

**Attachment 6:  
City of Sebastopol Living Wage Requirement**

## **Chapter 2.72**

### **A LIVING WAGE REQUIREMENT FOR SPECIFIED CITY-FUNDED CONTRACTS AND CITY EMPLOYEES**

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#### **2.72.010 Title and purpose.**

This chapter shall be known and may be cited as the “City of Sebastopol Living Wage Ordinance.” The purpose of this chapter is to protect the public health, safety and welfare by ensuring that City employees, employees of City service contractors, and other businesses who receive funding from the City earn an hourly wage that is sufficient to enable one working parent with one dependent to live with dignity and economic self-sufficiency. The City contracts with many businesses and organizations to provide services to the public, and construct necessary public improvements, for the purpose of promoting economic development and job growth. The City Council seeks to demonstrate through enactment of the ordinance codified in this chapter that the use of City funds to provide living wage jobs will decrease poverty, increase consumer income and reduce the need for taxpayer funded social service programs. In doing so the City takes the lead to establish a community economic standard that permits workers to live out of poverty.

#### **2.72.020 Findings.**

The City Council of the City of Sebastopol finds as follows:

- A. The City of Sebastopol awards contracts to private firms and other businesses to provide services to the public and to City government; and
- B. The City of Sebastopol has a limited amount of taxpayer resources to expend; and
- C. The use of taxpayer dollars to promote sustenance and creation of living wage jobs will increase consumer income, decrease levels of poverty and reduce the need for taxpayer-funded social programs in other areas; and
- D. When City funds are used to contract for services, such contracts should demonstrate an effort to promote an employment environment that enhances the general quality of life within the community and maximizes the productive effect of the City's limited resources; and
- E. The City's use of contractors that do not provide health insurance to their employees can result in imposing the costs of their medical care on the County, State and Federal governments; and
- F. Employees are far more likelier to be healthy if their employer provides reasonable health insurance to them and their dependents; and
- G. The payment of a minimum level of compensation as required by this chapter benefits these interests.

### **2.72.030 Definitions.**

The following words and phrases whenever used in this chapter shall be construed as defined in this section:

"City" means the City of Sebastopol and all City agencies.

"City-funded employers" means all persons or entities that receive from the City direct assistance in the form of grants, loans, or loan guarantees, in-kind services, waivers of City fees, real property or other valuable consideration in the amount of more than \$100,000 in any 12-month period. This term shall not include those who enjoy an economic benefit as an incidental effect of City policies, regulations, ordinances, or charter provisions. A subcontractor shall be deemed to have received a new contract through the City when the person to whom it is subcontracting receives a new City contract, lease, franchise or financial aid.

"Credit for the amount spent providing medical health benefits to such employees" shall be defined as follows: (1) the actual hourly contribution made by the employer for medical health benefits; (2) if the employer is not making an hourly contribution in the amount spent during the preceding month by such employer on medical health benefits for such employee divided by the hours worked except that the City Manager shall have discretion for good cause shown to allow an employer to use an alternate method of determining its average hourly contribution; (3) if the amount contributed by the employer varies between employees (such as a greater contribution for family versus single coverage), then the employer at its option may set the amount of the credit at the average it contributes for all employees covered by this chapter receiving health benefits; (4) if the employer is self-insured and employees covered by this chapter are pooled with other workers, then if the employer finds it impractical to determine the amount spent on health benefits just for employees covered by this chapter, then the

employer may approximate this calculation on the basis of the best data reasonably available and approved by the City Manager (for example, using the average spent by the employer for its entire workforce).

“Employee” means any individual employed by a City-funded employer, lessee, financial aid recipient or service contractor, including subcontracts therefrom, unless he or she spends less than 25 percent of his or her work time on work arising directly from the City’s financial contribution. No work may be reassigned in order to evade coverage under this chapter. For the purposes of determining whether an employer employs more than six employees for the purpose of this chapter, such number shall be determined by the most recent payroll period unless the employer had less than seven employees during the preceding eight payroll periods and will have less than seven during the next eight payroll periods.

“Employer” means those persons identified in SMC [2.72.040](#) except that no person other than the City shall be deemed an employer until they receive a new contract, lease concession or franchise, from or through the City. For these purposes the term “new” includes any arrangement entered into after the ordinance codified in this chapter was introduced, or any amendment, extension or renewal of a preexisting arrangement, or the City allowing continued occupancy by tenants with periodic tenancies (such as month-to-month tenants). A subcontractor shall be deemed to have received a new contract through the City when the person to whom it is subcontracting receives a new City contract, lease, franchise or financial aid.

“Nonprofit” shall mean a nonprofit organization described in Section [501c](#) of the Internal Revenue Code of 1954 which is exempt from taxation under Section 501c of that code, or any nonprofit educational organization qualified under Section [233701d](#) of the Revenue and Taxation Code.

