

ORDINANCE NUMBER _____ (CCS)

(City Council Series)

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF
SANTA MONICA AMENDING SANTA MONICA MUNICIPAL CODE CHAPTER 4.62
REQUIRING A MINIMUM WAGE FOR EMPLOYEES, CHAPTER 4.63 REQUIRING A
LIVING WAGE FOR HOTEL WORKERS, AND CHAPTER 4.65 REQUIRING A LIVING
WAGE FOR CERTAIN CITY CONTRACTORS

WHEREAS, income inequality is a growing problem throughout the United States and within the greater Los Angeles area; and

WHEREAS, the current State minimum wages paid to workers living and working within the greater Los Angeles region, including the City of Santa Monica, are inadequate to meet basic needs and sustain working families; and

WHEREAS, in recognition of these public concerns and to achieve regional coordination in minimum wage policies, on January 26, 2016, the City Council of the City Of Santa Monica adopted Ordinance No. 2509 (CCS), adding Chapter 4.62 to the Santa Monica Municipal Code requiring a minimum wage for employees, and adding Chapter 4.63 to the Municipal Code requiring a living wage for hotel workers; and

WHEREAS, Council authorized the City Manager to convene an ad-hoc Working Group made up of business, labor, and community members to address certain issues that Council identified for further discussion and clarification; and

WHEREAS, consistent with Council direction, the Working Group met on February 17, 24, and 29, 2016, to discuss the issues identified by Council, and unanimously agreed to certain recommendations to amend Ordinance No. 2509 (CCS); and

WHEREAS, the recommended amendments—pertaining to wage alignment, first-time workers, paid sick leave, service charges, enforcement, and hotel hardship waiver—strikes a balance between the practicalities of business operations and the need to ensure fair working conditions and an adequate living wage for employees; improves transparency to employees and consumers; facilitates regional coordination in wage policies; and thereby promotes the public health, safety, and welfare.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF SANTA MONICA DOES HEREBY ORDAIN AS FOLLOWS:

SECTION 1. Santa Monica Municipal Code Chapter 4.62 is hereby amended to read as follows:

Chapter 4.62 MINIMUM WAGE

4.62.010 Definitions.

As used in this Chapter:

- (a) "City" means the City of Santa Monica.
- (b) "Clear and Conspicuous" means in larger type than the surrounding text, or in contrasting type, font, or color to the surrounding text of the same size, or set off from the surrounding text of the same size by symbols or other marks, in a manner that is clearly visible in context and clearly calls attention to the language.
- (c) "Employee" means any person who in a particular week performs at least two hours of work within the geographic boundaries of the City for an Employer; and qualifies as an

employee entitled to payment of a minimum wage from any Employer under the California Labor Code and wage orders published by the California Industrial Welfare Commission.

(d) "Employer" means any person, including a corporate officer or executive, association, organization, partnership, business trust, and limited liability company or corporation, who directly or indirectly, or through an agent or any other person, including through the services of a temporary service or staffing agency or similar entity, employs or exercises control over the wages, hours or working conditions of any Employee.

(e) "Hardest to Employ" means persons who have been out of the workforce for an extended period of time and who face considerable barriers when trying to re-enter the mainstream workforce.

(f) "Nonprofit Corporation" means any organization that is duly organized, validly existing and in good standing under the laws of the jurisdiction of its incorporation and, if a foreign corporation, in good standing under the laws of the State of California, which has established and maintains valid nonprofit status under section 501(c)(3) of the Internal Revenue Code, as amended, and all rules and regulations promulgated thereunder.

(g) "Service Charge" means any separately-designated amount charged and collected by an Employer from customers, that is for service by Employees, or is described in such a way that customers might reasonably believe that the amount is for those services or is otherwise to be paid or payable directly to Employees, including those charges designated on receipts, invoices, or billing statements under the term "service charge," "table charge," "portage charge," "automatic gratuity charge," "healthcare surcharge," "benefits surcharge," or similar language. Service Charge does not include a tip or gratuity as defined under State or federal law.

(h) "Supportive Services" includes, but is not limited to, counseling services, individual case management, pre-employment job readiness training, daily monitoring of participants while on the job, provision of unsubsidized competitive employment opportunities, and assistance in applying for, obtaining, and maintaining unsubsidized competitive employment.

