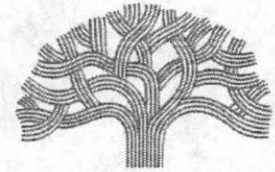


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CITY OF OAKLAND

CITY HALL ▪ 1 FRANK H. OGAWA PLAZA, 2<sup>nd</sup> Floor ▪ OAKLAND, CALIFORNIA 94612

Office of the Council President Patricia Kernighan  
COUNCILMEMBER ~ DISTRICT 2

(510) 238 - 3266

FAX (510) 238 - 6910

Office of the Honorable Lynette Gibson McElhaney  
COUNCILMEMBER ~ DISTRICT 3

TDD (510) 238 - 6451

To: Oakland City Councilmembers

From: Council President Patricia Kernighan and Councilmember McElhaney

Date: July 24, 2014

Re: An Ordinance to Establish an Oakland Minimum Wage and Require Paid Sick Leave

Dear City Councilmembers and fellow Oaklanders:

We submit for your consideration an Ordinance amending the Oakland Municipal Code to establish an Oakland minimum wage and require paid sick leave for Oakland workers. This Ordinance would phase in increases in the minimum wage, starting at \$11 per hour on July 1, 2015, reaching \$13 per hour on July 1, 2017, and \$15 per hour on July 1, 2021, for the great majority of Oakland employees. Small businesses who have 15 or fewer employees, some non-profit social services which are government funded, youth in training programs, and trainees in apprenticeship would also see a minimum wage increase starting at \$10 per hour on July 1, 2015, reaching \$11.50 per hour on July 1, 2017, and \$12.95 per hour on July 1, 2021. (Note, these wage increases are more thoroughly broken down in the attached tables. Additionally, we have included wage increase tables from Berkeley, Richmond, San Francisco, San Jose, and Seattle.) The measure would also require paid sick leave, accrued at the rate of one hour of leave for every 30 hours worked.

Please note that a few of the provisions of this Ordinance are different than in the minimum wage ballot measure that was presented to Committee last week, pursuant to feedback and direction from the CED Committee.

Special City Council Meeting  
Item # **11.1**  
July 29, 2014

### Addressing Income Disparity:

We are all aware of the increasing disparity of incomes nationally and locally and want to take action to raise the incomes for people on the lowest end of that continuum so that they are better able to provide the necessities of life for themselves and their families. It is the responsibility of the Council to enact policies that strengthen our local economy.

Other cities, including Seattle and San Francisco, as well as our smaller neighboring cities of Berkeley and Richmond, have recently adopted minimum wage increases by ordinance or have ballot measures coming up which would establish city minimum wage standards. Each one of the other cities has chosen to phase in the required wage increase in steps over multiple years, in order to allow businesses and non-profit organizations to adapt to the change without causing unintended negative consequences such as job loss or reduced social services. Many of the measures have included two wage tiers, usually for small businesses or non-profits. (As did San Francisco's original minimum wage law in 2004.) There is great wisdom in ramping up worker wages over a period of several years, as has been done in all other cities. It prevents harm to vulnerable sectors like non-profits and small businesses, while it steadily raises the wages for all employees.

### Structuring a Minimum Wage Increase that Works for Oakland:

As you know, the Oakland Lift Up coalition has already qualified a minimum wage ballot measure for the November 2014 ballot that would raise the minimum wage for all employees of any type of business or non-profit employer in Oakland to \$12.25/hour, effective March 2015, with no phase in or exemptions. Such a measure will certainly benefit thousands of Oakland residents who are now being paid less than \$12.25 per hour. And we are confident that many large Oakland businesses would be able to adjust to the proposed wage increase without too much difficulty. However, we are very concerned that the measure as written—mandating an increase of \$3.25 per hour in March 2015—on top of the State's recent raise from \$8 to \$9 per hour that just went into effect on July 1--would be too big a cost jump to for some types of employers to absorb in an 8 month period and thus would cause unintended negative impacts on those employers, several sectors of our economy and a significant number of Oakland residents. The entities that would likely suffer those negative impacts include:

- The small family-run businesses, such as the produce markets, restaurants, dry cleaners and other service businesses along International Boulevard and other neighborhoods, most of which are owned and operated by people who are immigrants and/or people of color and who are lower income people themselves. (And parenthetically, many of whom are the providers of the only healthy, fresh food in east Oakland.)
- Social service agencies who provide direct care to frail elderly or disabled persons, where those services are funded by the State and federal governments and the funding reimbursements are set at levels insufficient to cover the increased wages for the direct care workers. (I have already heard from one such provider of day care for hundreds of frail elderly seniors that the

program could not continue operating if the wages for their care workers increased by an additional \$3.25 an hour in the coming year.)

