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CITY OF OAKLAND



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LAURENCE E REID
Vice Mayor
Councilmember District #7

(510) 238-7007
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From: Vice Mayor Larry Reid

To: Council President Pat Kernighan

Members of The Oakland City Council

City Administrator Fred Blackwell

Colleagues,

Please accept the following submission and Introduction regarding An Ordinance Amending the Oakland Municipal Code to Establish a City Minimum Wage. The ordinance calls for increasing the minimum wage to \$10.20 per hour and adjusting it for inflation each year. It allows exemptions for youth summer employment and job training programs.

My intent is to introduce this Ordinance with your support that would allow employees within the City of Oakland a higher quality of life and would allow these workers to be able to afford to live, work and enjoy the many amenities that our City offers. This Ordinance would reflect a fair and equitable share of a wage standard that exceeds what has been established by the State of California, and would be competitive and comparable with surrounding cities here in the Bay Area. My goal is to recommend a minimum wage that will have little or no drastic impacts on Oakland small business owners.

I understand that a study is being initiated to look of the impacts of raising the minimum wage on our local economy and businesses, allowing the City of Oakland to perform due diligence around increasing the minimum wage in Oakland. Recent academic literature is already suggesting that increasing the minimum wage within a reasonable amount will not have significant impacts on local businesses.

Please join me in support of this introduction of An Ordinance Amending the Oakland Municipal Code to Establish a City Minimum Wage.

Respectfully submitted,


Vice Mayor Larry Reid

Council District 7



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AGENDA REPORT

TO: FRED BLACKWELL
CITY ADMINISTRATOR

FROM: Rachel Flynn

SUBJECT: Minimum Wage Ordinance

DATE: April 3, 2014

City Administrator
Approval

Date

4/10/14

COUNCIL DISTRICT: All

RECOMMENDATION

Staff has prepared:

An Ordinance Amending the Oakland Municipal Code to Establish a City Minimum Wage

This report and ordinance was prepared in response to a proposal put forward by Vice Mayor Larry Reid to establish a minimum wage of \$10.20 per hour in Oakland. This report is intended to help frame the City Council discussion on this matter by identifying key elements for consideration.

EXECUTIVE SUMMARY

Vice Mayor Larry Reid has proposed raising the minimum wage in the City of Oakland to \$10.20 per hour. As is the case in most cities, currently the City of Oakland does not have its own minimum wage rate; local businesses must conform to the State minimum wage rate of \$8.00 per hour. State Assembly Bill 10 enacted in 2013 will raise the California minimum wage to \$9.00 per hour in July 2014 and to \$10.00 per hour in January 2016. A proposed November ballot initiative would establish an Oakland minimum wage at \$12.25 per hour.

In addition to the background and brief summary of the existing studies about the impact of minimum wage increases on the economy contained in this report, staff is moving forward with engaging an economic consultancy to complete an Oakland-specific analysis of the pros and cons of increasing the minimum wage beyond State mandated requirements. Staff is also awaiting the results of a survey recently released by the Oakland Metropolitan Chamber of Commerce to its membership to gauge support for proposed minimum wage increases of \$10.20, \$12.25 or \$15.00 per hour.

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BACKGROUND/LEGISLATIVE HISTORY

Federal and State Minimum Wage Policies

The Fair Labor Standards Act of 1938 included, among other provisions, the establishment of a national minimum wage of 25 cents per hour. The federal minimum wage has risen 22 times since then and is currently at \$7.25 per hour. Efforts to raise the federal minimum wage to \$10.10 per hour have been thwarted by House Republicans, even though some studies indicate that doing so could pull roughly half of the nation's working poor out of poverty.

California established a minimum wage in 1916 at 16 cents per hour. It has been increased 25 times to its current rate of \$8.00 per hour. Assembly Bill 10 enacted in 2013 will raise the California minimum wage to \$9.00 per hour effective July, 2014 and to \$10.00 per hour effective January 1, 2016.

Minimum Wage Policies in other Bay Area Jurisdictions

The City of San Francisco was the first local municipality to establish a minimum wage in 2004, at \$8.50 per hour; today it is \$10.74 per hour. San Francisco also has labor standards for mandatory health care and paid leave.

Other Bay Area studies have either adopted higher minimum wages or are considering increases. By referendum in 2012, the City of San Jose established a minimum wage of \$10.15/ per hour. The City of Richmond recently adopted legislation establishing its minimum wage at \$9.00 per hour. The City of Berkeley is also contemplating establishing a minimum wage at \$10.55 per hour.

