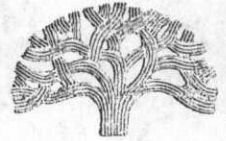


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OFFICE OF THE CITY CLERK
OAKLAND

CITY OF OAKLAND



CITY HALL ONE FRANK H. OGAWA PLAZA • OAKLAND, CALIFORNIA 94612

PATRICIA KERNIGHAN
Councilmember
District 2

(510) 238-7002
FAX (510) 238-6910
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To: Oakland City Councilmembers
From: Council President Patricia Kernighan
Date: July 17, 2014
Re: Minimum Wage and Paid Sick Leave Ordinance

I previously submitted to the CED agenda for July 22nd a proposed ballot measure entitled "Oakland Sustainable and Fair Compensation Act of 2014." As I outlined in my earlier cover memo, the measure provides a means to phase in an increase in the minimum wage and provides exemptions for two types of organizations that will be especially vulnerable to increased labor costs, (job training programs federally or state funded direct care). It also provides sick leave.

There are two possible mechanisms for instituting an Oakland minimum wage: 1) a ballot measure, and 2) an Ordinance. Today I am submitting to you the same minimum wage and sick leave law, but in the form of an Ordinance. This will allow you the flexibility to decide which mechanism you think would be the best means to institute a sustainable, phased-in minimum wage in our city.

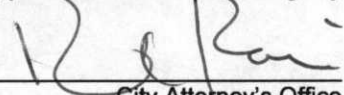
Thank you for your consideration.

(Please note that there is one difference between the two pieces of legislation I put before you. The first one included an exemption for higher wage tipped workers; the Ordinance does not include that exemption. Whether you prefer an Ordinance or a ballot measure, you can also decide what exemptions to include in each.)

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14 JUL 18 AM 11:02

Approved as to Form and Legality


City Attorney's Office

OAKLAND CITY COUNCIL

ORDINANCE NO. _____ C.M.S.

INTRODUCED BY COUNCIL PRESIDENT KERNIGHAN

AN ORDINANCE AMENDING THE OAKLAND MUNICIPAL CODE TO ESTABLISH A CITY MINIMUM WAGE AND REQUIRING PAID SICK LEAVE

WHEREAS, the City of Oakland as a home rule charter city has the right and power to make and enforce all laws and regulations that are its municipal affair, including the power to enact laws to promote the health, morals, safety, property, good order, well-being, general prosperity or general welfare of Oakland residents and workers; and

WHEREAS, public policies that promote and enhance economic sustainability and social equity are beneficial and consistent with the City of Oakland's policy goals; and

WHEREAS, the wage gap between the working poor and middle and upper class workers is increasing; and

WHEREAS, the current state minimum wage of \$9.00 per hour (increasing to \$10.00 per hour on January 1, 2016) is insufficient to enable workers to attain self-sufficiency in Oakland; and

WHEREAS, increasing the minimum wage and requiring paid sick leave will better enable workers to meet basic needs and avoid economic hardships; and

WHEREAS, most workers at some time will need time off from work to care of their own health needs or the health needs of a family member; and

WHEREAS, guaranteeing Oakland workers the right to earn and use paid sick leave will allow workers who are sick to receive the medical attention that they need, reduce recovery time from illnesses and injuries, promote the use of regular medical providers rather than hospital emergency departments, and reduce the likelihood of people spreading illnesses to other members of the workforce or the general public; and

WHEREAS, increased earnings by Oakland residents will have a positive impact on Oakland's economy, will boost the local tax base through increased purchasing power by workers, and will therefore promote the City's well-being, general prosperity, and general welfare; and

WHEREAS, increasing the minimum wage and requiring paid sick leave will improve the quality of services provided to the public by reducing worker turnover, absenteeism and instability while increasing productivity in the workplace; and

WHEREAS, prompt and efficient enforcement of this Ordinance will provide Oakland workers with improved economic security; and

WHEREAS, other East Bay cities have recently passed minimum wage ordinances which phase in the wage increase in order that employers are able to adjust to the increase without reducing the number of jobs; and

WHEREAS, it would be most beneficial for Oakland to phase in its minimum wage increase in approximate parity with the minimum wages of other cities in the East Bay so that Oakland is not competitively disadvantaged in retaining and attracting businesses and jobs in Oakland; and

