

EXHIBIT A
DRAFT

ORDINANCE NO. XX-2019

**AN ORDINANCE OF THE CITY OF FREMONT AMENDING
FREMONT MUNICIPAL CODE TITLE 5, BUSINESS LICENSES
AND REGULATIONS, CHAPTER 5.30 MINIMUM WAGE**

THE CITY COUNCIL OF THE CITY OF FREMONT DOES ORDAIN AS FOLLOWS:

SECTION 1. FMC CHAPTER 5.30 ADDED

Fremont Municipal Code Title 5, Chapter 5.30 is added to read as follows:

Chapter 5.30

MINIMUM WAGE

- Sec. 5.30.010 Title.
- Sec. 5.30.020 Authority.
- Sec. 5.30.030 Definitions.
- Sec. 5.30.040 Minimum wage.
- Sec. 5.30.050 Employee exemptions.
- Sec. 5.30.060 Waiver through collective bargaining.
- Sec. 5.30.070 Notice, posting and payroll records.
- Sec. 5.30.080 Retaliation prohibited.
- Sec. 5.30.090 Implementation.
- Sec. 5.30.100 Enforcement.
- Sec. 5.30.110 Relationship to other requirements.
- Sec. 5.30.120 Application of minimum wage to welfare-to-work programs.
- Sec. 5.30.130 Fees.

Sec. 5.30.010 Title.

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

Sec 5.30.020 Authority.

This chapter is adopted pursuant to the powers vested in the city of Fremont 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 Section 1205(b) of the California Labor Code.

Sec. 5.30.030 Definitions.

The following terms shall have the following meanings:

“City” means the city of Fremont or any third-party service provider to the extent designated by the city of Fremont to perform various investigative, enforcement and informal resolution functions pursuant to this chapter.

“Employee” means any person who:

- (1) In a calendar week performs at least two (2) hours of work for an employer within the geographic boundaries of the City; and
- (2) Qualifies as an employee entitled to payment of a minimum wage from any employer under the California minimum wage law, as provided under Section 1197 of the California Labor Code and wage orders published by the California Industrial Welfare Commission, or is a participant in a Welfare-to-Work Program.

“Employer” means any person receiving or holding a business tax certificate under Chapter 5.05 of the Fremont Municipal Code, or any person, including corporate officers or executives, as defined in Section 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, subcontractor or similar entity, employs or exercises control over the wages, hours or working conditions of any employee.

“Minimum Wage” shall have the meaning set forth in Section 5.30.040 of this chapter.

“Nonprofit Corporation” means a nonprofit corporation, 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 corporation has established and maintains valid nonprofit status under Section 501(c)(3) of the United States Internal Revenue Code of 1986, as amended, and all rules and regulations promulgated under such section, or any non-profit educational organization qualified under Section 23701(d) of the Revenue and Taxation Code.

“Welfare-to-Work Program” means the CalWORKS Program, County Adult Assistance Program (CAAP) that includes the Personal Assisted Employment Services (PAES) Program, and General Assistance Program, and any successor programs that are substantially similar to them.

Sec. 5.30.040 Minimum wage.

(a) Employers shall pay employees no less than the minimum wage set forth in this section for each hour worked within the geographic boundaries of the city.

(b) Beginning July 1, 2019, the minimum wage shall be an hourly rate of thirteen dollars and fifty cents (\$13.50). On July 1, 2020, the minimum wage shall increase to an hourly rate of fifteen dollars (\$15.00). To prevent inflation from eroding its value, beginning on July 1, 2021, and each July 1st thereafter, the minimum wage shall increase by an amount corresponding to the increase, if any, in the cost of living, not to exceed 5%.

(c) The increase in the cost of living shall be measured by the percentage increase, if any, in the Bay Area Consumer Price Index (Urban Wage Earners and Clerical Workers, San Francisco-Oakland-San Jose, CA for all Items) or its successor index as published by the U.S. Department of Labor or its successor agency. The percentage increase shall be calculated from February of the prior year to February of the year in which the increase would take effect, with the amount of the minimum wage increase rounded to the nearest multiple of five (\$.05) cents. If there is no net increase in the cost of living, the minimum wage shall remain unchanged for that year. The adjusted minimum wage shall be announced by April 1st of each year, or as soon as practicable thereafter if the Consumer Price Index for February has not yet been published, and shall become effective as the new minimum wage on July 1st of the following year.

(d) 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 provided in Part 1 (commencing with Section 200) of Division 2 of the California Labor Code, to the date immediately preceding the date the wages are paid in full.

Sec. 5.30.050 Employee exemptions.

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

(a) Employees up to twenty-five (25) years of age who are employed by a non-profit or governmental entity for after school or summer employment, or as a student intern, or as a volunteer, or as a trainee for a period not longer than one hundred twenty (120) days.

(b) 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.

Sec. 5.30.060 Waiver through collective bargaining.

To the extent required by federal law, all or any portion of the applicable requirements of this chapter may be waived in a bona fide collective bargaining agreement, provided that such waiver is explicitly set forth in such agreement in clear and unambiguous terms.

Sec. 5.30.070 Notice, posting and payroll records.

(a) By April 1st or as soon as practicable thereafter of each year, the city shall publish and make available to employers a bulletin announcing the adjusted minimum wage rate for the upcoming year, which shall take effect on July 1st. In conjunction with this bulletin, the city shall by April 1st, or as soon as practicable thereafter of each year, publish and make available to employers, in the top five languages spoken in the city based on the latest available census information for the city, 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.

