reason of employment, payable in legal tender of the United States, checks on banks, or direct deposit to the employee's choice of demand deposit account convertible into cash on demand at full face value.

Sec. 224.02 Employment in Saint Paul.

- (a) Subject to paragraph (b) below, employees are covered by this article for all time worked within the geographic boundaries of the city.
- (b) An employee who is typically based outside the city and performs work in the city on an occasional basis is covered by this article if the employee over the course of one week performs at least two hours of work for an employer within the geographic boundaries of the city.

Sec. 224.03 City Minimum Wage.

- a) An employer shall pay an employee a wage of no less than the City Minimum Wage which is the hourly rates set forth in this section, or the State Minimum Wage, whichever is greater.
- (b) City of Saint Paul and macro businesses shall pay a City Minimum Wage of no less than the hourly rates set forth herein:
 - (1) On January 1, 2020, the hourly wage shall be twelve dollars and fifty cents (\$12.50).
 - (2) On July 1, 2022, the hourly wage shall be fifteen dollars (\$15.00).

(3) No later than September 1 of each year, beginning in 2022, the director shall determine the increase in the minimum wage rates to be paid by the City of Saint Paul and macro businesses based on the percentage increase calculated by the Commissioner of Labor and Industry pursuant to Minnesota Statute Section 177.24, subdivision 1 (f) and applicable to the State of Minnesota minimum wage divided by two (2) in 2022 and based on the full percentage increase in each subsequent year rounded to the nearest cent. The director shall announce the adjusted minimum wage rates on September 1 of each year and the new minimum wage rates for City of Saint Paul employees and macro businesses determined under this subsection take effect on January 1 of each subsequent year, beginning in 2023.

(c) Large businesses shall pay a City Minimum Wage of no less than the hourly rate set forth herein:

- (1) On July 1, 2020, the hourly wage shall be eleven dollars and fifty cents (\$11.50).
- (2) On July 1, 2021, the hourly wage shall be twelve dollars and fifty cents (\$12.50).
- (3) On July 1, 2022, the hourly wage shall be thirteen dollars and fifty cents (\$13.50).
- (4) On July 1, 2023, the hourly wage shall be fifteen dollars (\$15.00).
- (5) Beginning on July 1, 2024, the City Minimum Wage rate that applies to the City of

Saint Paul shall apply to large businesses.

(d) Small businesses shall pay a City Minimum Wage of no less than the hourly rates set forth herein:

- (1) On July 1, 2020, the hourly wage shall be ten dollars (\$10.00).
- (2) On July 1, 2021, the hourly wage shall be eleven dollars (\$11.00).
- (3) On July 1, 2022, the hourly wage shall be twelve dollars (\$12.00).
- (4) On July 1, 2023, the hourly wage shall be thirteen dollars (\$13.00).
- (5) On July 1, 2024, the hourly wage shall be fourteen dollars (\$14.00)
- (6) On July 1, 2025, the hourly wage shall be fifteen dollars (\$15.00).
- (7) On July 1, 2026, the City Minimum Wage that applies to the City of Saint Paul

shall apply to small businesses.

(e) Micro Businesses shall pay a City Minimum Wage of no less than the hourly rates set forth herein:

- (1) On July 1, 2020, the hourly wage shall be nine dollars and twenty-five cents (\$9.25).
- (2) On July 1, 2021, the hourly wage shall be ten dollars (\$10.00).
- (3) On July 1, 2022, the hourly wage shall be ten dollars and seventy-five cents (\$10.75).
- (4) On July 1, 2023, the hourly wage shall be eleven dollars and fifty cents (\$11.50).
- (5) On July 1, 2024, the hourly wage shall be twelve dollars and twenty-five cents (\$12.25).
- (6) On July 1, 2025, the hourly wage shall be thirteen dollars and twenty-five cents (\$13.25).
- (7) On July 1, 2026, the hourly wage shall be fourteen dollars and twenty-five cents (\$14.25).
- (8) On July 1, 2027, the hourly wage shall be fifteen dollars (\$15.00).
- (9) On July 1, 2028, the City Minimum Wage that applies to the City of Saint Paul shall apply to micro businesses.