- Job training programs and youth summer employment programs run by non-profit organizations, the funding for which is very limited. According to City Staff, an additional 36 percent wage increase would mean serving thirty percent fewer trainees.
- Oakland's new, but still fragile restaurant sector would also be drastically hit by the rapid wage increase proposed by the Lift Up Campaign. The mandatory wage increase to restaurant workers, including those who make more than twice the minimum wage in tips, will put a financial strain on most restaurants in Oakland that many will not be able to adjust to.

Because of the above concerns, the Ordinance we propose creates a more moderate phase-in schedule for small businesses, clients of job training and apprenticeship programs, and youth in temporary training programs. Small Businesses are defined as those with 15 or fewer employees, calculated as Full Time Equivalent (FTE). As an example, if a business had one employee working 30 hours a week and another employee working 10 hours a week, together they would be counted as one FTE. (1 FTE = 40 hours in a seven day week).

#### Impacts on Small Businesses

The City's Community and Economic Development Department commissioned a study on the likely impacts to Oakland's economy of an increase in the minimum wage at the level mandated in the Lift Up initiative, which has now qualified for the November 2014 ballot. The study was done by Oakland economist Linda Hausrath and was presented to the CED Committee on July 8, 2014. The analysis was a detailed, drill-down into data on Oakland's businesses and labor pool. It looked at both the positive and negative impacts of a \$4.25 wage increase from \$8 to \$12.25 per hour over an eight month period. While it recognized the benefits to the thousands of employees who would receive the minimum wage of \$12.25, (only half of whom live in Oakland), it also presented data and analysis on the types of Oakland businesses that employ the most minimum wage workers and would be funding the increase. Most of those were small businesses with average of 4% profit margins. We have attached to this memo one of the charts from the report and we strongly encourage reading the whole report, which is online at [www.oaklandnet.com](http://www.oaklandnet.com)\*. The table shows the increased labor cost as a percentage of operating costs and of total revenue. It also shows the increased labor cost as a percentage of profit margins in various types of business. In 13 out of 15 of the business categories, the labor increase exceeded the entire profit margin and in most of them it was more than twice the profit margin. That kind of data shows the very serious risk to our economy if the minimum wage is increased by so much in one jump. Many of the small businesses in our districts serve a lower income clientele and cannot raise prices by up to 12% in order to break even. They will have to lay off employees or perhaps close altogether. That is why we highly recommend the approach taken by most other cities, which is to phase in a wage increase and consider slightly different treatment for particularly vulnerable sectors such as small businesses or certain types of social services.



Sick Leave

Sick leave is an important policy directive to promote a more equitable economy and a healthier Oakland. The sick leave provision in this proposed Ordinance accrues at the same rate as in the Lift Up measure, 1 hour is accrued per 30 hours worked. The Ordinance has a cap of 40 hours of accrued leave.

A Sustainable, Fair solution

We believe there is a way to raise the minimum wage and provide paid sick leave in Oakland, and yet avoid unintended harm to small businesses, persons served by social service agencies and others. That is to adopt the Ordinance before you. This Ordinance will establish a higher minimum wage for the great majority of workers while allowing additional time for the most vulnerable employers to ramp up their wages without cutting jobs or having to close altogether. It is a more sustainable alternative to the Lift Up initiative and is more sensitive to the unique range of businesses in the still fragile economy of Oakland. We urge you to adopt this law to raise the minimum wage and require sick leave for Oakland workers. It is law that can be supported by all stakeholders in our community.

Respectfully submitted,



Patricia Kernighan  
City Council President  
Councilmember for District 2



Lynette Gibson McElhaney  
Councilmember, District 3

\*Direct Link to Hausrath Report

<https://oakland.legistar.com/LegislationDetail.aspx?ID=1819795&GUID=1BD547BF-D7FC-49E9-AA65-757ACB738706&Options=&Search=>

TO: City Councilmembers

FROM: Council President Kernighan and Councilmember McElhanev

RE: ADDITIONAL ALTERNATIVES TO CONSIDER FOR WAGE STRUCTURES FOR MINIMUM WAGE ORDINANCE

Dear Councilmembers and Members of the Public:

Please see our memo describing our proposal. However, for maximum flexibility in your decision-making and for purposes of informing the public about all possible options, in compliance with the Sunshine Ordinance, below we are putting before you and the public, other possible options for structuring the wage increases that could be included in the Oakland Minimum Wage Ordinance.