There currently are efforts to pass a ballot initiative in November that would establish Oakland's minimum wage at \$12.25 per hour, with annual escalators based on increases in the local Consumer Price Index. Other labor standards included in the proposed ballot initiative are requirements for paid sick leave and requirements that hospitality workers receive service charges that are included on customers' bills.

See *Attachment A* for a summary of Federal, State and local minimum wage policies.

ANALYSIS

Proposals to raise the minimum wage rate at the federal, state and local levels are based primarily on concerns regarding the widening income gap between our working poor and middle and upper class workers. Nationally, approximately 3,600,000 workers—or 4.7% of all hourly workers—earn wages at or below the federal minimum wage of \$7.25 per hour. Nearly two-thirds of minimum wage earners are female, with the majority of them being single heads of households. More than half of the jobs that pay minimum wage are in food service and retail occupations.

Housing, food, transportation, child care, health care and other basic necessities in the Bay Area are more expensive than the national average. The true Self-Sufficiency Standard as calculated by the Insight Center for Community Development and used by the Oakland Workforce Investment Board for a family of four with two bread-winners in Alameda County is approximately \$86,400 annually. That comes to more than \$20 per hour for two working adults. For a single head of household with two children, the standard is around \$82,000 annually, which comes to \$39 per hour.

The proposed ordinance to establish a City of Oakland minimum wage at \$10.20 per hour represents a 27.5% increase from the current State minimum wage of \$8.00 per hour. With 76% of Americans supporting an increase in the minimum wage to \$9.00 per hour according to a recent Gallop Poll, it is safe to assume that the majority of residents in a City as committed to social equity as Oakland would support an increase as well.

Policy Considerations When Considering Minimum Wage Increases

In addition to increasing earnings for the working poor, advocates for increasing the minimum wage believe that it would increase aggregate demand for goods and services, thus stimulating local economies. They also believe that it would reduce income inequality. When considering a raise to the minimum wage, policymakers should take into consideration a number of other issues, including, but not limited to the following:

- Small business exemption—should there be an exemption for businesses with gross earnings of less than \$500,000 per year?
- Exemptions and subminimum wages for youth, student, job training program participants, and tipped workers, for example.
- Wage compression, meaning workers earning more than minimum wage would likely demand or expect increases as well.
- Cost of living escalator. It should be based on San Francisco/Bay Area costs, and not on the national index.
- Negative impact on jobs. Employers may cut back on jobs or leave town.

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- Increased prices for goods and services to off-set increased personnel costs.
- Reduced profits, particularly for food service providers and retailers.
- How an increase will impact small businesses and large employers and national chains differently.
- How to enforce local minimum wage violations, types of enforcement, and estimated costs to the City General Fund.

Preliminary Literature Review

There are numerous studies and articles on the topic of increasing the minimum wage. Staff's preliminary summation of the more extensive studies performed by neutral entities, such as the Congressional Budget Office and the UC Berkeley Institute for Research on Labor and Employment, is as follows:

- There would likely be some loss of jobs due to reductions in force or businesses leaving Oakland. Nationally, the projection is \$500,000 based on the proposed increase to \$9.00 per hour. In Oakland, a local analysis of impacted employers is needed to determine the extent of potential job loss.
- Many more workers than those who earn minimum wage would benefit. Nationally, the estimate is 24.5 million workers would experience increases in their wages—more than six times more people than currently making minimum wage. On a smaller scale, Oakland should experience the same ripple effect.
- Prices for some goods and services would increase. Studies vary on this potential impact. One study indicated that the cost of food would increase 10 cents per day.
- There would likely be an increase in automation, thus off-setting the loss of minimum wage jobs with higher end technology and manufacturing jobs. The extent to which Oakland would experience this positive off-set is unknown at this time.
- Economic stimulation—roughly half of the people who work in Oakland live in Oakland. Their increased earning would go back into the local economy. At the national level, this stimulation is estimated at \$33 billion annually. Oakland's businesses would experience increased sales and revenue, comparable a portion of the increased earnings of the residents who live and work here.
- Improved worker retention, loyalty, and productivity. Several studies came to this conclusion, which has a significant positive impact on the cost of doing business, customer satisfaction, and improved sales.

