

INTRODUCED BY COUNCILMEMBERS FORTUNATO BAS AND GALLO


CITY ATTORNEY'S OFFICE

Amended During June 9, 2020 City Council Meeting

OAKLAND CITY COUNCIL

ORDINANCE NO. _____ C.M.S.

ORDINANCE AMENDING CHAPTER 2.29 OF THE OAKLAND MUNICIPAL CODE ENTITLED "CITY AGENCIES, DEPARTMENTS AND OFFICES" TO CREATE THE DEPARTMENT OF WORKPLACE AND EMPLOYMENT STANDARDS TO IMPLEMENT MEASURE Z (HOTEL MINIMUM WAGE AND WORKING CONDITIONS ORDINANCE, OAKLAND MUNICIPAL CODE CHAPTERS 5.93 AND 2.44 AND SECTIONS 2.36.010(A) AND 5.92.050)

WHEREAS, on November 6, 2018, the voters of the City of Oakland overwhelmingly approved Measure Z, the Hotel Minimum Wage and Working Conditions Ordinance ("Ordinance"), which amended the Oakland Municipal Code to establish a minimum wage and workplace protections for hotel employees and modify the procedures for enforcing Oakland's local employment standards, among other things; and

WHEREAS, wage theft is a pervasive problem that disproportionately impacts women, foreign-born, Black, immigrant, and precariously employed workers;¹ and

WHEREAS, wage theft contributes to adverse health outcomes, leads to economic instability, and depresses economic growth by creating an uneven playing field between businesses, draining governments of tax revenue, and depriving low-income families of earnings they would otherwise spend in the local economy;² and

¹ See David Cooper and Teresa Kroeger, "Employers Steal Billions from Workers' Paychecks Each Year," *Economic Policy Institute* (May 2017) available at <https://www.epi.org/publication/employers-steal-billions-from-workers-paychecks-each-year/>.

² "The Social and Economic Effects of Wage Violations: Estimates for California and New York," *U.S. Department of Labor* (Dec. 2014) available at <https://www.dol.gov/sites/dolgov/files/OASP/legacy/files/WageViolationsReportDecember2014.pdf>; Minkler et al, "Wage theft as a neglected public health problem," *104 American Journal of Public Health* 6, 1010-20 (June 2014).

WHEREAS, objectives of progressive local employment policies include reducing unemployment, bringing quality jobs to disadvantaged communities, and ensuring that all residents share in economic development;³ and

WHEREAS, there is a national trend to strengthen worker protections at the local level, and cities and counties with dedicated offices of labor standards enforcement have proven records of success in improving compliance, redressing labor violations, and recovering stolen wages⁴; and

WHEREAS, the City of Oakland's Division of Contracts and Compliance is a division of the City Administrator's office that performs critical functions, such as providing business assistance and managing contract administration for the City; and

WHEREAS, the Division of Contracts and Compliance has been managing enforcement of Measure FF, the City's Minimum Wage, Sick Leave, and Other Employment Standards Ordinance since 2014, and Measure Z, the Hotel Minimum Wage and Working Conditions Ordinance since 2018, in addition to its other responsibilities; and

WHEREAS, the establishment of a new and independent City department, the Department of Workplace and Employment Standards, operating under the leadership of a single Director, devoted to the enforcement of City of Oakland workplace and employment standards, would enable the City to enforce such standards in a more vigorous and comprehensive manner; and

WHEREAS, the Department of Workplace and Employment Standards will work to protect the rights of workers and engage in strategic enforcement actions, investigations, and audits with the goal of achieving industry-wide compliance in targeted sectors where violations rates are high and workers are less able to exercise their legal rights; and

WHEREAS, the Department of Workplace and Employment Standards shall enforce Chapter 2.28 ("Living Wage Ordinance"); Chapter 2.36 ("Worker Retention at Large-Scale Hospitality Business Ordinance"); Chapter 5.92 ("City Minimum Wage, Sick Leave, and Other Employment Standards"); Chapter 5.93 ("Hotel Minimum Wage and Working Conditions"); Prevailing Wage Resolution (Resolution No. 57103 C.M.S.), Local Employment Program (Part IV of the Local and Small Local Business Enterprise Program, Resolution No. 69687 C.M.S., as amended and codified by Ordinance No.

³ Laura Wolf-Powers et al., "Building in Good Jobs," *Pratt Center for Community Development and NYC Employment & Training Coalition* (Dec. 2006) available at https://repository.upenn.edu/cplan_papers/42/.

⁴ *When Mandates Work: Raising Labor Standards at the Local Level*, edited by Michael Reich et. al (Berkeley: University of California Press, 2014).