(i) "Transitional Employer" means a Nonprofit Corporation that provides Transitional Jobs for the long-term unemployed, and that has been certified by the City as a Transitional Employer.

(j) "Transitional Job" means short-term, wage-paying, subsidized employment in a Nonprofit Corporation that combines actual work, skill development, and Supportive Services to help participants overcome barriers to employment and transition to unsubsidized competitive employment.

4.62.015 Minimum wage payment requirements.

(a) An Employer shall pay an Employee a wage of no less than the hourly rates set under this section.

(b) Employers with 26 or more Employees shall pay no less than the following hourly wages:

- (1) On July 1, 2016, the hourly wage shall be \$10.50;
- (2) On July 1, 2017, the hourly wage shall be \$12.00;
- (3) On July 1, 2018, the hourly wage shall be \$13.25;
- (4) On July 1, 2019, the hourly wage shall be \$14.25; and
- (5) On July 1, 2020, the hourly wage shall be \$15.00.

(c) Employers with 25 or fewer Employees shall pay no less than the following hourly wages:

(1) On July 1, 2017, the hourly wage shall be \$10.50;

(2) On July 1, 2018, the hourly wage shall be \$12.00;

(3) On July 1, 2019, the hourly wage shall be \$13.25;

(4) On July 1, 2020, the hourly wage shall be \$14.25; and

(5) On July 1, 2021, the hourly wage shall be \$15.00.

(d) On July 1, 2022, and annually thereafter, the minimum wage will increase based on the Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI-W) for the Los Angeles metropolitan area (Los Angeles-Riverside-Orange County, California), which is published by the Bureau of Labor Statistics. The City shall announce the adjusted rates annually each January 1st and publish a bulletin announcing the adjusted rates, which shall take effect on July 1st of each year.

(e) Employees who are learners, as defined in Labor Code section 1192 and consistent with wage orders published by the California Industrial Welfare Commission, shall be paid not less than 85% of the minimum wage rounded to the nearest nickel during their first 160 hours of employment, after which learners shall be paid the applicable minimum wage pursuant to this section.

(f) Every Employer shall post in a conspicuous place at any workplace or job site where any Employee works, the bulletin published each year by the City informing Employees of the current minimum wage rate and of their rights under this Chapter. Every Employer shall post notices in English, Spanish, and any other language spoken by at least five

percent of the Employees. Every Employer shall also provide to each Employee at the time of hire, the Employer's name, address, and telephone number in writing.

(g) Every Employer shall retain payroll records pertaining to Employees for no less than three years.

(h) For purposes of this section:

(1) Multiple Employers that form a single integrated enterprise shall be considered a single Employer under this section if so deemed under the Fair Labor Standards Act; and

(2) The number of Employees shall be determined by the average number of Employees employed per quarter during the previous calendar year.

4.62.020 Deferral application for certain Nonprofit Corporation Employers.

The City shall establish a procedure to allow a Nonprofit Corporation Employer with 26 or more Employees to qualify for the deferral rate schedule set forth in section 4.62.015, subdivision (c). A Nonprofit Corporation Employer seeking the deferral must establish evidence that:

(a) The chief executive officer earns a salary that, when calculated on an hourly basis, is less than five times the lowest wage paid by the Nonprofit Corporation; or

(b) The Nonprofit Corporation is a Transitional Employer; or

(c) The Nonprofit Corporation serves as a child care provider; or

(d) The Nonprofit Corporation is funded primarily by City, county, state or federal grants or reimbursements.

4.62.025 Paid sick leave.

(a) Paid sick leave shall begin to accrue at the commencement of an Employee's employment with the Employer.

(b) An Employee shall accrue one hour of paid sick leave for every 30 hours worked. Such paid sick leave shall accrue only in hour-unit increments; there shall be no accrual of a fraction of an hour of such time off.

(1) For Employers with 26 or more Employees, the Employer shall provide at least 40 hours of accrued paid sick leave as of January 1, 2017, and at least 72 hours of accrued paid sick leave as of January 1, 2018. Unused accrued paid sick leave will carry over from year to year (whether calendar year, fiscal year, or year of employment) until the paid sick leave reaches a maximum of 40 or 72 hours, unless the Employer's established policy is more generous.