Provisions in Current Draft Ordinance

The basic provisions included in the attached Minimum Wage Ordinance are as follows:

- The Minimum Wage shall be an hourly rate of \$10.20, beginning on January 1, 2015.
- To prevent inflation from eroding its value, 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 August of the immediately preceding year over the level as of August of the previous 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 October 1 of each year, and shall become effective as the new minimum wage on January 1.
- Per the Living Wage Ordinance, an exemption is proposed an employee who is a trainee in a job training program that meets the City job training standards. This exemption shall be for the period of training as specified under the City-approved training standards;
- Also per the Living Wage Ordinance, an exemption is proposed for an employee who is under twenty-one years of age and is employed by a nonprofit corporation for after school or summer employment or as a trainee for a period not longer than 90 days.
- Compliant based enforcement, meaning workers who believe their rights under this Ordinance are being violated may lodge a complaint with the City, rather than having the City perform ongoing monitoring.

Next Steps

National studies and reports on impacts of minimum wage increases are helpful in understanding all the facets of this complex and critical issue; however, further local impact analyses of potential positive and negative impacts is needed. While some parts of Oakland have grown and flourished with business development and expansion, other parts of the City struggle to attract and retain businesses.

The commitment to social equity and closing the wage gap and Oakland's ongoing need to attract and retain businesses are not necessarily mutually exclusive. With current and proposed minimum wage rates in the Bay Area ranging from \$8.00 per hour to \$15.00 per

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hour, the need for a more in depth analysis of potential impacts on Oakland-based employers is essential. Within this wide range of current and proposed minimum wage rates, there may be a “sweet spot” where an increase could help close the wage gap, minimize job loss, and stimulate our local economy and improve worker retention and productivity.

Next steps staff has planned for providing the City Council with more information on this important topic include engaging an economic consultancy to complete an Oakland-specific analysis of the pros and cons of establishing a minimum wage. The study will focus on the impacts of a range of minimum wage increases, including the \$10.20 per hour rate proposed by Vice Mayor Reid and the \$12.25 rate proposed to be slated for the November election. Staff has released a Notice Inviting Bids for a consultant to conduct a minimum wage increase impact analysis specifically for Oakland and expects to have a study completed in three to four months.

Staff is also awaiting the results of a survey released by the Oakland Metropolitan Chamber of Commerce to its membership to gather and analyze their positions (please see *Attachment B*).

PUBLIC OUTFREACH/INTEREST

Lift Up Oakland is the coalition that is planning to place the \$12.25 per hour minimum wage initiative on the November ballot. This coalition is comprised of many community based and labor organizations with which the City has worked. In addition, the Oakland Metropolitan Chamber of Commerce is conducting a survey of its members to gauge their support for and opposition to the proposed increases of \$10.20 per hour, \$12.25 per hour and \$15.00 per hour.

COORDINATION

Staff is coordinating efforts within the Department of Economic and Workforce Development and the City Attorney’s Office for assistance with the Ordinance. This report has also been reviewed by the Budget Office.

COST SUMMARY/IMPLICATIONS

At this point, staff has no precise cost estimates but want to ensure the City Council considers the cost of enforcement. San Jose devotes 0.8 FTE to field and follow-up complaints from workers. San Jose also set aside additional general funds for legal fees and enforcement, which the City has not had to access since its minimum wage was enacted in March 2013.

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The City of San Francisco has a robust Office of Labor Standards Enforcement to oversee its many workplace standards ordinances. Its minimum wage enforcement is also complaint driven, although the Office of Labor Standards and Enforcement does use active enforcement for instances where there are numerous alleged violations in a particular area or with particular types of businesses.

The City Council would also need to consider the potential increase in salary costs for the City's employees. The two classifications potentially impacted by the minimum wage increase are Recreation Aide, PT and Senior Aide, PT. The salary structure for the Recreation Aide, PT classification would need to be revised as of January 1, 2015 to reflect the \$10.20 minimum wage at Step 1 and increase in pay level for the other steps, which is shown in the chart below. The potential estimated cost increase would range between \$90,000 to \$108,000 annually for this classification. Funding for these added costs have not been identified and would need to be considered during the FY2014/2015 mid-cycle budget process.

Recreation Aide, PT Salary Range		
	<u>Old Rate</u>	<u>New Rate</u>
Step 1	\$8.63	\$10.20
Step 2	\$9.05	\$10.71
Step 3	\$9.51	\$11.25
Step 4	\$10.00	\$11.81
Step 5	\$10.51	\$12.40

The Senior Aide program in Human Services is a federal program in which pay rates are set by the program, and some participants are paid less than \$10.20 an hour. The impact of the proposed ordinance on the Senior Aide, PT classification would have to be explored within the restraints of the program guidelines. Furthermore, there may be additional cost implications to the City, however a thorough analysis would need to be conducted to determine the full extent of the fiscal impact.