Sec. 224.04 Adjustments to City Minimum Wage.

- (a) No employer may directly or indirectly credit, apply, or utilize gratuities towards payment of the minimum wage set by this Chapter.
- (b) *City-Approved Youth-Focused Training or Apprenticeship Program.* Notwithstanding 224.03 subsections (b) - (e), an employer may pay an employee under the age of twenty (20) years who is employed in a city-approved youth-focused training or apprenticeship program not less than eighty-five (85) percent of the City Minimum Wage for small employers rounded up to the nearest nickel, provided that any percentage of the hourly rate established by rule shall not be lower than the percentage applicable under state statutes and regulations. The minimum training or apprentice wage shall be published annually by the department as provided by rule. Criteria for city-approved youth-focused training or apprenticeship programs shall be developed by the department with input from current service providers and published by rule. No employer may take action to displace an employee, including a partial displacement through a reduction in hours, wages, or employment benefits, in order to hire an employee at the wage authorized in this subsection.
- (c) *Youth Wage.* Employees who are 14-17 years of age shall be paid not less than 85 percent of the City Minimum Wage for small employers and rounded to the nearest nickel during their first 90 days after the date of hire. After more than 90 days after the date of hire, Employees who are 14-17 years of age shall be paid the applicable City Minimum Wage. The minimum youth wage shall be published annually by the department as provided by rule.
- (d) *Athletic Exemption.* An employer is not required to pay City Minimum Wage to an employee to play baseball as part of an independent baseball league provided that the employee is compensated pursuant to a negotiated contract and appears on the roster of the baseball team.

Sec. 224.05 Determination of Business Size.

- (a) An employer's business size for the current calendar year is based upon the average number employees per week during the previous calendar year.
- (b) For a new business, the employer's business size for the current calendar year is based upon the average number employees per week during the first ninety (90) days after the first person working for compensation began work.
- (c) In determining the number of employees, all employees on a full-time, part-time, joint, or temporary basis shall be counted, whether or not the persons work in the city.
- (d) Determination of business size for any establishment operated pursuant to a franchise as defined in Minnesota Statutes [Section] 80C.01, shall be classified based on the total number of employees at all franchise locations owned and operated by a single franchisee.
- (e) Except as in [subsection] (d), each full- service restaurant location within the geographic boundaries of the city and with fewer than ten (10) locations nationally, shall be treated as a unique employer solely for the purposes of determining business size.

Sec. 224.06. - Implementation.

- (a) The department shall be authorized to coordinate implementation and enforcement of this chapter and shall promulgate appropriate guidelines and regulations for such purposes. Any guidelines or rules promulgated by the department may be relied on by employers, employees, and other persons to determine their rights and responsibilities under this chapter. Such guidelines or rules will:
 - (1) Be consistent with this chapter;
 - (2) Establish procedures for fair, efficient, and cost-effective implementation and enforcement of this chapter; and
 - (3) Establish procedures for informing employers of their duties and employees of their rights under this chapter and monitoring employer compliance.
- (b) The director shall publish, maintain, and make available to the public any such initial rules at least ninety (90) days prior to their effective date. Any revisions to published rules shall be published, maintained, and made available to the public at least thirty (30) days prior to their effective date.

Sec. 224.07 Enforcement.