“Part-time employee” means any employee whose regular hours of work are less than 40 hours per week.

“Person” means any individual, proprietorship, partnership, joint venture, corporation, limited liability company, trust, association, or other entity that may employ individuals or enter into contracts.

“Service contract” means a contract given a contractor by the City for the furnishing of services to or for the City, except contracts where services are incidental to the delivery of products, equipment or commodities. Service contracts include but are not limited to security guard services, janitorial services, waste management, landscaping, parking attendant services, towing and health care.

“Service contractor” means any person or entity that enters into a service contract as hereafter defined in an amount equal to or greater than \$10,000.

## **2.72.040 Employers subject to the requirements of this chapter.**

The persons and entities described below shall comply with the minimum compensation standards established by this chapter if they employ more than six employees:

- A. The City of Sebastopol, including all its agencies, departments and offices.
- B. For-profit service contractors that receive contract(s) for \$10,000 or more from the City in a 12-month period.

- C. Nonprofit service contractors that receive contracts from the City of \$20,000 or more in a 12-month period.
- D. Recipients of City leases, concessions, or franchises which employ 25 or more employees and have \$350,000 or more in annual gross receipts.
- E. Recipients that receive more than \$100,000 in loans or other cash and/or noncash assistance in any 12-month period. Compliance shall be required during the term in which the assistance is received.
- F. Subcontractors or subtenants of any of the persons described in subsections [B](#) through [E](#) of this section and which have \$50,000 or more in annual gross receipts.

### **2.72.050 Exceptions and waivers.**

- A. Any employer that contends that it is unable to pay all or part of the living wage must provide a detailed explanation in writing to the City Manager (or the City Manager's designee) who may recommend an exception to the City Council.

The explanation must set forth the reasons for its inability to comply with the provisions of this chapter, including a complete cost accounting for the proposed work to be performed with the financial assistance sought.

- B. The City Council may grant an exception upon making one or more of the following findings:
  - 1. That the employer has demonstrated economic hardship.
  - 2. That the exception will further the interests of the City of Sebastopol in providing training positions which will enable employees to advance into permanent living wage jobs or better.
  - 3. That the exception will further other public objectives.
  - 4. That the exception is requested by both parties to a memorandum of understanding or other form of collective bargaining agreement.

However, no exception will be granted if the effect of the exception is to replace or displace existing positions or employees or to lower the wages of current employees.

- C. Exceptions to the requirements of this chapter will be made for the term of the financial assistance, except that the City reserves the right to rescind the exception at any time due to changed circumstances which lead the City to revise the findings on which the exception was based.
- D. The City Council of the City of Sebastopol reserves the right to waive the requirements of this chapter upon a finding and determination of the City Council that a waiver is in the best interests of the City of Sebastopol. The City Council may also waive the requirements of this chapter during an emergency due to war or natural or human made disasters.

E. Any waiver or exception shall be granted for no more than one year. At the end of the year, the employer may reapply for a new waiver or exception which may be granted subject to the same criteria for granting the initial waiver or exception.

### **2.72.060 Compensation required to be paid to employees.**

Except as otherwise provided in this chapter, an employer subject to this chapter shall provide its covered employees the following minimum compensation:

A. *Living Wages.* The employer shall pay each employee an hourly wage of not less than \$13.20, except that the employer shall receive credit for the actual amount spent providing medical health benefits to such employee as defined in SMC [2.72.030](#). As an example, if an employer spends \$1.50 per hour on medical health benefits, then the employer must pay a cash wage of only \$11.70 per hour.

B. *Time Off.* Employees shall be entitled to at least 22 days off per year for sick leave, vacation or personal necessity. Twelve of the required days off shall be compensated at the same rate as regular compensation for a normal working day. Ten of the required 22 days may be uncompensated days off. Employees who work part-time shall be entitled to accrue compensated days off in increments proportional on an annual basis to 12 days per year. Employees shall be eligible to use accrued days off after the first six months of satisfactory employment or consistent with employer policy, whichever is sooner. Paid holidays, consistent with established employer policy, may be counted toward provision of the required 12 compensated days off.

C. The initial rates set forth in subsection [A](#) of this section shall increase annually on July 1st, in accordance with any increase due to a cost of living adjustment for City employees, equal to the average COLA for all City nonsafety employees, but no more than the Consumer Price Index for San Francisco-Oakland-San Jose published by the Bureau of Labor Statistics, in any fiscal year.

### **2.72.070 Provisions required contract.**

Every City contract, lease, license, concession agreement, franchise agreement or agreement for City funding with an employer described in SMC [2.72.040](#) or amendment thereto shall contain provisions requiring it to comply with the requirements of this chapter as they exist on the date when the employer entered its agreement with the City or when such agreement is amended. Such contract provisions shall address the employer's duty to promptly provide to the City documents and information verifying its compliance with the requirements of this chapter, and sanctions for noncompliance. Such contract provisions shall also require the employer to notify each of its affected employees with regard to the wages that are required to be paid pursuant to this chapter.

