

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF DESERT HOT SPRINGS, CALIFORNIA, AMENDING TITLE 5 "BUSINESS LICENSES AND REGULATIONS" OF THE DESERT HOT SPRINGS MUNICIPAL CODE TO ADD CHAPTER 5.50 "EMPLOYEE GOOD WAGE LAW" TO REQUIRE CERTAIN RETAILERS TO PAY FAIR AND REASONABLE WAGES

WHEREAS, the City Council of the City of Desert Hot Springs desires to promote good wage employment to help working families make ends meet and to enjoy a decent living and good quality of life, and to provide to the economic well-being of the community; and

WHEREAS, the retail industry is an increasingly important source of employment for residents of the City of Desert Hot Springs; and

WHEREAS, although some retail employers in the Coachella Valley pay good wages, overall retail jobs are some of the lowest paying in the overall economy, both locally and nationally; and

WHEREAS, without certain safeguards, some retail employers do not or will not provide wages adequate to meet the basic needs of working families nor support the local economy; and

WHEREAS, by adopting good wage rates for certain retail employers, the City can ensure that local retail employment better meets the community's need for family-supporting jobs; and

WHEREAS, the City Council believes it is reasonable to establish good wage rates for local retail employers because: (a) a number of retail employers in the Coachella Valley already pay good wages, which demonstrates that it is feasible for retail employers to create and maintain good jobs while still operating profitably; (b) retailers are generally less likely than other kinds of businesses to respond to wage regulations by closing or reducing employment due to the location-dependent nature of the retail industry; and (c) in other jurisdictions, the enactment of good wage laws have not had any negative impact on the retail market, retail employment or retail development in those jurisdictions; and

WHEREAS, the City Council finds that it is desirable for retailers to provide certain benefits for their workers, because better benefits can be purchased more economically by groups of individuals and, as such, it is desirable to include incentives in a good wage rate program that will encourage retailers to provide benefits to their workers by offering retailers the option of offsetting a portion of a mandatory good wage rates with a credit for certain benefits retailers pay for their workers.

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Desert Hot Springs as follows:

Section 1. RECITALS

That the above recitals are true and correct and are incorporated as though fully set forth herein.

Section 2. AMENDMENT

That Title 5 "Business Licenses and Regulations" shall be amended as follows:

Chapter 5.50

RETAIL EMPLOYEE GOOD WAGE LAW

5.50.010 Authority.

This Chapter is adopted pursuant to the powers vested in the City of Desert Hot Springs and 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.

5.50.020 Purpose.

The purpose of this chapter is to promote good wage employment to help working families make ends meet and enjoy a decent living and good quality of life, and to provide to the economic well-being of the community.

5.50.030 Effective Date.

This provisions of this chapter shall take effect January 1, 2015.

5.50.040 Payment of Good Wage Rate.

Retailers shall ensure that all employees receive minimum compensation of no less than the Good Wage Rate for each hour worked.

5.50.050 Good Wage Rates.

The Good Wage Rate shall be as follows:

(a) January 1, 2015 through December 30, 2015, the Good Wage Rate shall be ten dollars twenty cents (\$10.20) per hour.

(b) January 1, 2016 through December 30, 2016, the Good Wage Rate shall be eleven dollars twenty cents (\$11.20) per hour.

(c) January 1, 2017 through December 30, 2018, the Good Wage Rate shall be twelve dollars twenty cents (\$12.20).

(d) January 1, 2018 and for each January 1 of each successive year, the Good Wage Rate shall be increased in proportion to the increase during the preceding calendar year in the Consumer Price Index for All Items for All Urban Consumers as published by the U.S. Department of Labor or its successor index for the Riverside-San Bernardino-Ontario, CA Metropolitan area.

(e) If the state or federal minimum wage rises to the level of any of the Good Wage Rates set forth in the section, then the Good Wage Rate for the subject period shall automatically increase to an amount equal to two dollars (\$2.00) above the highest of the two minimum wages.

