

ORDINANCE NO. _____

ORDINANCE OF THE CITY OF CHULA VISTA ADDING
CHAPTER 2.73, "TRAFFIC CONTROL WORKER MINIMUM
WAGE" TO TITLE 2 OF THE CHULA VISTA MUNICIPAL
CODE TO ESTABLISH A TRAFFIC CONTROL WORKER
MINIMUM WAGE

WHEREAS, the City of Chula Vista (the "City"), a charter city, may adopt ordinances in accordance with its police powers to ensure the public health, welfare, and safety of its residents; and

WHEREAS, construction and maintenance projects in the public rights-of-way may cause unexpected hazards and difficult driving conditions, creating health and safety risks to the public, including drivers, pedestrians, and workers; and

WHEREAS, traffic control workers perform a critical role in ensuring public safety during construction and maintenance work in the city's public rights-of-way; and

WHEREAS, traffic control workers are exposed to health and safety hazards and risks, including the risks of serious injury and death; and

WHEREAS, traffic control workers who work on public works projects for the City must be paid the prevailing wage required by the California Labor Code for public works projects; however, private employers currently may pay traffic control workers on non-public works projects significantly less for the same type of work in the City's public rights-of-way; and

WHEREAS, the California Department of Industrial Relations generally describes the prevailing wage rate as the basic hourly rate paid on public works projects to a majority of workers engaged in a particular craft, classification, or type of work within the locality and in the nearest labor market area (if a majority of such workers are paid at a single rate). If there is no single rate paid to the majority, then the single or modal rate being paid to the greatest number of workers is prevailing; and

WHEREAS, studies have shown that the payment of applicable prevailing wage rate improves safety and reduces rate of injury and death among workers because workers who are paid the prevailing wage generally are more qualified, based on factors such as skill, training, and experience; and

WHEREAS, the City desires to limit health and safety risks to the public and traffic control workers associated with construction and maintenance activities in the City's public rights-of-way, by requiring private employers to pay no less than the prevailing wage rate paid for the same type of work on public works projects in San Diego County; and

WHEREAS, on August 8, 2023, the City Council directed City staff to draft and present a traffic control worker minimum wage ordinance for consideration; and

WHEREAS, a draft traffic control worker minimum wage ordinance was presented to the City Council on September 12, 2023, and the City Council received public testimony, including proposed amendments to the ordinance; and

WHEREAS, on September 12, 2023, the City Council directed staff to incorporate certain amendments proposed to the traffic control worker minimum wage ordinance and return with an ordinance for action on September 19, 2023.

NOW, THEREFORE the City Council of the City of Chula Vista does ordain as follows:

Section I. Chapter 2.73 is added to the Chula Vista Municipal Code to read as follows:

Chapter 2.73

TRAFFIC CONTROL WORKER MINIMUM WAGE

2.73.010 Title

This chapter is known as the “Traffic Control Worker Minimum Wage Ordinance,” may be cited as such, and will be referred to herein as “this chapter”.

2.73.020 Purpose and Intent

The purpose of this chapter is to address the unique safety risks confronted by workers and users of City public rights-of-way by ensuring that, except in limited circumstances, all traffic control workers are paid a wage at least equivalent to the prevailing wage they would receive if they were working on a City public works project.

2.73.030 Definitions

When used in this chapter, the following words and phrases shall have the meanings ascribed to them below. Words and phrases not specifically defined below shall have the meanings ascribed to them elsewhere in this Code, or shall otherwise be defined by common usage. For definitions of nouns, the singular shall also include the plural; for definitions of verbs, all verb conjugations shall be included.

“City” means the City of Chula Vista.

“City Manager” means the City Manager of the City of Chula Vista, or designee.

“Code” means the City of Chula Vista Municipal Code.

“Employee” has the same meaning as Section 2775 in the California Labor Code.

“Employer” means any Person, including a corporate officer or executive, who directly or indirectly, or through any other Person, including through the services of a temporary service,

staffing agency, or similar entity, employs or exercises control over the wages, hours, or working conditions of any Employee.

“Permit” means a City issued permit that includes a traffic control plan.

“Person” means any individual, firm, partnership, joint venture, association, corporation, limited liability company, estate, trust, business trust, receiver, syndicate, or any other group or combination of Persons acting as a unit.

“Prevailing Wage” means the wage required by Labor Code Section 1720 et seq. to be paid to a worker on a public works or maintenance project in the location where the work is performed.

“Public Works Project” means the construction, reconstruction, or repair of public buildings, streets, utilities, and other public works, including design-build contracts, construction manager at-risk contracts, and job orders.

“Traffic Control Work” means the stopping, slowing, or otherwise guiding, directing or controlling of traffic pursuant to a Permit.

“Traffic Control Worker” means any Person engaged in Traffic Control Work, excluding public agency Employees performing traffic control for a public agency.