Timing of the First Increase: The first wage increase could start sooner than we have proposed in the Ordinance, if you choose to do so. Our proposal starts on July 1, 2015.

You could choose to start the first increase on October 1, 2014, or January 1, 2015 or other date following.

Amount of the increase: If you choose to have the first wage increase start sooner than July 1, 2015, the initial increase could be \$10.00 or \$10.50. Then the schedule would resume as written in the Ordinance, with \$11.00/hour in July. (Please keep in the mind that the State minimum wage was \$8/hour in June 2014 (two months ago), and just went to \$9/hour on July 1, 2014.)

Special City Council Meeting

Item 11.1

July 29, 2014

# Minimum Wage Increase Comparison

## Oakland 2014 Lift Up Ballot Initiative

Date	Amount	Percent Increase
Jan. 2014	\$8.00	
Jul. 2014	\$ 9.00	12.50%
Mar. 2015	\$ 12.25	36.10%
Jan. 2016	\$ 12.58	CPI
Jan. 2017	\$ 12.92	CPI
Jan. 2018	\$ 13.27	CPI
Jan. 2019	\$ 13.63	CPI
Jan. 2020	\$ 13.98	CPI
Jan. 2021	\$ 14.34	CPI
Jan. 2022	\$ 14.69	CPI
Jan. 2023	\$ 15.05	CPI

## Oakland Kernighan Ordinance Large (> 15 FTE)

Date	Amount	Percent Increase
Jan. 2014	\$8.00	
Jul. 2014	\$ 9.00	12.50%
Jul. 2015	\$ 11.00	22.22%
Jul. 2016	\$ 12.00	9.09%
Jul. 2017	\$ 13.00	8.33%
Jul. 2018	\$ 13.33	CPI
Jul. 2019	\$ 13.68	CPI
Jul. 2020	\$ 14.03	CPI
Jul. 2021	\$ 14.39	CPI
Jul. 2022	\$ 14.76	CPI
Jul. 2023	\$ 15.14	CPI

## Oakland Alternative Ordinance Large (> 15 FTE)

Date	Amount	Percent Increase
Jan. 2014	\$8.00	
Jul. 2014	\$ 9.00	12.50%
Jul. 2015	\$ 11.00	22.22%
Jul. 2016	\$ 12.00	9.09%
Jul. 2017	\$ 13.00	8.33%
Jul. 2018	\$ 13.50	3.85%
Jul. 2019	\$ 14.00	3.70%
Jul. 2020	\$ 14.50	3.57%
Jul. 2021	\$ 15.00	3.45%
Jul. 2022	\$ 15.39	CPI
Jul. 2023	\$ 15.78	CPI

## Oakland Kernighan Ordinance Small (<15 FTE), Non-profit and Grant-

Date	Amount	Percent Increase
Jan. 2014	\$8.00	
Jul. 2014	\$ 9.00	12.50%
Jul. 2015	\$ 9.00	0.00%
Jul. 2016	\$ 10.00	11.11%
Jul. 2017	\$ 11.00	10.00%
Jul. 2018	\$ 12.00	9.09%
Jul. 2019	\$ 12.31	CPI
Jul. 2020	\$ 12.62	CPI
Jul. 2021	\$ 12.95	CPI
...	...	...
Jul. 2028	\$ 15.28	CPI

## Oakland Alternative Ordinance Small (<15 FTE), Non-profit and Grant-

Date	Amount	Percent Increase
Jan. 2014	\$8.00	
Jul. 2014	\$ 9.00	12.50%
Jul. 2015	\$ 10.00	11.11%
Jul. 2016	\$ 11.00	10.00%
Jul. 2017	\$ 11.50	4.55%
Jul. 2018	\$ 12.00	4.35%
Jul. 2019	\$ 12.31	CPI
Jul. 2020	\$ 12.62	CPI
Jul. 2021	\$ 12.95	CPI
...	...	...
Jul. 2028	\$ 15.28	CPI



