

ORDINANCE NO. 22-1180

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF WEST HOLLYWOOD, CALIFORNIA, AMENDING SECTIONS 5.130.020, 5.130.030, and 5.130.080 OF THE WEST HOLLYWOOD MUNICIPAL CODE REGARDING IMPLEMENTATION OF THE CITY-WIDE MINIMUM WAGE

THE CITY COUNCIL OF THE CITY OF WEST HOLLYWOOD DOES HEREBY ORDAIN AS FOLLOWS:

SECTION 1. Findings

- A. The City Council of the City of West Hollywood adopted Ordinance No. 21-1168 establishing a city-wide minimum wage on November 15, 2021 (“Minimum Wage Ordinance”).
- B. The City Council desires to amend Minimum Wage Ordinance sections 5.130.020, 5.130.030, and 5.130.080 to set the calculation for number of employees for existing and new employers, to clarify the general rules for compensated time off, and to include provisions for a one-year waiver from the City’s paid sick leave, vacation, or personal necessity leave requirements in applicable circumstances.

SECTION 2. Amendment to Municipal Code. West Hollywood Municipal Code Title 5, Chapter 130, Section 5.130.020 *Minimum wage payment requirements*, subsection (G) is amended to read as follows:

“G. 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.
- 2. The number of Employees shall be determined as follows:
 - (a) For existing Employers, the number of Employees shall be calculated based on the average number of Employees employed per quarter during the most recent calendar year.
 - (b) For new Employers, an initial determination of size shall be based upon the actual number of hires at the time of the business’ opening. After the business has opened, the Employee count shall be determined by the average number of Employees per week who worked for compensation in the first ninety (90) days.

(c) The number of Employees shall be determined using the Employer's total number of individual employees within the United States, regardless of where those employees work."

SECTION 3. Amendment to Municipal Code. West Hollywood Municipal Code Title 5, Chapter 130, Section 5.130.030 *Paid sick leave, vacation, or personal necessity*, subsection (A)(3) is amended to read as follows:

"3. General Rules for Compensated Time Off.

(a) An Employee must be eligible to use accrued paid compensated time off after the first six (6) months of employment or consistent with company policies, whichever is sooner.

(b) An Employer may not unreasonably deny an Employee's request to use the accrued compensated time off.

(c) Unused accrued compensated time off will carry over until the time off reaches a maximum of one hundred ninety-two (192) hours unless the Employer's established policy is more generous.

(d) An Employer may not implement any employment policy to count accrued compensated time off taken under this section as an absence that may result in discipline, discharge, suspension, or any other adverse action."

SECTION 4. Amendment to Municipal Code. West Hollywood Municipal Code Title 5, Chapter 130, Section 5.130.080 *One-year waiver for certain Employers*, is amended as follows:

"5.130.080 – One-year waiver for certain Employers.

A. Waiver of requirements in Section 5.130.020 (A) and (B) (payment of Minimum Wage Rate). This chapter is not intended to cause reduction in employment or work hours for Employees. Therefore, the City Manager or their designee may grant a waiver from the requirements of Section 5.130.020 (A) and (B) if an Employer can demonstrate to the City Manager or their designee that compliance with this chapter would force the Employer, in order to avoid bankruptcy or a shutdown of the Employer's business, to reduce its workforce by more than twenty percent (20%) or curtail its Employees' total hours by more than thirty percent (30%). The City Manager or their designee shall reach a determination only after reviewing and auditing, as necessary, the Employer's financial condition, with such review or audit paid for by the Employer. Any waiver granted by the City Manager, or their designee is valid for no more than one year. If a waiver is granted under this section, then the Employer must pay at least the minimum wage as required by State law. Any waiver granted under this section does not exempt Employers from compliance with the remaining sections of this chapter. A determination by the City Manager or their designee to grant or deny a request for waiver may be appealed to an

administrative hearing officer pursuant to the procedure set forth in Chapter 1.08 of this Code.

B. Waiver of requirements in Section 5.130.030 (paid sick leave, vacation, or personal necessity). The City Manager or their designee may grant a waiver from the requirements of Section 5.130.030 if an Employer can demonstrate to the City Manager or their designee that compliance with this chapter would; 1) force the Employer, in order to avoid bankruptcy or a shutdown of the Employer's business, to reduce its workforce by more than twenty percent (20%) or curtail its Employees' total hours by more than thirty percent (30%), or 2) it will be a hardship to implement the compensated and uncompensated leave provisions due to the existing payroll and human resources processes and platforms the Employer has in place. If the waiver is related to financial conditions, the City Manager or their designee shall reach a determination only after reviewing and auditing, as necessary, the Employer's financial condition, with such review or audit paid for by the Employer. If the waiver is related to hardship due to existing payroll and human resources processes and platforms, the City Manager or their designee shall reach a determination only after reviewing, as necessary, back-up documentation provided by the Employer showing how the provisions cannot be implemented in a timely manner. The City Manager or their designee may grant up to a one-year waiver based on the first hardship condition (financial hardships). The City Manager or their designee may grant up to two three-month waivers based on the second hardship condition (implementation hardships due to existing payroll and human resources processes and platforms), provided the second three-month waiver shall only be granted if implementation hardships remain and the Employer has made diligent progress towards implementing the provisions. Total waivers granted pursuant to this subsection shall not exceed one year. If a waiver is granted under this section, then the Employer must provide at least the minimum compensated and uncompensated leave as required by State law. Any waiver granted under this section does not exempt Employers from compliance with the remaining sections of this chapter. A determination by the City Manager or their designee to grant or deny a request for waiver may be appealed to an administrative hearing officer pursuant to the procedure set forth in Chapter 1.08 of this Code.

C. An Employer that applies for a waiver under this section must provide: (1) advance, written notice to all Employees of such application for waiver; and (2) written notice to all Employees of the City Manager or their designee's determination within three (3) business days after such determination."

SECTION 5. Environmental Review. The City Council finds this ordinance is exempt from the California Environmental Quality Act ("CEQA") as provided in Section 15061(b)(3) of the CEQA Guidelines (California Code of Regulations, Title 14, Chapter 3). The ordinance is enacted pursuant to the City' police powers to improve the standard of living and to protect the health and well-being of employees in the City of West Hollywood. This is a minimum wage ordinance for workers and covers employees at businesses in a fully built out environment and does not cover any actions that would change the physical environment. Therefore, it can be seen with certainty that adopting

this ordinance would not have a significant adverse effect on the environment under CEQA Guideline 15061(b)(3).

SECTION 6. Effective Date. Pursuant to California Government Code section 36937, this ordinance shall take effect thirty (30) days after its final passage.

SECTION 7. Certification. The City Clerk is directed to certify the passage and adoption of this Ordinance; make a note of the passage and adoption in the records of this meeting; and cause it to be published or posted in accordance with California law.