Ordinance No. _____
Date Adopted: _____

5.50.060 Good Wage Rate Credit for Benefits Provided.

The Good Wage Rate may be credited (reduced) up to a maximum of six dollars (\$6.00) per hour for an employee who receives employer-provided employee benefits, subject to the following: (a) the employee's hourly rate does not fall below the highest of the state or federal minimum wage rates; (b) the retailer utilizes a reasonable methodology that is not inconsistent with any regulations issued by the City to determine the hourly dollar value of the benefits; (c) the retailer prepares at least semi-annually written accounting justifying benefit credit amounts and a written explanation of the retailer's methodology; and (d) the retailer files the accounting and explanation with the City and provides a copy to the employee or employee's designated representative.

5.50.070 Benefits Credit Examination.

If upon examining any benefit credit filing, submitted to the City pursuant to this chapter, the City determines that the subject filing is either inaccurate or unreasonable, the subject retailer's right to take a credit for benefits shall be immediately suspended until the subject retailer files a replacement filing(s) deemed accurate and reasonable by the City.

5.50.080 Welfare-to-Work Programs.

The good wage rates of this chapter shall apply to the Welfare-to-Work programs under which persons must perform work in exchange for receipt of benefits. Employees who participate in Welfare-to-Work programs 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 applicable good wage rate.

5.50.090 Relation to other Wage or Benefit Requirements.

The provisions of this chapter 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 employee protections.

5.50.100 Certification of Compliance.

No later than December 31 of each year, every retailer shall certify under penalty of perjury in a writing filed with the City that it has paid all its employees the good wage rates pursuant to the provisions of this chapter.

5.50.110 Definitions.

The following words, terms and phrases shall have the following meanings throughout this chapter, unless the context clearly indicates otherwise:

- (a) "Affiliated Corporation" shall mean any corporation that shares a common Parent Corporation with a Retailer.
- (b) "Benefits" shall mean actual payments paid directly to an employee or paid to a third party on behalf of an employee or employee's family for the following benefits: healthcare, retirement security, disability, death, life insurance, childcare, legal services, public transportation, paid-parking assistance at locations not owned by retailer, education and training at accredited institutions, but in no case shall benefits mean to include any payments that are required by any federal, state or

local law, or that are deducted from an employee's wages or otherwise paid for or reimbursed by the employee.

- (c) "City" shall mean the City of Desert Hot Springs and any designated agency, department, office or subdivision thereof.
- (d) "Compensation" shall mean to include wages and salaries, excluding tips and gratuities.
- (e) "Employee" shall mean: (i) the common-law employees of a retailer, and (ii) any other person who regularly works or performs services on or about the premises of a retail store, regardless of who the person's legal employer is. A person shall be deemed to regularly work or perform services on or about a retail store's premises if the person spends at least five (5) hours during each of at least four (4) weeks over two (2) months on or about the retail store's premises, but does not include any person who: (a) is employed in a bona fide executive or administrative capacity within the meaning of the state wage and hour laws as set forth in Section 13(a)(l) of the Fair Labor Standards Act, 29 U.S.C. section 213(a)(l),] and (b) is paid more than \$50,000 per year in wages (excluding overtime), salary (excluding overtime), bonus or commission.
- (f) "Employer" shall mean any retailer subject to the provisions of this chapter.
- (g) **"Franchisee" shall mean a sole proprietorship or other legal business entity that is independently owned and operated under a franchise agreement with a supplier that is a separate and independent business entity that authorizes the franchisee to utilize the supplier's trademark, logo and business model and permits franchisee to sell, distribute and provide supplier's goods, products and/or services to franchisee's clients, customers and consumers.**
- (h) "Parent Corporation" shall mean any corporation that owns or controls at least 51% of the voting stock, voting shares or other equity in a retailer or an affiliated corporation.
- (i) "Retailer" shall mean any entity, **other than a franchisee**, that: (i) operates a retail store and (ii) whose annual gross volume of sales or business when added to the annual gross volume of sales or business of its parent corporation and all of its affiliated corporations exceeds \$500,000,000 (exclusive of excise taxes at the retail level that are separately stated).
- (j) "Retail Store" shall mean an establishment engaged in retailing merchandise, generally without transformation, and rendering services incidental to the sale of merchandise that is located within the geographic boundaries of the City of Desert Hot Springs and that derives a majority of its revenue from retail sales of goods for use or consumption, but not for resale.