(2) For Employers with 25 or fewer Employees, the Employer shall provide at least 32 hours of accrued paid sick leave as of January 1, 2017, and at least 40 hours of accrued paid sick leave as of January 1, 2018. Unused accrued paid sick leave will carry over from year to year (whether calendar year, fiscal year, or year of employment) until the paid sick leave reaches a maximum of 32 or 40 hours, unless the Employer's established policy is more generous.

(3) No accrual or carry over is required if the full amount of leave required by this section is received at the beginning of each calendar year, fiscal year or year of employment.

(c) An Employee may use paid sick leave consistent with State sick leave laws.

(d) An Employee is eligible to use accrued paid sick leave after the first 90 days of employment or consistent with the Employer's policies, whichever is sooner.

(e) An Employer is not required to provide financial or other reimbursement to an Employee upon the Employee's termination, resignation, retirement, or other separation from employment, for unused accrued paid sick leave.

(f) An Employer may not require, as a condition of an Employee's taking paid sick leave, that the Employee search for or find a replacement worker to cover the hours during which the Employee is off.

(g) The provisions of this section provide minimum requirements pertaining to paid sick leave and shall not be construed to preempt, limit, or otherwise affect the applicability of any other law, regulation, policy, or standard that provides for separate or greater accrual or use by Employees of sick leave, whether compensated or uncompensated, or that extends other protections to Employees. This section shall not be construed to prevent an Employer from adopting or retaining leave policies that are more generous than policies that comply with this section.

4.62.030 Exemptions.

(a) The requirements of this Chapter shall not apply to Employers that are government agencies, including federal agencies, state agencies, cities, counties, school districts, and all other public entities.

(b) The requirements of this Chapter shall not apply to Hotel Employers or Hotel Workers, except as otherwise provided in Chapter 4.63 of this Code.

4.62.035 Limited exemption for Transitional Employers.

(a) Transitional Employers that provide Supportive Services and Transitional Jobs for the Hardest to Employ may pay each Employee in a Transitional Job an hourly wage that is below the minimum wage set forth under this Chapter during the first 18 months of the Employee's work in the Transitional Job.

(b) The City shall establish a procedure to determine whether an Employer may be certified as a Transitional Employer, including but not limited to consideration of the following criteria:

(1) The Employer's nonprofit corporate status;

(2) The profile of program participants (e.g., homeless individuals, individuals with addictions, at-risk youth);

(3) The components of the Employer's Transitional Job program, including Supportive Services, designed to help program participants transition towards unsubsidized competitive employment; and

(4) Any other criteria as may be developed in the administrative regulations adopted consistent with this Chapter.

4.62.040 Service Charges.

(a) **Service Charges.** An Employer shall distribute all Service Charges in their entirety to the Employee(s) who performed services for the customers from whom the Service Charges are collected. No part of these amounts may be paid to Employees whose primary role is supervisory or managerial. No Employer or agent thereof shall deduct any amount from wages or other compensation required by this Chapter due an Employee on account of a Service Charge, or require an Employee to credit the amount of a Service Charge, in whole or in part, against and as a part of the wages or other compensation required by this Chapter due the Employee.

(1) Amounts collected as Service Charges shall be paid to Employee(s) equitably and according to the services that are or appear to be related to the description of the amounts given by the Employer to the customers. Employees whose roles are primarily non-

managerial or non-supervisory, and who directly or indirectly contributed to the chain of services performed for the customers from whom the Service Charge is collected, may share in the distribution of the Service Charge amounts. Except as otherwise required by law, amounts collected as healthcare-related surcharges shall be (i) deposited within seven days of their collection into segregated accounts controlled exclusively by Employees, including but not limited to Flexible Spending Accounts, Health Savings Accounts, or Premium-Only Cafeteria Plans; or (ii) paid to Employees in wages. No part of any amount collected as a surcharge for healthcare or any other Employee benefit shall revert to the Employer.