SUSTAINABLE OPPORTUNITIES

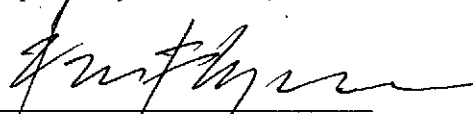
Economic: The economic impact of establishing a minimum wage in Oakland requires further study. While it appears that increased wages for Oakland workers will likely stimulate the City's economy, it is not yet clear what the impact will be on jobs lost and increased costs for goods and services.

Environmental: This report does not directly address environmental sustainability.

Social Equity: The minimum wage increase would help close the wage gap for Oakland's many working poor if wages go up 27.5% or higher.

For questions regarding this report, please contact Al Auletta, Program Director, at 510-238-3752.

Respectfully submitted,



Rachel Flynn, Acting Director
Economic and Workforce Development

Reviewed by:
Kelley Kahn, Director of Special Projects
Office of the City Administrator

John R. Bailey, Executive Director
Oakland Workforce Investment Board

Prepared by:
Al Auletta, Program Manager
Department of Economic & Workforce Development

Attachment A: Summary Table of Federal, State and Local Minimum Wage Policies
Attachment B: Chamber of Commerce Minimum Wage Survey

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Table of Minimum Wages & Proposals

Jurisdiction	Min Wage	Notes
Federal	\$7.25	<ul style="list-style-type: none"> • In State of the Union, President Obama proposed increase to \$10.10 for all federal contracts • Reps. Harkin & Miller have introduced bill to make it \$10.10 per hour and peg to inflation (current minimum wage not pegged)
State	\$8.00 (to \$9 on July 1 and \$10 in 2016 – see note)	<ul style="list-style-type: none"> • Gov. Brown signed AB 10 last year raising min. wage for CA to \$9 on July 1, 2014 and to \$10 on July 1, 2016 (a 25% increase over 2.5 years) • Senator Leno recently introduced <u>SB 935</u> to set the State's minimum wage at \$11 in 2015, \$12 in 2016 and \$13 in 2017. Beginning in 2018, adjusted annually for inflation. • California currently has the eighth-highest minimum wage in the country. Washington has the highest at \$9.19, followed by Oregon at \$8.95 and Vermont at \$8.60. Nevada, Connecticut, the District of Columbia and Illinois all have minimum wages of \$8.25 an hour. 19 states and DC have passed laws setting their minimum wage above the federal level.
San Francisco	\$10.74	<ul style="list-style-type: none"> • SF voters passed a 2003 ordinance pegging the minimum wage (\$8.50 in the 2004 base year) to inflation. Effective Jan. 1, 2014, it is \$10.74.
San Jose	\$10.15	<ul style="list-style-type: none"> • Increased to \$10 with inflation index passed by City of San Jose voters Nov. 2012, and then adjusted annually for inflation.
Richmond	\$9.00 (to \$12.30 by 2017 - see note)	<ul style="list-style-type: none"> • The City Council recently approved an ordinance increasing the minimum wage to \$9 effective immediately and phased in each year to \$12.30 an hour by 2017. Beginning in 2018, adjusted annually for inflation
Oakland	\$8.00 (to \$9 on July 1 and \$10 in 2016 – see note)	<ul style="list-style-type: none"> • Oakland currently does not require anything more than the State minimum wage. Oakland's minimum wage will go to \$9.00 on July 1 and to \$10 on July 1, 2016, consistent with State law • Oakland has a Living Wage Ordinance for City and Port contractors, which is currently \$13.75 (if no health benefits) and \$11.96 (if health benefits provided). • Lift Up Oakland, a coalition of labor and community groups, is collecting signatures to place a \$12.25 minimum wage initiative on the November ballot. The initiative also calls for allowing workers to earn at least five paid sick days



Oakland Business Minimum Wage Survey How would the multiple proposals out there to increase the minimum wage affect Oakland? This survey will help us answer this question and ensure a strong voice in ongoing policy discussions.

*1. Which of the following best describes the principal industry of your organization?

*2. Roughly how many employees currently work for your organization at locations in Oakland?