5.50.120 Good Wage Law Official Notice.

By December 1 of each year, the City will publish and make available to retailers an official notice suitable for posting in the workplace informing employees of the applicable Good Wage Rate for the upcoming year and their rights under this chapter, which shall be posted pursuant to the following:

Ordinance No. _____
Date Adopted: _____

- (a) The notice shall be posted by every retailer in conspicuous and accessible areas of the workplace that are frequented by all employees in a manner that allows all employees to easily see and read the notice.
- (b) The notice shall be translated into any language that at least five percent of the retailer's employees read and/or speak as their predominant language, the content of which shall be subject to prior approval by the City.
- (c) The notice shall be provided to each current employee and the each newly hired employee at the time of hire, in the language predominantly read and/or spoken by the subject employee.

5.50.130 Collective Bargaining Agreements.

The requirements of this chapter shall not apply to employees covered by a bona fide collective bargaining agreement with a bona fide labor organization if that agreement expressly waives compliance with this chapter, with all other waivers presumed to be against public policy, voidable and unenforceable.

5.50.140 Payroll Records.

Retailers shall retain payroll records pertaining to its employees for a period of four (4) 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; otherwise, where a retailer 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 demonstrating otherwise.

5.50.150 Discrimination and Retaliation.

It shall be unlawful for a retailer or any of its supervisors, managers, contractors, agents or other representatives to discriminate in any manner or take adverse action against any employee in retaliation for exercising any rights protected under this chapter, including without limitation to any of the following: (1) the right to file a complaint or inform any person about any party's alleged noncompliance with this chapter and (2) 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. In addition, protections under this section shall apply to any person who mistakenly, but in good faith, alleges noncompliance with this chapter. 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.

5.50.160 Implementation.

The City is authorized promulgate appropriate guidelines or rules to ensure the fair, efficient and cost-effective implementation of the provisions of this chapter, which shall have the force and effect of law which may be relied on by retailers, employees and other parties to determine their respective rights and responsibilities under this chapter.

5.50.170 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. In order to further encourage reporting by employees, if the City notifies a retailer that the City is investigating a complaint, the City shall require the retailer to post or otherwise notify its employees that the City is conducting an investigation, using a form provided by the City.

5.50.180 Investigations.

The City shall be responsible for investigating any possible violations of this chapter. 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.

5.50.190 Violations.

Any retailer or any retailer's supervisor, manager, contractor or agent who violates any provision of the chapter may be subject to the following:

- (a) Notice of Violation. The City may issue a notice of violation to a retailer, its supervisors, managers, contractors, agents or other representatives pursuant to Chapter 4.20 (Notice of Violation) of the Municipal Code, if there is any violation of this chapter committed, caused or maintained by the any of the above parties.
- (b) Administration Citation. The City may issue an administrative citation to a retailer, its supervisors, managers, contractors, agents or other representatives pursuant to Chapter 4.24 (Administration Citation Procedure) of the Municipal Code, if there is any violation of this chapter committed, caused or maintained by the any of the above parties. Nothing in this section shall preclude the City from also issuing an administrative citation upon the occurrence of the same offense on a separate day. Unless otherwise provided herein, any person issued an administrative citation pursuant to this chapter shall for each separate violation be subject to: (1) an administrative fine in an amount not to exceed two hundred fifty dollars **(\$250.00)** for the first citation; (2) an administrative fine in an amount not to exceed five hundred dollars **(\$500.00)** for a second citation issued for the same offense within a twelve (12) month period of the date of the first offense; and (3) a fine in an amount not to exceed one thousand dollars **(\$1,000.00)** for a third and any subsequent citation issued for the same offense within a twelve (12) month period of the date of the first offense.
- (c) Infraction. The City may issue an infraction citation to any retailer, its supervisors, managers, contractors, agents or other representatives, pursuant to the provisions set forth in Chapter 4.28 (Infractions) of the Municipal Code, including but not limited to the imposition of any and all criminal penalties set forth therein if there is any violation of this chapter committed, caused or maintained by the any of the above parties. Unless otherwise provided herein, any person convicted of an infraction shall, for each separate violation of this chapter be subject to: (1) a fine in an amount not to exceed five hundred dollars **(\$500.00)** for a first conviction of an offense; (2) a fine in an amount not to exceed seven hundred fifty dollars **(\$750.00)** for a second conviction of the same offense within a twelve (12) month period of the date of the first offense; and (3) a fine in an amount not to exceed one thousand dollars **(\$1,000.00)** for the third conviction of the same offense within a twelve (12) month period of the date of the first offense. The fine for a fourth and subsequent convictions of the same offense within a twelve (12) month period of the date of the first offense shall be one thousand five hundred dollars **(\$1,500.00)**.