(b) 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. Every employer shall post such notices in the top five languages spoken in the city based on the latest available census information for the city at the workplace or job site. Every employer shall also provide each employee at the time of hire with the employer's name, address, and telephone number in writing.

(c) Employers shall retain payroll records pertaining to employees for a period of four 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. Failure to maintain such records or to allow the city reasonable access shall render the employer subject to administrative citation, pursuant to Section 5.35.100 of this chapter.

(d) If a violation of this chapter has been finally determined, the city shall require the employer to post public notice of the employer's failure to comply in a form determined by the city. Failure to post such notice shall render the employer subject to administrative citation, pursuant to Section 5.35.100 of this chapter.

Sec. 5.30.080 Retaliation prohibited.

(a) It is unlawful for an employer or any other party to discriminate in any manner or take adverse action against any person in retaliation for exercising rights protected under this chapter. Rights protected under this chapter include, but are not limited to: the right to file a complaint or inform any person about any party's alleged noncompliance with this chapter; and the right to inform any person of his or her potential rights under this chapter and to assist him or her in asserting such rights. Protections of this chapter shall apply to any person who mistakenly, but in good faith, alleges noncompliance with 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 for the exercise of such rights.

Sec. 5.30.090 Implementation.

(a) Guidelines. The city shall be authorized to coordinate implementation and enforcement of this chapter and may promulgate appropriate guidelines or rules for such purposes. Any guidelines or rules promulgated by the city shall have the force and effect of law and may be relied on by employers, employees and other parties to determine their rights and responsibilities under this chapter. Any guidelines or rules may establish procedures for ensuring fair, efficient and cost effective implementation of this chapter, including supplementary procedures for helping to inform employees of their rights under this chapter, for monitoring employer compliance with this chapter, and for providing administrative hearings to determine whether an employer or other person has violated the requirements of this chapter.

(b) Reporting Violations. An employee or any other person may report to the city in writing any suspected violation of this chapter. The city shall encourage reporting pursuant to this subsection by keeping confidential, to the maximum extent permitted by applicable laws, the name and other identifying information of the employee or person reporting the violation. Provided, however, that with the authorization of such person, the city may disclose his or her name and identifying information as necessary to enforce this chapter or other employee protection laws. In order to further encourage reporting by employees, if the city notifies an employer that the city is investigating a complaint, the city shall require the employer to post or otherwise notify its employees that the city is conducting an investigation, using a form provided by the city.

(c) Investigation. The city shall be responsible for investigating any possible violations of this chapter by an employer or other person. The city shall have the authority to inspect workplaces, interview persons and request the city attorney to subpoena books, papers, records, or other items relevant to the enforcement of this chapter.

(d) Informal Resolution. The city shall make every effort to resolve complaints informally, in a timely manner, and shall take no more than one year to resolve any matter, before initiating an enforcement action. The failure of the city to meet these timelines within one year shall not be grounds for closure or dismissal of the complaint.

Sec. 5.30.100 Enforcement.

(a) Where prompt compliance is not forthcoming, the city shall take any appropriate enforcement action to secure compliance. 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, the city and any of its 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 Section 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 Section 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.

Sec. 5.30.110 Relationship to other requirements.

This chapter provides for payment of a 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

Sec. 5.30.120 Application of minimum wage to welfare-to-work programs.

The minimum wage established under this chapter shall apply to the Welfare-to-Work Programs under which persons must perform work in exchange for receipt of benefits. Participants in Welfare-to-Work Programs within the city shall not, during a given benefits period, be required to work more than a number of hours equal to the value of all cash benefits received during that period, divided by the minimum wage.

Sec. 5.30.130 Fees.

Nothing herein shall preclude the city council from imposing a cost recovery fee on all employers to pay the cost of administering this chapter.

SECTION 2. CEQA

The City Council finds, under Title 14 of the California Code of Regulations, Section 15061(b)(3), that this ordinance is exempt from the requirements of the California Environmental Quality Act (CEQA) in that it is not a project which has the potential for causing a significant effect on the environment. The Council therefore directs that a Notice of Exemption be filed with the Alameda County Clerk in accordance with the CEQA guidelines.

SECTION 3. SEVERABILITY

If any section, subsection, sentence, clause or phrase of this Ordinance is for any reason held by a court of competent jurisdiction to be invalid, such a decision shall not affect the validity of the remaining portions of this Ordinance. The City Council of the City of Fremont hereby declares that it would have passed this Ordinance and each section or subsection, sentence, clause and phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared invalid.

SECTION 4. EFFECTIVE DATE

This Ordinance shall take effect and will be enforced thirty (30) days after its adoption.

SECTION 5. PUBLICATION AND POSTING

The City Clerk has caused to be published a summary of this ordinance, prepared by the City Attorney under Government Code Section 36933(c), once in a newspaper of general circulation printed and published in Alameda County and circulated in the City of Fremont, at least five days before the date of adoption. A certified copy of the full text of the ordinance was posted in the office of the City Clerk since at least five days before this date of adoption. Within 15 days after adoption of this ordinance, the City Clerk shall cause to be again published in a newspaper of general circulation the summary of this ordinance with the names of those City Council members voting for and against the ordinance; and the City Clerk shall post in the office of the City Clerk a certified copy of the full text of this adopted ordinance with the names of those City Council members voting for and against the ordinance.

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The foregoing Ordinance was introduced before the City Council of the City of Fremont at the regular meeting of the City Council, held on the ____ day of _____, 2019 and finally adopted at a regular meeting of the City Council held on the ____ day of _____, 2019 by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

Mayor

ATTEST:

APPROVED AS TO FORM:

City Clerk

Sr. Deputy City Attorney