WHEREAS, small businesses are critical to the Oakland economy, many operate as family businesses and survive on slim operating margins, have limited means to increase revenues and absorb cost increases, and so will need additional time to adjust their payroll for higher wages as compared to larger companies; and

WHEREAS, social service agencies who employ direct care workers who assist disabled, frail elderly or other persons and whose funding for such work comes from the state and/or the federal governments are highly likely to have to cut back on the services they provide, serve fewer persons, or cease operating altogether if they must pay wages higher than the amount reimbursed by state or federal funding for such services; and

WHEREAS, such direct care workers should be exempt from the Oakland minimum wage ordinance in order to avoid losing critical care for disabled, frail elderly and other needy persons that is funded by the state and/or federal governments; and

WHEREAS, participants in City job training programs and youth employment programs should be exempt from the City's minimum wage for a limited time to allow agencies to operate such programs and encourage businesses to employ program participants; now, therefore

The Council of the City of Oakland does ordain as follows:

SECTION 1. This Ordinance shall be known as the "Oakland Sustainable and Fair Compensation Act of 2014."

SECTION 2. Chapter 5.41 is hereby added to the Oakland Municipal Code to read as follows:

Chapter 5.41

MINIMUM WAGE AND PAID SICK LEAVE

5.41.010 Purpose.

The purpose of this chapter is to establish a minimum hourly wage and provide paid sick leave for workers employed within the City of Oakland to improve the quality of life for Oakland workers and residents.

5.41.020 Definitions.

As used in this chapter, the following terms have the following meanings:

"City" means the City of Oakland.

"Employee" means any person who: (1) in a calendar week performs at least two hours of work within the geographic boundaries of the City for an Employer, 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, 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 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 5.41.030 of this chapter.

"Office" means such City department, agency or office as the City Administrator shall designate to administer and enforce this chapter.

"Paid Sick Leave" means paid "sick leave" as defined in California Labor Code § 233(b)(4), except that the definition here extends beyond the Employee's own illness, injury, medical condition, need for medical diagnosis or treatment, or medical reason, to also encompass time taken off work by an Employee for the purpose of providing care or assistance to other persons specified in Section 5.41.070 with an illness, injury, medical condition, or need for medical diagnosis or treatment.

"Person" means an individual, corporation, partnership, limited partnership, limited liability partnership, limited liability company, business trust, estate, trust, association, joint venture, agency, instrumentality, or any other legal or commercial entity, whether domestic or foreign.

"Small Business" means an Employer for which normally fewer than fifteen persons (calculated on a full-time equivalent (FTE) basis) work for compensation during a given week, including persons employed outside the City. The City Council is authorized to adopt regulations further defining "small business" for businesses with fluctuating numbers of employees. In determining the number of persons performing work for an employer during a given week, all persons performing work for the same business enterprise for compensation on a full-time, part-time, or temporary basis shall be counted (calculated on a full-time equivalent (FTE) basis), including persons made available to work through the services of a temporary services or staffing agency or similar entity.

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

5.41.030 Minimum Wage.

A. Employers must 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. For an Employer that is not a Small Business, the Minimum Wage shall be an hourly rate of \$11.00 beginning on July 1, 2015, \$12.00 beginning on July 1, 2016, and \$13.00 beginning on July 1, 2017. For an Employer that is a Small Business, the Minimum Wage shall be an hourly rate of \$11.00 beginning on July 1, 2017, and \$12.00 beginning on July 1, 2018.

C. To prevent inflation from eroding its value, beginning on July 1, 2018 (for Employers other than Small Businesses) and July 1, 2019 (for Employers that are Small Businesses), and each year thereafter, the Minimum Wage shall increase by an amount corresponding to the prior year's increase, if any, in the cost of living. The prior year's increase in the cost of living shall be measured by the percentage increase, if any, as of December 31 of the immediately preceding calendar year over the level as of January 1 of the immediately preceding calendar year of the Consumer Price Index (Urban Wage Earners and Clerical Workers, for the San Francisco-Oakland-San Jose metropolitan statistical area) or, if such index is discontinued, then in the most similar successor index, with

the amount of the minimum wage increase rounded to the nearest multiple of five cents. The adjusted minimum wage shall be announced by April 1 of each year, and shall become effective as the new minimum wage on the subsequent July 1.