- (d) Public Nuisance. It shall be a public nuisance for a retailer, its supervisors, managers, contractors, agents or other representatives to commit, cause or maintain a violation of this chapter, which shall be subject to the provisions of Chapter 4.16 (Public Nuisances) of the Municipal Code.
- (e) Permit Modification, Suspension and Revocation. A violation of any provision of this chapter by a retailer, its supervisors, managers, contractors, agents or other representatives shall constitute grounds for modification, suspension and/or revocation of any affiliated licenses or permits issued to the retailer pursuant to the provisions set forth in Chapter 4.36 (Permit and License Suspension, Modification and Revocation Procedures) of Title 14 of the Municipal Code.
- (f) Injunctive Relief. The City may seek and obtain injunctive relief to enjoin any violation or continuing violation of this chapter and/or any applicable statute, rule, code or regulation.
- (g) Back Pay. Retailers found to have violated this chapter shall be required to pay each and every employee harmed by any violation twice the amount of back pay owed to each respective employee, attorneys' fees, court costs and any damages or other relief, including without limitation equitable relief, deemed appropriate by a court of competent jurisdiction.
- (h) Separate Violations. A violation of this chapter against any one employee shall be deemed an independent and separate violation from any other violation of this chapter by a retailer, its supervisors, managers, contractors, agents or other representatives against any other employee.
- (i) Aggrieved parties. Any person aggrieved by a violation of this chapter or any entity which has a member aggrieved by any violation of this chapter shall have standing to bring a civil action in a court of competent jurisdiction against any retailer, its supervisors, managers, contractors, agents or other representatives who has violated any provision of this chapter. Nothing in this chapter, however, shall be construed to limit an aggrieved party'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 other employee rights.

5.50.200 Fees.

Nothing herein shall preclude the City Council from imposing a cost recovery fee on retailers to pay the cost of administering this chapter.

Section 3. SEVERABILITY

The City Council declares that, should any provision, section, paragraph, sentence or word of this ordinance be rendered or declared invalid by any final court action in a court of competent jurisdiction or by reason of any preemptive legislation, the remaining provisions, sections, paragraphs, sentences or words of this ordinance as hereby adopted shall remain in full force and effect.

Section 4. REPEAL OF CONFLICTING PROVISIONS

All the provisions of the Municipal Code as heretofore adopted by the City of Desert Hot Springs that are in conflict with the provisions of this ordinance are hereby repealed.

Section 5. AMENDING OF BAIL SCHEDULE

The City Attorney's Office is hereby directed to determine whether this ordinance necessitates amendment of the City's Bail Schedule and to cause such necessary amendments to be made and filed with the local branches of the Superior Court of the County of Riverside.

Section 6. EFFECTIVE DATE

This ordinance shall take effect thirty (30) days after its second reading.

Section 7. CERTIFICATION

The City Clerk shall certify to the passage of this ordinance and shall cause the same to be published according to law.

PASSED AND ADOPTED by the City Council of the City of Desert Hot Springs at a regular meeting held on the _____ day of _____, 2014 by the following vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

Adam Sanchez, Sr., Mayor

ATTEST:

Jerryl Soriano, CMC, City Clerk

APPROVED AS TO FORM:

Steven B. Quintanilla, City Attorney