(2) Notwithstanding the foregoing:

(A) Amounts collected for hotel banquets or hotel-catered meetings shall be paid to the Employees who actually work at the banquet or catered meeting;

(B) Amounts collected for hotel room service shall be paid to the Employees who actually deliver food and beverage associated with the charge; and

(C) Amounts collected for hotel portage service shall be paid to the Employees who actually carry the baggage associated with the charge;

Provided, however, that Employers that had, prior to the effective date of this Chapter, an existing practice of pooling and distributing the amounts specified in this subdivision to non-management/non-supervisory Employees other than the above-listed Employees in subdivisions (A) through (C) may continue such practice to the same extent.

(b) All Service Charges must be disclosed to consumers with Clear and Conspicuous notice prior to the time that the customer makes a purchase or selection, in such a way that customers might easily and reasonably deduce what the Service Charge is for.

(c) If an Employer characterizes and separately designates a Service Charge as optional, the designation must be written in a manner that requires the customer to affirmatively add the optional payments. The Employer shall not automatically add such optional payment amounts to a customer receipt, invoice, or billing statement in a manner that requires the customer to affirmatively opt out of paying such amounts.

(d) The Employer shall disclose in writing to each Employee its plan of distribution of Service Charges and shall report to Employees on each payroll date on the amount of Service Charges collected and amounts distributed to Employees for the pay period in question.

(e) The amounts shall be paid to the Employees no later than the next payroll following collection of the amounts from customers, except that any amounts collected in cash shall be paid to Employees at the close of business on the day the amounts are collected.

(f) An Employer that permits customers to pay Service Charges by credit card shall pay the Employees the full amount of the Service Charge that the customer indicated on the credit card slip, without any deductions for any credit card payment processing fees or costs that may be charged to the Employer by the credit card company.

(g) The Employer shall keep records showing compliance with the provisions of this section for no less than three years from the date of collection of Service Charge amounts from the customer.

(h) This section does not apply to any tip, gratuity, money, or part of any tip, gratuity, or money that has been paid or given to or left for an Employee by customers over and above the actual amount due for services rendered or for goods, food, drink, or articles sold or served to customers.

4.62.045 Supercession by collective bargaining agreement.

The provisions of this Chapter, or any part thereof, may be waived in a bona fide collective bargaining agreement, but only if the waiver is explicitly set forth in such agreement in clear and unambiguous terms. Unilateral implementation of terms and conditions of employment by either party to a collective bargaining relationship shall not constitute or be permitted as a waiver of all or any part of the provisions of this Chapter.

4.62.050 No waiver of rights.

Except for bona fide collective bargaining agreements, any waiver by an Employee of any provisions of this Chapter shall be deemed contrary to public policy and shall be void and unenforceable.

4.62.060 Unlawful practices.

(a) It shall be unlawful for an Employer to reduce the hours or benefits of, refuse to hire, discharge, displace or otherwise discriminate or take adverse action against any Employee or other individual in order to pay wages less than the minimums established under this Chapter.

(b) It shall be unlawful for an Employer to directly fund the wages and benefits required under this Chapter by reducing the pension, vacation, or other non-wage benefits of any Employee, or by increasing charges to Employees for parking, uniforms, meals, or other work-related materials or equipment.

4.62.070 Retaliatory action prohibited.

(a) It shall be unlawful for an Employer to reduce the hours, wages or benefits of; demote; suspend; discharge; or otherwise discriminate or take adverse action against any person

for exercising rights protected under this Chapter. Such rights include but are not limited to opposing any practice proscribed by this Chapter, participating in proceedings related to this Chapter, seeking to enforce the person's rights under this Chapter by any lawful means, or otherwise asserting rights under this Chapter.

(b) Taking adverse action against a person within 90 days of the person's exercising rights protected under this Chapter shall raise a rebuttable presumption that the adverse action was taken in retaliation for the exercise of such rights.

4.62.080 Reports.

Every year after July 1, 2016, the City shall collect economic data, including jobs, business license, and sales tax, and shall make this information available to the City Council and to the public.

4.62.090 Administrative regulations.

The Finance Director is authorized to adopt administrative regulations that are consistent with the provisions of this Chapter. Violations of the administrative regulations adopted pursuant to this section shall constitute violations of this Chapter, and shall subject the violator to the penalties set forth in this Chapter.