D. Notwithstanding any provision in this Ordinance to the contrary, in the event that the California or federal minimum wage is increased above the level of the Minimum Wage in force under this Section, the Minimum Wage under this Section will be increased to match the higher California or federal wage, effective on the same date as the increase in the California or federal minimum wage takes effect.

E. 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.

5.41.040 Exceptions.

The following Employees shall be exempt from this chapter:

- A. An Employee who is a direct care worker. For purposes of this section, a "direct care worker" shall mean an Employee who (1) is a home health aide, personal care aide, certified nursing assistant, or other person who gives assistance to people who are sick, injured, mentally or physically disabled, elderly, or fragile, (2) provides care in or about a private home or in a facility other than a hospital or skilled nursing facility, and (3) receives compensation that is 70 percent or more funded by the State of California and/or the federal government.
- B. An Employee who is a trainee in a job training program that meets the City's job training standards. This exemption shall be for the period of training as specified under the City-approved training standards, but in no event shall be longer than six months.
- C. An Employee who is twenty-one years of age or younger and is employed by a nonprofit corporation for after-school or summer employment for a period not longer than 90 days.

5.41.050 Waiver through Collective Bargaining.

To the extent allowed by federal and state 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.

5.41.060 Application of Minimum Wage to Welfare-to-Work Programs.

The Minimum Wage established pursuant to 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 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.

5.41.070 Paid Sick Leave.

A. Accrual of Paid Sick Leave.

1. Employers must provide Paid Sick Leave to their Employees in accordance with this chapter.
2. Paid Sick Leave shall begin to accrue for Employees at the commencement of employment or on July 1, 2015, whichever is later.
2. Employers must provide an Employee with one hour of Paid Sick Leave for every thirty hours worked by the Employee after Paid Sick Leave begins to accrue. Employers are not required to provide an Employee with Paid Sick Leave in less than one-hour increments for a fraction of an hour worked.
3. Employers may impose a cap on the number of hours that Employees may accrue in Paid Sick Leave, but this cap may be no less than 40 hours for each Employee. Accrued Paid Sick Leave for Employees carries over from year to year (whether calendar year or fiscal year), but is limited to the aforementioned cap. Nothing herein precludes an Employer from establishing a higher cap or no cap on the number of accrued hours. Paid Sick Leave must be compensated at the same hourly rate or other measure of compensation as the Employee earns from his or her employment at the time the Employee uses the Paid Sick Leave.

4. If an Employer has a paid leave policy, such as a paid time off policy, that makes available to Employees an amount of paid leave that may be used for the same purposes as Paid Sick Leave under this chapter and that is sufficient to meet the requirements for accrued Paid Sick Leave as stated in this chapter, the Employer is not required to provide additional Paid Sick Leave.
5. An Employer is not required to provide financial or other reimbursement to an Employee upon the Employee's termination, resignation, retirement, or other separation from employment, for accrued Paid Sick Leave that the Employee has not used.

B. Use of Paid Sick Leave.

1. An Employee may use Paid Sick Leave not only when he or she is ill or injured or for the purpose of the Employee's receiving medical care, treatment, or diagnosis, as specified more fully in California Labor Code § 233(b)(4), but also to aid or care for the following persons when they are ill or injured or receiving medical care, treatment, or diagnosis: child; parent; legal guardian or ward; sibling; grandparent; grandchild; and spouse, registered domestic partner under any state or local law, or designated person. The Employee may determine how much Paid Sick Leave they need to aid or care for the aforementioned persons. The aforementioned child, parent, sibling, grandparent, and grandchild relationships include not only biological relationships but also relationships resulting from adoption; step-relationships; and foster care relationships. "Child" includes a child of a domestic partner and a child of a person standing in loco parentis. If the Employee has no spouse or registered domestic partner, the Employee may designate one person as to whom the Employee may use paid sick leave to aid or care for that person in lieu of a spouse or registered domestic partner. The opportunity to make such a designation shall be extended to the Employee no later than the date on which the Employee has worked 30 hours after Paid Sick Leave begins to accrue pursuant to this chapter. There shall be a window of 10 work days for the Employee to make this designation. Thereafter, the opportunity to make such a designation, including the opportunity to change such a designation previously made, shall be extended to the Employee on an annual basis, with a window of 10 work days for the Employee to make the designation.
2. An Employer may not require, as a condition of an Employee's taking Paid Sick Leave, that the Employee search for or find a

replacement worker to cover the hours during which the Employee is on Paid Sick Leave.