- 1-10
- 11-50
- 51-100
- 101-250
- 251-500
- 501+

3. What PERCENTAGE of your Oakland-based employees are paid at or near the current minimum wage?

(Please enter the approx. percentage of employees in each pay range; if zero, no need to enter a value; and please do NOT enter the percent sign, "%".)

Paid at current state minimum wage of \$8 per hour.

Paid between \$8 and \$9 per hour.

Paid between \$9 and \$10 per hour.

Paid between \$10
and \$11 per hour.

Paid between \$11
and \$12 per hour.

4. What percentage of your minimum wage employees are tipped employees?

- 0-10%
- 11-25%
- 26-50%
- 51-75%
- 76%+

5. If you have tipped employees, what is your best estimate for the average regular hourly take-home pay for those workers?

- Less than \$10/hour
- \$10-\$15/hour
- \$15-\$20/hour
- More than \$20/hour

6. In addition to base wage (and tips, if applicable), do you offer your minimum wage employees any of the following (please select all that apply)?

- Medical coverage
- Dental coverage
- Vision coverage
- Paid sick leave
- Paid vacation (beyond required holidays)
- Bonus, commissions, or incentive pay
- In-kind or other (gym access, parking, discounts, etc.)
- None of the above

Other (please specify)

7. If your company provides added benefits, please provide an estimate of the value of the benefits (as a percentage add on to total pay, either wages alone or wages plus tips)?

- 25% or less
- 26-50%
- 51-75%
- More than 75%

*8. Will your organization benefit from an increase in the minimum wage?

- Yes.
- No.
- Not sure.
- Depends. (How much? How fast? Any exemption for size, type of worker, industry, etc?)

9. What does your organization think is the best minimum wage public policy for Oakland?

- Federal proposals to increase it from \$7.25/hour nationwide to \$10.10/hour in three stages over two years and then peg it to the CPI.
- Status Quo - i.e. California State Minimum Wage (Currently \$8/hour, increasing to \$9/hour July 1, 2014, and to \$10/hour July 1, 2016).
- Proposal pending before Oakland City Council to increase it to \$10.20/hour starting in 2015.
- Local initiative proposal to increase to \$12.25/hour starting March 2, 2015 and peg to cost of living increases starting Jan. 1, 2016.
- \$15/hour as proposed by at least one candidate for Oakland Mayor.
- Not sure if it should stay where it is or increase, but it should be lower than in cities like San Francisco to maintain Oakland's competitive edge.

Other (please specify)

10. How will your organization likely respond to or be affected by an increase in the minimum wage in Oakland (select all that apply)?

- Reduce staffing levels
- No response
- Limit future expansion plans
-

Increase prices

- Attract and retain better employees
- Reduce employee hours
- See increased revenue
- Close locations
- Relocate

Other (please specify)

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11. How do you think an increase in the minimum wage will affect Oakland businesses and overall business climate, or is there anything else you would like to add?

↑
↓

12. Would you be willing to be involved in advocacy around this issue, and if so, how?

- No, but thanks for your leadership on the issue.
- Yes, please keep me posted.
- Yes, and I would be willing to attend meetings on this issue.
- Yes, and I would like to sign on to a letter with other organizations.
- Yes, and I would like to send my own letter.
- Yes, and I would be willing to put in calls to key decision-makers.
- Yes, and I would be willing to talk to media and government officials about how this will impact me.

Other (please specify)

↑
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***13. Are you a member of the Oakland Metropolitan Chamber of Commerce?**

- Yes.
- No, though I would be interested in getting involved.
- No, and not interested at this time.

14. Please enter your contact information and affiliation (helpful, but optional, and will be available only to Oakland Chamber representatives).

Name:

Company:

Address:

Address 2:

City/Town:

State:

ZIP:

Country:

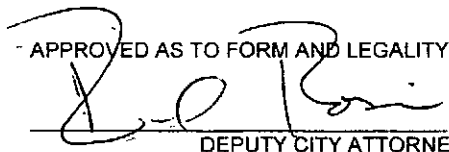
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APPROVED AS TO FORM AND LEGALITY

DEPUTY CITY ATTORNEY

OAKLAND CITY COUNCIL

ORDINANCE NO. _____ C.M.S.