- (a) Report of violations. An employee or other person may report to the department any suspected violation of this chapter. Such reports may be filed only if the matter complained of occurred after the effective date of this chapter and within two years (2) prior to filing the report.
- (b) *Investigation process.* The department shall have the authority to investigate possible violations of this chapter whenever it has cause to believe that any violation of this chapter has occurred including but not limited to: on the basis of a report of a suspected violation, on the basis of any other credible information including violations found during the course of an investigation, when circumstances show that violations are likely to occur within a class of businesses because the workforce contains a significant number of workers who are vulnerable to violations of this chapter or the workforce is unlikely to volunteer information regarding such violations.
 - (1) *Notice of Investigation.* To pursue a violation of this chapter, the director must serve upon an employer via U.S. mail a notice of investigation setting forth the allegations and pertinent facts. The notice of investigation shall be accompanied by a request for a written position statement and may include a request for records or other information. The notice shall also inform the employer that retaliation for claiming rights under this chapter is a violation of this chapter and a basis for additional monetary damages. Within 7 days of the notice of investigation, an employer must post or otherwise notify its employees that the department is conducting an investigation, using a form provided by the department and displaying it on-site, in a conspicuous and accessible location, and in English and the primary language of the employee(s) at the particular workplace. If display of the form is not feasible, including situations when the employee works remotely or does not have a regular workplace, employers may provide the form on an individual basis in the employee's primary language in physical or electronic format that is reasonably conspicuous and accessible.
 - (2) An employer's position and response to any request for records must be provided to the department as provided in the department's rules. An employer's failure to provide a position statement or to provide a full response to a request for records, or any other

reasonable request issued by the department pursuant to an investigation, within thirty days of such request creates a rebuttable presumption of a violation of this chapter. An employer that fails to respond to a request for records may not use such records or any records not provided to the department at any hearing held under this chapter.

(3) Investigations shall be conducted in an objective and impartial manner.

(4) The department shall consider any statement of position or evidence with respect to the alleged violation which the complainant or employer wishes to submit.

(5) In order to define the issues, determine which elements are undisputed, resolve those issues that can be resolved, and afford an opportunity to discuss or negotiate settlement, during investigation the department may require a fact-finding conference or participation in another process with the employer and the complainant.

(c) *Director notice of violation/determination of no violation.* Except when there is an agreed upon settlement, the director must issue either a written notice of violation or a written notice of determination of no violation. In the case of a notice of a determination of no violation, the department must state the reason for declining. Every notice must be issued to the employer and the complainant who filed the suspected violation report. The complainant may, within twenty-one (21) days, file a request for reconsideration of a notice of determination of no violation with the director. The director must provide a written response on the reconsideration within ten (10) days.

(d) An employee or other person who has reported a violation of this chapter may:

(1) Bring a civil action in district court within forty-five (45) days after receipt of a notice of determination of no violation of this chapter.

(2) Bring a civil action in district court within forty-five (45) days upon notice that the director has reaffirmed a determination of no violation of this chapter if the complainant requested reconsideration.

(3) For purposes of this clauses (1) and (2), notice is presumed to be five (5) days from the date of service by mail of the written notice.

(e) *Contents of notice of violation.* If the department determines that cause exists to believe that an employer has failed to pay City Minimum Wage, the city attorney's office on behalf of the department shall issue a notice of violation for failure to pay City Minimum Wage to the employer. The notice shall advise the employer of the following:

(1) That the city believes the employer has failed to pay City Minimum Wage;

(2) The basis for the City's belief;

(3) The amount of restitution owed and penalty sought;

(4) That the employer is entitled to a hearing before any restitution or penalty is imposed; and

(5) That the employer can choose to admit or deny the allegations.

a. If the employer wishes to admit the allegations but contest the proposed restitution or sanction, the employer may request a hearing before the Council regarding the proposed restitution or, if applicable, penalty.

b. If the employer wishes to deny the allegations, then the employer must request a hearing before a hearing examiner.

c. Failure to respond in writing within fifteen (15) working days of the notice of violation shall be deemed an admission of the allegations and acceptance of the proposed restitution and, if applicable, penalty.

(f) Hearing before hearing examiner.

(1) The hearing examiner shall hear all evidence as may be presented on behalf of the city and the employer. Both parties shall be provided an opportunity to present evidence and argument as well as meet adverse testimony or evidence by reasonable cross-examination and rebuttal evidence. The hearing examiner may in his/her discretion permit other interested persons the opportunity to present testimony or evidence or otherwise participate in such hearing. Following the hearing, the hearing examiner shall present to the Council written findings of fact and conclusions of law together with a recommendation regarding the appropriate sanction, including restitution.

(2) Record; evidence. The hearing examiner shall receive and keep record of such proceedings, including testimony and exhibits, and shall receive and give weight to evidence, including hearsay evidence, which possesses probative value commonly accepted by reasonable and prudent persons in the conduct of their affairs.