# Minimum Wage Increases in Other Cities

**San Francisco 2014 Ballot Initiative**

Date	Amount	Percent Increase
Jan. 2014	\$10.74	
Jan. 2015	\$ 11.00	CPI
May 2015	\$ 12.25	11.30%
Jul. 2016	\$ 13.00	6.10%
Jul. 2017	\$ 14.00	7.70%
Jul. 2018	\$ 15.00	7.70%
Jan. 2019	\$ 15.00	
Jan. 2020	\$ 15.39	CPI
Jan. 2021	\$ 15.78	CPI

**Berkeley Adopted Ordinance (2014)**

Date	Amount	Percent Increase
July. 2014	\$9.00	12.50%
Oct. 2014	\$ 10.00	11.10%
Oct. 2015	\$ 11.00	10.00%
Oct. 2016	\$ 12.53	13.90%
Oct. 2017	\$ 12.53	-
Oct. 2018	\$ 12.53	-

Note: Does not call for CPI increase

**Seattle Adopted Minimum Wage (2014)  
( > 500 Employees)**

Date	Amount	Percent Increase
2014	\$9.32	CPI
2015	\$ 11.00	18%
2016	\$ 13.00	18%
2017	\$ 15.00	15%
2018	\$ 15.36	CPI
2019	\$ 15.73	CPI
2020	\$ 16.11	CPI
2021	\$ 16.49	CPI

Note: Separate rate for businesses that cover health care  
The Seattle region has a slightly lower CPI

**San Jose (2012 Ballot Initiative)**

Date	Amount	Percent Increase
Mar. 2013	\$ 10.00	25%
Jan. 2014	\$ 10.15	CPI
Jan. 2015	\$ 10.42	CPI
Jan. 2016	\$ 10.71	CPI
Jan. 2017	\$ 10.99	CPI
Jan. 2018	\$ 11.29	CPI
...	...	
Jan. 2031	\$14.99	CPI

**Richmond Adopted Ordinance (2014)**

Date	Amount	Percent Increase
Jan. 2014	\$8.00	
July. 2014	\$ 9.00	12.50%
Jan. 2015	\$ 9.60	6.70%
Jan. 2016	\$ 11.52	20.00%
Jan. 2017	\$ 12.30	6.80%
Jan. 2018	\$ 13.00	5.70%
Jan. 2019	\$ 13.35	CPI
Jan. 2020	\$ 13.70	CPI
Jan. 2021	\$ 14.05	CPI
Jan. 2022	\$ 14.40	CPI
Jan. 2024	\$ 15.10	CPI

**Seattle Adopted Minimum Wage (2014)  
( < 500 Employees)**

Date	Amount	Percent Increase
2014	\$9.32	CPI
2015	\$ 11.00	18%
2016	\$ 12.00	9%
2017	\$ 13.00	8%
2018	\$ 14.00	8%
2019	\$ 15.00	7%
2020	\$ 15.75	5%
2021	\$ 16.49	5%

Note: Separate rate for busiessses with tips and benefits

TABLE 6  
EXAMPLES OF POTENTIAL IMPACTS ON BUSINESS COSTS

Business/Industry Sector	Existing Conditions				Increase in Labor Costs From Higher Minimum Wage		
	Total Revenue %	Labor Costs /a/ %	Other Costs /b/ %	Profit Margin /b/ %	Increase in Labor Costs /c/	Increase as Percent of Revenue /d/	Increase as Percent of Profit Margin /e/
<b>Other Services</b>							
Personal care services	100	44	52	4	26%	11.4%	285%
Dry cleaning & laundry serv.	100	35	61	4	26%	9.1%	228%
Civic, social, advocacy, labor, & other orgs.	100	31	65	4	26%	8.1%	203%
<b>Food Service &amp; Drinking Places</b>							
Full service restaurant	100	31	65	4	22%	6.8%	170%
Limited service eating places	100	34	62	4	22%	7.5%	188%
<b>Admin &amp; Support Services</b>							
Office admin services	100	28	68	4	22%	6.2%	155%
Business support services	100	48	48	4	19%	9.1%	228%
Security services	100	42	54	4	19%	8.0%	200%
Services to buildings.	100	55	41	4	19%	10.5%	263%
<b>Retail Trade</b>							
Small Stores/Shops	100	42	54	4	19%	8.0%	200%
<b>Arts, Ent., &amp; Recreation</b>							
Performing Arts, Spec. Sports	100	11	85	4	17%	1.9%	48%
Museums, zoo, parks	100	15	81	4	17%	2.5%	63%
Amusements, recreation	100	40	56	4	17%	6.8%	170%
	100	37	59	4	17%	6.3%	158%
	100	30	66	4	17%	5.1%	128%

NOTE: Data are order-of magnitude examples to illustrate the potential impacts on business costs of increased labor costs from a higher minimum wage.