Introduced by Vice Mayor Reid

AN ORDINANCE AMENDING THE OAKLAND MUNICIPAL CODE TO ESTABLISH A CITY MINIMUM WAGE

WHEREAS, the wage gap between the working poor and middle and upper class workers is increasing; 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 current state minimum wage of \$8.00 per hour (increasing to \$9.00 per hour on July 1, 2014, and \$10.00 per hour on July 1, 2016) is insufficient in enabling workers to attain self-sufficiency in Oakland; and

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

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, this Ordinance is intended to improve the quality of services provided to the public by reducing worker turnover, absenteeism and instability while increasing productivity in the workplace; and

WHEREAS, increased earnings by Oakland residents will have a positive impact on Oakland's economy, and will therefore promote the City's well-being, general prosperity, and general welfare; and

WHEREAS, prompt and efficient enforcement of this Ordinance will provide Oakland workers with improved economic security and the assurance that their rights will be respected; now, therefore

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

SECTION 1. This Ordinance shall be known as the "City of Oakland Minimum Wage Ordinance."

SECTION 2. Chapter 5 41 is hereby added to the Oakland Municipal Code to read as follows:

Chapter 5.41

MINIMUM WAGE

5.41.010 Purpose.

The purpose of this chapter is to establish a minimum hourly wage 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.B. of this chapter.

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

"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 a youth and young adult between the ages of 14 to 24 enrolled in a job training program which meets the city job training standards.

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. The Minimum Wage shall be an hourly rate of \$10.20. To prevent inflation from eroding its value, beginning on January 1, 2015, 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 August of the immediately preceding year over the level as of August of the previous 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 October 1 of each year, and shall become effective as the new minimum wage on January 1.

C. 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 trainee in a job training program that meets the City job training standards. This exemption shall be for the period of training as specified under the City-approved training standards.

- B. An Employee who is under twenty-one years of age and is employed by a nonprofit corporation for after school or summer employment or as a trainee for a period not longer than 90 days.

5.41.050 Waiver through Collective Bargaining.

To the extent required by federal 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 Notice, Posting and Payroll Records.

By October 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 January 1. In conjunction with this bulletin, the Office shall by October 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.

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.

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.

5.41.080 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.

5.41.090 Implementation.

A. Rules, Regulations and Guidelines. 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.

B. Reporting Violations. An Employee or any other person may report to the Office in writing any suspected violation of this chapter. The Office 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 Office may disclose his or her name and identifying information as necessary to enforce this chapter or other employee protection laws. In order to further encourage reporting by Employees, if the Office notifies an Employer that the Office is investigating a complaint, the Office shall require the Employer to post or otherwise notify its Employees that the Office is conducting an investigation, using a form provided by the City.

C. Investigation. The Office shall be responsible for investigating any possible violations of this chapter by an Employer or other person. The Office 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.

D. Informal Resolution. The Office shall make every effort to resolve complaints informally, in a timely manner, and shall have a policy that the Office shall take no more than one year to resolve any matter, before initiating an enforcement action. The failure of the Office to meet these timelines within one year shall not be grounds for closure or dismissal of the complaint.

5.41.100 Enforcement.

A. Where prompt compliance is not forthcoming, the City may take any appropriate enforcement action to secure compliance with this chapter, including any of the following:

1. The Office may issue an administrative citation pursuant to Sections 1.12.040, et seq., of the Oakland Municipal and Planning Codes with a fine of not more than \$50 for each day or portion thereof for each Employee or person as to whom the violation occurred or continued.
2. The Office may issue a compliance order to the Employer.
3. The City may initiate a civil action for injunctive relief and damages and civil penalties in a court of competent jurisdiction.

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, 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. Except where prohibited by state or federal law, City agencies or departments may revoke or suspend any registration certificates, permits or licenses held or requested by the Employer until such time as the violation is remedied.

E. 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.

F. If a repeated violation of this chapter has been finally determined, the Office may require the Employer to post public notice of the Employer's failure to comply in a form determined by the City.

5.41.110 Relationship to Other Requirements.

This chapter provides for payment of a local Minimum Wage 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.

5.41.120 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. 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 of the City Council that this Ordinance would have been adopted had such provisions not been included or such persons or circumstances been expressly excluded from its coverage.

SECTION 5. 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

FILED
OFFICE OF THE CITY CLERK
OAKLAND

**AN ORDINANCE AMENDING THE OAKLAND
MUNICIPAL CODE TO ESTABLISH A CITY MINIMUM
WAGE**

2014 APR 17 10:18 AM

NOTICE AND DIGEST

This Ordinance adds Chapter 5.41 to the Oakland Municipal Code to require payment of a minimum hourly wage for employees working within the City of Oakland.