(3) The city must prove that the employer failed to pay City Minimum Wage by a preponderance of the evidence.

(g) Council Determination

(1) The Council shall consider the evidence contained in the record, the hearing examiner's recommended findings of fact and conclusions, and shall not consider any factual testimony not previously submitted to and considered by the hearing examiner. The Council may accept, reject or modify the findings, conclusions and recommendations of the hearing examiner.

(2) Council action. The Council shall determine whether the employer has failed to pay City Minimum wage, and shall by resolution determine whether to adopt all or part of the findings, conclusions and recommendations of the hearing examiner.

(3) Imposition of costs. The Council may impose upon any respondent some or all of the costs of a contested hearing before an independent hearing examiner. The costs of a contested hearing include, but are not limited to, the costs of the hearing examiner, stenographic and recording costs, copying costs, city staff and attorney time for which adequate records have been kept, rental of rooms and equipment necessary for the hearing, and the cost of expert witnesses. The Council may impose all or part of such costs in any given case if the position, claim or defense of the employer was frivolous, arbitrary or capricious, made in bad faith, or made for the purpose of delay or harassment.

(h) *Relief and administrative fines.* The penalty recommended by the director or imposed by the Council may include any appropriate relief, including but not limited to:

(1) Reinstatement and back pay, for any violation.

(2) For the first violation, an administrative fine of \$500.00.

(3) For the second and subsequent violations, an administrative fine of \$1,000.00.

(4) In addition to any administrative fine, for the first violation, the payment of any wages unlawfully withheld, and the payment of an additional sum as liquidated damages to each employee whose rights under this chapter were violated. The dollar amount of wages withheld from the employee, or \$250.00, whichever amount is greater, may be included as liquidated damages to be paid to the employee.

(5) In addition to any administrative fine, for a second violation by an employer against the same employee, in addition to the payment of any wages unlawfully withheld, the director shall assess liquidated damages in an additional amount and order the employer to pay to the employee the dollar value of the wages unlawfully

withheld multiplied by two (2), or two hundred fifty dollars (\$250.00), whichever amount is greater. In addition thereto, for any second violation by an employer, the director shall assess an administrative fine, payable to the city, up to one thousand dollars (\$1,000.00).

(5) In addition to the above, for a third or any subsequent violations against the same employee, the director shall assess liquidated damages, payable to the employee, up to one thousand dollars (\$1,000.00), or an amount equal to ten (10) percent of the total amount of unpaid wages, whichever is greater.

(6) An administrative fine of up to one thousand dollars (\$1,000.00), payable to the employee, for each violation of section 224.10 of this chapter.

(7) An administrative fine of up to one thousand dollars (\$1,000.00), payable to the city, for each violation of sections 224.08, and 224.09, 224.10 of this chapter.

Sec. 224.08 Notice and Posting.

- (a) Employers shall give notice on an annual basis that employees:
 - (1) Are entitled payment of minimum wage under this chapter; and
 - (2) that each employee has the right to report a violation of this chapter if:
 - a. payment of minimum wage as required by this section is denied by the employer; or
 - b. the employee is retaliated against for requesting payment of minimum wage; or
 - c. the employee is retaliated against for reporting a violation of this chapter.
- (b) The department shall create and make available to employers a poster and a model notice, hereinafter referred to as the "notice," which contains the information required under subsection (a) of this section for their use in complying with that subsection. The poster shall be printed in English and any other languages that the department determines are needed to notify employees of their rights under this chapter.
- (c) Employers may comply with this section by displaying the poster in a conspicuous and accessible place in each establishment where such employees are employed.
- (d) An employer that provides an employee handbook to its employees must include in the handbook notice of employee rights and remedies under this chapter.

Sec. 224.09 Employer Records.