12389 C.M.S., and as subsequently amended), and Fifteen (15) Percent Apprenticeship Program (Resolution No. 74762 C.M.S.), and shall carry out such additional duties and functions as assigned by the City Administrator, or by Charter, ordinance, or City Council resolution; and

WHEREAS, the guiding principles of the Department of Workplace and Employment Standards will be informed by best practices in labor standards enforcement; and

WHEREAS, the Department of Workplace and Employment Standards will seek input from labor standards enforcement experts, labor unions, and community-based organizations that work closely with workers to help shape its strategic priorities, and partner with such entities to track on-the-ground developments and workplace and wage standards compliance in key industries, and conduct education and outreach; and

WHEREAS, the Department of Workplace and Employment Standards will coordinate with other City Departments as needed and seek partnerships with outside agencies, such as the California Department of Labor Standards Enforcement, to aid its enforcement efforts; and

WHEREAS, the Department of Workplace and Employment Standards will provide periodic reports, including to City Council, regarding the results of its enforcement efforts; and

WHEREAS, Chapter 2.29.010 of Oakland Municipal Code requires that all departments in the City “function under the leadership of a single Director”; and

WHEREAS, the City Council, in its FY 2019-2021 budget, allocated \$336,004 in funding to hire a Chief Enforcement Officer to lead the Department and its related enforcement activities, see Oakland City Council Resolution No. 87759, p. 7; and

WHEREAS, the City Administrator intends to immediately begin the recruitment process for a qualified Chief Enforcement Officer capable of leading the Department of Workplace and Employment Standards and implementing bold and effective enforcement strategies; and

WHEREAS, The Chief Enforcement Officer shall serve as “department head” within the meaning of Article IX of the City Charter, subject to the direction of the City Administrator; and

WHEREAS, the specialized nature of labor standards enforcement requires the focused attention of a leader who can implement bold strategies and build strong working relationships with workers, community-based organizations, and other governmental agencies; and

WHEREAS, the leader of a labor standards office should have a background in and demonstrated commitment to worker advocacy, and experience working collaboratively with community-based organizations, labor unions and government agencies, and knowledge of labor standards, wage and hour compliance, employment law and public policy; and

WHEREAS, the Department of Workplace and Employment Standards will provide an opportunity to strengthen and elevate Oakland's labor standards enforcement efforts to the benefit of working families; and

WHEREAS, Section 600 of the Charter of the City of Oakland provides that the City Council shall by ordinance provide the form of organization through which the functions of the City under the jurisdiction of the City Administrator are to be administered; and

WHEREAS, Chapter 2.29 of the Oakland Municipal Code is revised from time to time to change the City organizational structure; and

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF OAKLAND DOES ORDAIN AS FOLLOWS:

SECTION 1. The City Council finds and determines the foregoing recitals to be true and correct and hereby adopts and incorporates them into this Ordinance.

SECTION 2. Oakland Municipal Code Chapter 2.29, which establishes the City of Oakland's organizational structure, is hereby amended to modify sections as set forth below; additions are indicated by underscoring and deletions are indicated by strike through type; portions of the Chapter not cited or not shown in underscoring or strike through type are not changed.

2.29.xxx - Department of Workplace and Employment Standards

There is established in the City government a Department of Workplace and Employment Standards which shall be under the supervision and administrative control of the City Administrator. The powers, functions and duties of said Department shall be those assigned, authorized and directed by the City Administrator. The management and operation of the Department of Workplace and Employment Standards shall be the responsibility of the Chief Enforcement

Officer who shall serve as Director of said Department, subject to the direction of the City Administrator.

SECTION 3. Severability. If any section, subsection, sentence, clause or phrase of this Ordinance is for any reason held to be invalid or unconstitutional by decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of the Chapter. The City Council hereby declares that it would have passed this Ordinance and each section, subsection, clause or phrase thereof irrespective of the fact that one or more other sections, subsections, clauses or phrases may be declared invalid or unconstitutional.

SECTION 4. Effective Date. This ordinance shall become effective immediately if it receives six or more affirmative votes; otherwise it shall become effective upon the seventh day after final adoption.

IN COUNCIL, OAKLAND, CALIFORNIA,

PASSED BY THE FOLLOWING VOTE:

AYES - FORTUNATO BAS, GALLO, GIBSON MCELHANEY, KALB, REID, TAYLOR, THAO AND
PRESIDENT KAPLAN

NOES -

ABSENT -

ABSTENTION -

ATTEST: _____

ASHA REED

Acting City Clerk and Clerk of the Council of the City of
Oakland, California

Date of Attestation: _____

NOTICE AND DIGEST

ORDINANCE AMENDING CHAPTER 2.29 OF THE OAKLAND MUNICIPAL CODE ENTITLED "CITY AGENCIES, DEPARTMENTS AND OFFICES" TO CREATE THE DEPARTMENT OF WORKPLACE AND EMPLOYMENT STANDARDS TO IMPLEMENT MEASURE Z (HOTEL MINIMUM WAGE AND WORKING CONDITIONS ORDINANCE, OAKLAND MUNICIPAL CODE CHAPTERS 5.93 AND 2.44 AND SECTIONS 2.36.010(A) AND 5.92.050)

This Ordinance would amend Oakland Municipal Code Chapter 2.29, which established the organizational structure of the City of Oakland per Oakland Charter section 600, to create a Department of Workplace and Employment Standards.

Upon final adoption on second reading this ordinance will become effective immediately if it receives six or more affirmative votes; otherwise it shall become effective upon the seventh day after final adoption.