4.62.100 Law enforcement remedies and penalties.

(a) Unless otherwise specifically provided, any person violating any provision of this Chapter shall be guilty of a misdemeanor, which shall be punishable by a fine not exceeding \$500 but not less than \$150 per violation, or imprisonment in the County Jail for a period not exceeding six months, or by both fine and imprisonment, or shall be guilty of an infraction, which shall be punishable by a fine not exceeding \$250 but not less than

\$100 per violation. Each such person shall be guilty of a separate offense for each and every day during any portion of which any violation of any provision of this Chapter is committed, continued, or permitted by such person and shall be punishable accordingly.

(b) Any person violating any provision of this Chapter or any rule or regulation may be subject to administrative citation pursuant to Chapter 1.09 of this Code.

(c) Any person convicted of violating any provision of this Chapter or the terms and conditions of any permit or approval issued pursuant to this Chapter shall be required to reimburse the law enforcement agency that investigated the violation its full investigative costs.

(d) Violation of any provision of this Chapter, with the exception of sections 4.62.060 and 4.62.070, shall be considered a strict liability offense; accordingly, the prosecution shall not be required to prove criminal intent or that the violator meant to violate any provision of this Chapter.

(e) Prosecution for any violation of this Chapter, including the issuance of any administrative citation or order, shall be commenced within three years after discovery of the commission of the offense by law enforcement authorities or by the victims of the offense.

4.62.110 Civil remedies.

(a) Any applicant or Employee aggrieved by a violation of this Chapter or any other person or entity acting on behalf of the public, may file a civil action in a court of competent jurisdiction against the person violating this Chapter.

(b) Upon prevailing, any aggrieved applicant or Employee shall be entitled to legal or equitable relief, including, without limitation, the payment of any back wages unlawfully

withheld, the payment of any sick leave unlawfully withheld, the payment of penalties up to the amount of \$100 to each person whose rights under this Chapter were violated for each day that the violation occurred or continued, reinstatement in employment, and/or injunctive relief, and shall be awarded reasonable attorneys' fees and costs. For willful violations, the amount of monies and penalties to be paid under this subdivision may be trebled.

(c) Any person or entity enforcing this Chapter on behalf of the public, upon prevailing, shall be entitled only to equitable, injunctive or restitutionary relief, and reasonable attorneys' fees and costs. The right to recover reasonable attorneys' fees and costs does not apply to any proceeding initiated by a governmental entity.

(d) The remedies set forth in this Chapter are cumulative. Nothing in this Chapter shall be interpreted as restricting, precluding, or otherwise limiting a separate or concurrent criminal prosecution under this Code or State law.

4.62.120 Higher minimum wage under State or federal law; conflicts; relief.

(a) If at any time the State or federal minimum wage is scheduled to exceed the minimum wage required under this Chapter, employers shall pay the higher minimum wage.

(b) Nothing in this Chapter shall be interpreted or applied so as to create any power or duty in conflict with any State or federal law.

(c) Nothing in this Chapter shall be construed to limit any Employee's right to obtain relief to which the Employee may be entitled at law or in equity.

SECTION 2. Sections 4.63.010, 4.63.015, 4.63.020, and 4.63.040 of Santa Monica Municipal Code Chapter 4.63 are hereby amended to read as follows:

4.63.010 Definitions.

As used in this Chapter:

(a) "City" means the City of Santa Monica.

(b) "Hotel" means a residential building that is designated or used for lodging and other related services for the public, and containing guest rooms or suites of rooms. "Hotel" also includes any contracted, leased or sublet premises connected to or operated in conjunction with the building's purpose, or providing services at the building. "Hotel" does not include hostels, which is defined as any lodging facility that is primarily characterized by dormitory-style accommodations, shared bathrooms, and reservations of beds rather than rooms.

(c) "Hotel Employer" means any person, including a corporate officer or executive, association, organization, partnership, business trust, and limited liability company or corporation, who owns, controls, and/or operates a Hotel in the City, or a person who owns, controls, and/or operates any contracted, leased or sublet premises connected to or operated in conjunction with the Hotel's purpose, or a person who provides services at the Hotel.