2.73.040 Minimum Wage Required

All Traffic Control Workers performing Traffic Control Work, as required by a Permit, shall be paid no less than the Prevailing Wage, except as follows:

- A. Traffic Control Work performed by an Employee in support of the construction, renovation, or repair of a single-family home, duplex, triplex, or accessory dwelling unit.
- B. Traffic Control Work performed by an Employee on any project costing \$1,000 or less, as specified in California Labor Code Section 1771 or any subsequent cost threshold applicable to the payment of Prevailing Wage established by California law.
- C. Traffic Control Work performed by an Employee of a gas or electric utility company on any project where the Employee performs Traffic Control Work for one hour or less per workday or one hour or less per shift.
- D. To the extent prohibited by law, or by a state or federal funding source requirement applicable to the work that is the subject of the Permit.

2.73.050 Retaliation

No Employer shall discharge, terminate a contract with, reduce compensation to, or otherwise discriminate against or take adverse action against any Traffic Control Worker for opposing any practice prohibited by this chapter, for participating in proceedings related to this chapter, for

seeking to enforce rights under this chapter by any lawful means, or for otherwise asserting rights under this chapter. Protections in this section shall apply to any Traffic Control Worker who mistakenly, but in good faith, alleges noncompliance with this chapter. Taking any adverse action against a Traffic Control Worker within 90 days of the Traffic Control Worker'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.

2.73.060 Enforcement

A. The City Manager may enforce this chapter in accordance with the provisions of CVMC Chapter 1.41.

B. If an Employer ceases its business operations, or sells, exchanges, transfers, or otherwise disposes of the Employer's business, then any Person that becomes a successor to the business shall be liable for any unpaid amounts owed under this chapter, if, at the time of the conveyance of the business, the successor has actual or constructive knowledge of the amounts owed as determined by the City.

C. *Civil Enforcement.* A Traffic Control Worker, a representative of a Traffic Control Worker, the City Attorney, or another Person 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 an Employer violating this chapter.

1. *Remedies for Violation.* A Court of competent jurisdiction may impose all remedies available under law or in equity, including injunctive or other equitable relief, reinstatement, the payment of any wages unlawfully withheld, the payment of penalties in the amount of up to \$120 to each Traffic Control Worker for each day that a violation occurred or continued, and reasonable attorneys' fees and costs. In an action initiated by the City Attorney, the recovery of attorneys' fees shall be subject to the provisions of 2.73.060(C)(2) below. In addition to the remedies identified above, a Traffic Control Worker who is the subject of retaliation by an Employer, as described in Section 2.73.050, is entitled to reinstatement and treble damages.
2. *Attorneys' Fees in City Initiated Action.* Attorneys' fees may be recovered by the prevailing party only in individual actions or proceedings in which the City elects, at the initiation of that individual action or proceeding, to seek recovery of its own attorneys' fees. If the City does not elect, at the initiation of an individual action or proceeding, to seek recovery of its own attorneys' fees, no other party shall seek or recover attorneys' fees.

2.73.070 Limitations

A. Any waiver by a Traffic Control Worker of any or all of the provisions of this chapter or of rights or protections afforded under the authority of this chapter shall be deemed contrary to public policy and shall be void and unenforceable.

B. This chapter is not intended to, and shall not be interpreted to, conflict with federal or state law and shall be interpreted to be compatible with federal and state enactments, not limited to those dealing with employee/employer and labor relations, and in furtherance of the public purposes that those enactments encompass.

C. This chapter does not create any cause of action for damages against the City.

D. This chapter shall not be construed as limiting any Traffic Control Worker's right to obtain relief to which the Traffic Control Worker may be entitled at law or in equity. Exhaustion of remedies under this chapter is not a prerequisite to the assertion of any right.

E. This chapter shall not be construed to discourage or prohibit an Employer from providing higher wages to its Employees.

2.73.080 Promulgation of regulations, standards, and other legal duties

A. The City Manager is authorized to establish, consistent with the terms of this chapter, any additional administrative rules, regulations and standards determined to be necessary to carry out the purposes of this chapter.

B. Regulations shall be published on the City's website and maintained and available to the public in the Office of the City Clerk.

C. Regulations promulgated by the City Manager shall become effective and enforceable upon date of publication on the City's website.

2.73.090 Effective Date

Any Permit issued by the City on or after December 2, 2023 shall be deemed to include the requirement to comply with this chapter.

Section II. Severability

If any portion of this Ordinance, or its application to any person or circumstance, is for any reason held to be invalid, unenforceable or unconstitutional, by a court of competent jurisdiction, that portion shall be deemed severable, and such invalidity, unenforceability or unconstitutionality shall not affect the validity or enforceability of the remaining portions of the Ordinance, or its application to any other person or circumstance. The City Council of the City of Chula Vista hereby declares that it would have adopted each section, sentence, clause or phrase of this Ordinance, irrespective of the fact that any one or more other sections, sentences, clauses or phrases of the Ordinance be declared invalid, unenforceable or unconstitutional.

Section III. Construction

The City Council of the City of Chula Vista intends this Ordinance to supplement, not to duplicate or contradict, applicable state and federal law and this Ordinance shall be construed in light of that intent.

Section IV. Effective Date

This Ordinance shall take effect and be in force on the thirtieth day after its final passage.

Section V. Publication

The City Clerk shall certify to the passage and adoption of this Ordinance and shall cause the same to be published or posted according to law.

Presented by

Approved as to form by

Tiffany Allen
Assistant City Manager

Jill D.S. Maland
Lounsbery Ferguson Altona & Peak
Acting City Attorney