### **2.72.080 Exemptions.**

The requirements of this chapter shall not be applicable to the following employees:

- A. An employee who is under 21 years of age employed by a nonprofit entity for after school or summer employment or as a trainee for a period not longer than six months.
- B. A temporary employee whose term of employment will not exceed six months in duration.
- C. Volunteers.
- D. City employees during their first six months of employment, which is considered a training or probationary period.
- E. Employees of contractors on City public works projects subject to the requirements of Division 2, Part 7, of the [California Labor Code](#), when said code requires compensation greater than that required by this chapter.
- F. Employees who are standing by or on call according to the criteria established by the Fair Labor Standards Act, [29](#) U.S.C. Section [201](#). This exemption shall apply only during the time when the employee is actually standing by or on call.
- G. Any disabled employee who (1) is covered by a current sub-minimum wage certificate issued to the employer by the U.S. Department of Labor; or (2) would be covered by such a certificate but for the fact that the employer is paying a wage equal to or higher than the minimum wage.
- H. An employee for whom application of the requirements of this chapter is prohibited by State or Federal law.

### **2.72.090 Retaliation and discrimination prohibited.**

It shall be unlawful to retaliate or discriminate against any person on account of his having claimed a violation of this chapter.

### **2.72.100 Employee complaints to the City.**

- A. Any employee covered by this chapter who alleges violation of any provision of the requirements of this chapter may report such acts to the City. The City Manager may establish a procedure for receiving and investigating such complaints and take appropriate enforcement action.
- B. Any complaints received shall be treated as confidential matters, to the extent permitted by law. Any complaints received and all investigation documents related thereto shall be deemed exempt from disclosure pursuant to California Government Code Sections [6254](#) and [6255](#).

### **2.72.110 Private right of action.**

- A. A person claiming violation of this chapter may bring an action in the Superior Court of the State of California against an employer and obtain the following remedies:
1. Back pay for each day during which the employer failed to pay the compensation required by this chapter.
  2. Reinstatement, compensatory damages and punitive damages.
  3. Reasonable attorney's fees and costs.
- B. Notwithstanding any provision of this chapter or any other ordinances to the contrary, no criminal penalties shall attach for any violation of this chapter.
- C. No remedy set forth in this chapter is intended to be exclusive or a prerequisite for asserting a claim for relief to enforce any rights hereunder in a court of law. This chapter shall not be construed to limit an employee's right to bring a common law cause of action for wrongful termination.
- D. Nothing in this chapter shall be interpreted to authorize a claim for damages against the City based upon another employer's failure to comply with this chapter.

### **2.72.120 Responsible bidding and use of City funds and facilities.**

Prior to commencement of the contract's term or execution by the City, each contractor, subcontractor, lessee of City property or other City-funded employer will certify to the satisfaction of the City that its employees are paid a living wage as provided by this chapter. As part of any bid, application or proposal for any contract or other funding arrangement with the City covered by SMC [2.72.040](#), the submitter shall (A) include an acknowledgment in a form acceptable to the City of the terms of this chapter and intent to comply therewith, and (B) complete a form to be created by the City Manager indicating whether any charges, complaints, citations or findings of violation of law or regulation by any regulatory agency or court have occurred within the last 10 years, including but not limited to California DFEH, OSHA, Department of Industrial Relations (Labor Commissioner), EPA, and NLRB.

By seeking such contract or arrangement from the City submitter shall be deemed to have authorized the City to obtain additional information upon request about the submitter's history as an employer, including but not limited to information about employee turnover and complaints lodged by employees (unless disclosure is prohibited by their legal right of privacy) so that the City may ascertain the submitter's ability to provide the promised services without disruption and without adverse effect on the City's proprietary interests. To the extent permitted by law, the Council shall consider such matters in deciding whether to award the contract, financial assistance, or other arrangement being sought from the City.

### **2.72.130 Labor relations neutrality.**

No employer covered by SMC [2.72.040](#) shall use any City funds or property to assist, promote or deter union organizing. This restriction shall be subject to the definitions and exclusions found in Government Code Sections [16645\(a\)](#) through [\(e\)](#), [16446](#) and [16647](#), as of January 1, 2002.

City staff may enforce this chapter by awaiting citizen complaints. Nothing herein shall be construed as a promise by the City to actively monitor contractor compliance.

### **2.72.140 Phase-in and transitional funding for nonprofits.**

All 501(c) nonprofit organizations subject to the provisions of this chapter shall be exempted from its wage requirements for the first three years following its enactment.

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**The Sebastopol Municipal Code is current through Ordinance 1148, passed September 19, 2023.**

Disclaimer: The City Clerk's Office has the official version of the Sebastopol Municipal Code. Users should contact the City Clerk's Office for ordinances passed subsequent to the ordinance cited above.

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