(d) "Hotel Worker" means any individual whose primary place of employment is at one or more Hotels and who is employed directly by the Hotel Employer, or by a person who has contracted with the Hotel Employer to provide services at the Hotel. "Hotel Worker" does not include a managerial, supervisory or confidential employee.

(e) "Service Charge" means any separately-designated amount charged and collected by an Employer from customers, that is for service by Employees, or is described in such a way that customers might reasonably believe that the amount is for those services or is otherwise to be paid or payable directly to Employees, including those charges

designated on receipts, invoices, or billing statements under the term “service charge,” “table charge,” “portage charge,” “automatic gratuity charge,” “healthcare surcharge,” “benefits surcharge,” or similar language. Service Charge does not include a tip or gratuity as defined under State or federal law.

4.63.015 Minimum wage payment requirements.

(a) Hotel Employers shall pay Hotel Workers a wage of no less than the hourly rates set under this section.

(b) The minimum wage for each Hotel Worker shall be as follows:

(1) On July 1, 2016, the hourly wage shall be \$13.25; and

(2) On July 1, 2017, and annually thereafter, the hourly wage shall match the hourly wage set for Hotel Workers in the City of Los Angeles.

(c) The City shall announce the adjusted rates annually each January 1st and publish a bulletin announcing the adjusted rates, which shall take effect on July 1st of each year.

4.63.020 One-year waiver for certain Hotel Employers.

(a) This Chapter is not intended to cause reduction in employment or work hours for Hotel Workers. Therefore, the Finance Director may grant a waiver from the requirements of this Chapter if a Hotel Employer can demonstrate to the Finance Director that compliance with this Chapter would force the Hotel Employer, in order to avoid bankruptcy or a shutdown of the hotel, to reduce its workforce by more than 20 percent or curtail its Hotel Workers’ total hours by more than 30 percent. The Finance Director shall reach a determination only after reviewing and auditing, as necessary, the Hotel Employer’s financial condition, with such review or audit paid for by the Hotel Employer, at rates established by resolution of the City Council. Any waiver granted by the Finance Director

is valid for no more than one year. Any waiver granted under this section does not exempt Hotel Employers from compliance with Chapter 4.62 of this Code. A determination by the Finance Director to grant or deny a request for waiver may be appealed to a hearing examiner pursuant to Chapter 6.16 of this Code.

(b) A Hotel Employer that applies for a waiver under this section must provide (1) advance, written notice to all Hotel Workers of such application for waiver; and (2) written notice to all Hotel Workers of the Finance Director's determination within three days after such determination.

4.63.040 Service Charges.

A Hotel Employer shall comply with Santa Monica Municipal Code section 4.62.040 with respect to any Service Charges.

SECTION 3. Section 4.65.010 of Santa Monica Municipal Code Chapter 4.65 shall be amended to read as follows:

As used in this chapter:

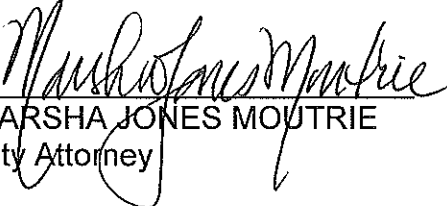
"Employee" means any person who does not actually work as a manager, supervisor, or confidential employee, and who is not required to possess an occupational license.

"Minimum wage" means a wage payment set under this Chapter. As of July 1, 2005, minimum wage means a wage payment at an initial hourly rate of eleven dollars and fifty cents per hour. As of July 1, 2014, minimum wage means a wage payment at an initial hourly rate of \$15.37. As of July 1, 2018, and annually thereafter, the minimum wage shall match the hourly wage set for Hotel Workers under Chapter 4.63 of this Code.

SECTION 4. If any section, subsection, 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 each and every section, subsection, sentence, clause, or phrase not declared invalid or unconstitutional without regard to whether any portion of the ordinance would be subsequently declared invalid or unconstitutional.

SECTION 5. The Mayor shall sign and the City Clerk shall attest to the passage of this Ordinance. The City Clerk shall cause the same to be published once in the official newspaper within 15 days after its adoption. This Ordinance shall become effective 30 days from its adoption.

APPROVED AS TO FORM:


MARSHA JONES MOUTRIE
City Attorney