3. An Employer may require Employees to give reasonable notification of an absence from work for which Paid Sick Leave is or will be used.
4. An Employee may determine how much Paid Sick Leave they need to use, provided that Employers may set a reasonable minimum increment of the use of Paid Sick Leave not to exceed two hours.
5. An Employer may only take reasonable measures to verify or document that an Employee's use of Paid Sick Leave is lawful, and shall not require an Employee to incur expenses in excess of five dollars in order to show his or her eligibility for such paid leave.
6. An Employee shall be entitled to begin using Paid Sick Leave on the ninetieth calendar day following commencement of his or her employment or on July 1, 2015, whichever is later.

5.41.080 Notice, Posting and Payroll Records.

A. By April 1 of each year, the Office 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 1 of that same year. In conjunction with this bulletin, the Office shall by April 1 of each year publish and make available to Employers, in all languages spoken by more than five percent of the work force in 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 must post in a conspicuous place at any workplace or job site where any Employee works the notice published each year by the Office informing Employees of the current Minimum Wage rate and of their rights under this chapter. Every Employer must post such notices in any language spoken by at least five percent of the Employees at the work-place or job site. Every Employer must also provide each Employee at the time of hire with the Employer's name, address, and telephone number in writing.

C. Employers must retain payroll records pertaining to Employees for a period of four years, and must 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.

5.41.090 Retaliation Prohibited.

It shall be 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. Taking adverse action against a person within 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.

5.41.100 Implementation.

The Office shall be authorized to coordinate implementation and enforcement of this chapter and may promulgate appropriate rules, regulations or guidelines for such purposes. Any rules, regulations or guidelines promulgated by the Office 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 rules, regulations or guidelines 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.

5.41.110 Enforcement.

A. The City may establish an administrative procedure for receiving and investigating complaints of noncompliance with this chapter, hearing and rendering City decisions on the merits of such complaints, enforcing such decisions, and establishing remedies for noncompliance. Pursuit of such administrative procedure shall not be a prerequisite for pursuing a private action under this chapter.

B. Any person claiming harm from a violation of this chapter, any entity a member of which is aggrieved by a violation of this chapter, including without limitation the City, 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 and remedies as set forth below. 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. This chapter shall not give rise to any cause of action against the City.

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. The remedies for violation of this chapter include but are not limited to:

1. Reinstatement of the Employee in employment, injunctive relief, the payment of back wages unlawfully withheld, and/or the payment of an additional sum as a civil penalty in the amount of \$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.

5.41.120 Severability.

The provisions of this Ordinance are severable, and if any clause, sentence, paragraph, provision, or part of this Ordinance, or the application of this Ordinance to any person, is held to be invalid or preempted by state or federal law, such holding shall not impair or invalidate the remainder of this Ordinance. It is hereby declared to be the legislative intent that this Ordinance would have been adopted had such provisions not been included or such persons or circumstances been expressly excluded from its coverage.

5.41.130 Relationship to Other Requirements.

This chapter provides for payment of a local Minimum Wage and imposes other labor standards, 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.

5.41.140 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 3. The recitals contained in this Ordinance are true and correct and are an integral part of the Council's decision, and are hereby adopted as findings.

SECTION 4. This Ordinance shall be in full force and effect immediately upon its passage as provided by Section 216 of the City Charter if adopted by at least six members of the City Council, or upon the seventh day after final adoption if adopted by fewer votes.

IN COUNCIL, OAKLAND, CALIFORNIA, _____, 2014

PASSED BY THE FOLLOWING VOTE:

AYES - BROOKS, GALLO, GIBSON MCELHANEY, KALB, KAPLAN, REID, SCHAAF, AND
PRESIDENT KERNIGHAN

NOES -

ABSENT -

ABSTENTION -

ATTEST: _____

LATONDA SIMMONS
City Clerk and Clerk of the Council of
the City of Oakland, California

DM

AN ORDINANCE AMENDING THE OAKLAND MUNICIPAL CODE TO ESTABLISH A CITY MINIMUM WAGE AND REQUIRING PAID SICK LEAVE

NOTICE AND DIGEST

This Ordinance adds Chapter 5.41 to the Oakland Municipal Code to require employers to pay a minimum hourly wage and provide paid sick leave to employees working within the City of Oakland.