- (a) An employer shall create and retain records documenting wages paid to each employee. Such records shall be retained for a period of not less than three (3) years from the date such hours were worked.
- (b) Employers shall allow the department access to such records, with appropriate notice and at a mutually agreeable time, to investigate potential violations and to monitor compliance with the requirements of this chapter even if the department is not investigating a potential violation. The employer shall allow the department to copy, as needed, only those records which document the hours worked by employees and the amount paid to employees for that work. To the extent permitted by law, social security numbers and employees' personal addresses shall

not become a matter of public record. At the employee's request the employer shall provide a copy of these records to the employee.

(c) If an employer fails to create and retain adequate records or does not allow the department reasonable access to the records and an issue arises as to an alleged violation of an employee's rights under this chapter, it shall be presumed that the employer has violated this chapter, absent clear and convincing evidence otherwise.

Sec. 224.10 Exercise of Rights; Retaliation Prohibited.

(a) It shall be unlawful, and a violation of this chapter for an employer or any other person to interfere with, restrain, or deny the exercise of, or the attempted exercise of, any right protected under this chapter.

(1) Such rights include but are not limited to the right to earn minimum wage pursuant to this chapter; the right to make inquiries about the rights protected under this chapter; the right to inform others about their rights; the right to inform the person's employer, union, or similar organization, and/or the person's legal counsel or any other person about an alleged violation; the right to file an oral or written complaint with the department or bring a civil action for an alleged violation; the right to cooperate with the department in its investigations; the right to testify in a proceeding under or related to this; the right to refuse to participate in an activity that would result in a violation of city, state, or federal law; and the right to oppose any policy, practice, or act that is unlawful under this chapter.

(2) No employer or any other person shall communicate to a person exercising rights protected under this section, directly or indirectly, the willingness to inform a government employee that the person is not lawfully in the United States, or to report, or to make an implied or express assertion of a willingness to report, suspected citizenship or immigration status of an employee or a family member of the employee to a federal, state, or local agency because the employee has exercised a right under this chapter.

(b) An employer shall not take any adverse employment action or in any other manner discriminate against an employee because the employee has exercised in good faith the rights protected under this chapter.

(c) A person injured by a violation of this section may bring a civil action in the district court to recover any and all damages recoverable at law, together with costs and disbursements, including reasonable attorney's fees, and may receive injunctive and other equitable relief as determined by the court.

(d) It shall be a rebuttable presumption of retaliation if an employer or any other person takes an adverse action against a person within 90 days of the person's exercise of rights protected in this section. However, in the case of seasonal work that ends before the close of the 90-day period, the presumption also applies if the employer fails to rehire a former employee at the next opportunity for work in the same position. The employer may rebut the presumption with clear and convincing evidence that the adverse action was taken for a permissible purpose.

(e) Standard of proof. Proof of retaliation shall be sufficient upon a showing that an employer or any other person has taken an adverse action against a person and the person's exercise of rights protected was a motivating factor in the adverse action, unless the employer can prove that the action would have been taken in the absence of such protected activity.

(f) The protections afforded shall apply to any person who mistakenly but in good faith alleges violations.

(g) A complaint or other communication by any person triggers the protections of this section regardless of whether the complaint or communication is in writing or makes explicit reference to this chapter.

Sec. 224.11. - Remedies cumulative.

The remedies, penalties, and procedures provided under this chapter are cumulative.

Sec. 224.12 Preemption.

Nothing in this article shall be interpreted or applied so as to create any power or duty in conflict with federal or state law.

Sec. 224.13 No Assumption of Liability.

In undertaking the adoption and enforcement of this article, the city is undertaking only to preserve and protect safety, health, and general welfare. The city is not assuming liability, nor is it imposing on its officers and employees, an obligation for breach of which it is liable in money damages to any person who claims that such breach proximately caused injury. This article does not create a legally enforceable right against the city.

Sec. 224.14 Severability.

If any of the parts or provisions of this article or the application thereof to any person or circumstance is held invalid or unconstitutional by a decision of a court of competent jurisdiction, the remainder of this article, including the application of such part or provisions to persons or circumstances other than those to which it is held invalid, shall not be affected thereby and shall continue in full force and effect. To this end, the provisions of this article are severable.

Section 3

This Ordinance shall take effect and be in force thirty (30) days following its passage, approval, and publication.