/a/ U.S. Census Bureau, Economic Census, Industry Series to identify labor as share of total revenue. Includes payroll and payroll taxes (excludes health and other benefits).

/b/ Profit margin is assumed percentage applicable for the types of businesses in the industries to be most affected (per Tables 4 and 5). Other operating costs are the residual.

/c/ Combines the increased wages for workers affected directly and indirectly for each industry sector with the share of workers not affected to show total increase in labor costs.

/d/ Compares revenue shortfall from higher labor costs to total revenue currently. Identifies revenue increases required, if prices were to fully cover increases in labor costs.

/e/ Compares revenue shortfall with current profit margin. A percentage greater than 100 indicates that reducing profit margins to zero would not cover increases in labor costs.

Source: Hausrath Economics Group



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REVISÉD 7/224/2014

Approved as to Form and Legality

City Attorney's Office

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## OAKLAND CITY COUNCIL

ORDINANCE NO. \_\_\_\_\_ C.M.S.

INTRODUCED BY COUNCIL PRESIDENT KERNIGHAN  
AND COUNCILMEMBER MCELHANEY

### 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 (as of July 1, 2014 and 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 so will need additional time to adjust their payroll for higher wages as compared to other employers; 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 ~~subject to a lower~~ also be subject to a minimum wage increase, that is phased-in more adequately the City's minimum wage for a limited time to allow agencies to continue operating such programs at maximized levels of service and to 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:

—"Apprentice or Trainee" means —an Employee who is an apprentice or trainee in an apprenticeship or job training program that meets the City's apprenticeship or job training standards. An Employee shall be considered an Apprentice or Trainee for the period of apprenticeship or training as specified under the City-approved standards, but in no event shall this period be longer than six months.

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—"City" means the City of Oakland.

—"Direct Care Worker" means 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.

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"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.

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"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, nonprofit corporation, nonprofit association, 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 or fewer (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.

"Youth Trainee" means an Employee who is 25 years of age or younger and is employed by a nonprofit corporation for after-school or summer employment for a period not longer than six months.

#### 5.41.030 Minimum Wage.

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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 Employee who is either not either (1) employed by a Small Business, (2) a Direct Care Worker, (3) a Youth Trainee, or (4) an Apprentice or Trainee, 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, \$13.50 beginning on July 1, 2018, \$14.00 beginning on July 1, 2019, \$14.50 beginning on July 1, 2020, and \$15.00 beginning on July 1, 2021.~~

~~For an Employer that is a Small Business and for an Employee who is a Direct Care Worker, 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. For an Employer that is a Small Business and for an Employee who is either (1) employed by a Small Business, (2) a Direct Care Worker, (3) a Youth Trainee, and/or (4) an Apprentice or Trainee, the Minimum Wage shall be an hourly rate of \$10.00 beginning on July 1, 2015, \$11.00 beginning on July 1, 2016, and \$11.50 beginning on July 1, 2017, and \$12.00 beginning on July 1, 2018.~~

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~~D. In order to prevent inflation from eroding its value, beginning on July 1, 2018-2022, and each year thereafter, the Minimum Wage for those Employees who are not Small Businesses Employees, (for Employers other than Small Businesses-Direct Care Workers, Youth Trainees, or Apprentices or Trainees, or and employed by Small Businesses Employees other than Direct Care Workers) and July 1, 2019 (for Employers that are Small Businesses and for Employees that are Direct Care Workers), 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.

E. In order to prevent inflation from eroding its value, beginning on July 1, 2019, and each year thereafter, the Minimum Wage for Employees who are -Direct Care Workers, Youth Trainees, Apprentices or Trainees, or employed by Small Businesses, 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.

DE. 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.

EG. 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.~~

**5.41.0450 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.

**5.41.0560 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.

**5.41.0760 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.

**5.41.0780 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.

**5.41.0890 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.

**5.41.9400 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.

5.41.1040 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.

**5.41.1210 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.

**5.41.1230 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.

**5.41.1340 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.

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SECTION 5. This Ordinance shall automatically be repealed and shall have no further force or effect in the event that another law establishing a minimum wage in the City of Oakland is enacted.

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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

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.