



Office of the City Manager

ACTION CALENDAR

November 10, 2015

(Continued from September 15, 2015)

To: Honorable Mayor and Members of the City Council

From: *DWR* Dee Williams-Ridley, Interim City Manager

Submitted by: Kelly Wallace, Acting Director, HHCS

Subject: Proposed Amendments to the Minimum Wage Ordinance; Amending Berkeley Municipal Code Chapter 13.99

RECOMMENDATION

Review and consider information regarding the activities and costs associated with implementing and enforcing the Commission on Labor's proposed amendments to the Minimum Wage Ordinance (MWO), including the potential impact of the proposed amendments on the City's minimum wage employees, employers, non-profit organizations and community-based organizations, on-call workers and youth training program workers, and either:

- 1) Adopt first reading of an Ordinance amending Berkeley Municipal Code Chapter 13.99, which includes staff-recommended revisions to the Commission's proposed Ordinance; or
- 2) Refer the MWO back to the City Manager for further analysis and revisions.

SUMMARY

This report accompanies the Commission's report recommending changes to the City's Minimum Wage Ordinance. The proposed changes address several complex policy issues for Council's consideration. The attached version of the ordinance retains most of the Labor Commission's proposed changes, and includes recommended revisions to:

- Remove Paid Sick Leave requirements from the MWO,
- Change the definition, noticing requirements and regulations relating to Service Charges, and
- Remove the language prohibiting employers from eliminating or reducing any current benefits for employees in order to fund compensation requirements of the MWO.

FISCAL IMPACTS OF RECOMMENDATION

Adopting staff's revisions of the Commission's proposed ordinance would moderately increase staff time required to:

- Investigate and evaluate claims related to alleged non-compliance of the collection and distribution of service charges, alleged non-compliance of the increased minimum wage requirements and the applicability of the MWO to previously exempt “on-call” workers, and allegations of retaliation; and
- Outreach to covered businesses, update the City’s website, FAQs and literature on the MWO.

The enforcement of the proposed service charge requirements in particular is complex and difficult to predict. Enforcement would require obtaining and analyzing sales records from private businesses and assessing if the revenue collected in service charges was entirely used to pay for benefits and higher pay for employees.

Referring the MWO back to the City Manager for further analysis would require staff time to analyze and revise the ordinance language according to priorities identified by the Council.

CURRENT SITUATION AND ITS EFFECTS

The MWO went into effect on October 1, 2014 and provides a minimum pay requirement for all employees working at least two hours per week within the geographic limits of the city of Berkeley. The MWO stipulates an increase to \$12.53 on October 1, 2016 but does not provide for changes after that date. The Minimum Wage Ordinance provides a floor, not a ceiling, for compensation, and does not increase annually with the Consumer Price Index (CPI). Summaries of the Commission’s recommended revisions and staff recommendations are provided below.

Increase Minimum Wage

The Labor Commission’s proposal would increase the minimum wage from the currently scheduled rate increase to \$12.53 on October 1, 2016 to \$13.00 and would increase the requirement by \$1.50 each year through the year 2020, when the minimum wage requirement would be \$19.00 an hour. Thereafter, the minimum wage would increase corresponding with the previous year’s CPI increase for urban wage earners in the Bay Area. Staff takes no position on this policy question.

In regions such as the Bay Area, where the cost of living is extraordinarily higher than the national average, municipalities have adopted local minimum wage standards that are significantly higher than both the federal and state minimum wage requirements. These local minimum wage mandates are an effort to restore the buying power that the federal minimum wage used to provide and to afford minimum wage standards that more accurately reflect the cost of living in the Bay Area region. **Attachment #2: Table Comparison of Current Minimum Wage Laws in the Bay Area** shows a comparison of other Bay Area cities and their respective minimum wage regulations.

As shown in **Attachment #3: Graph of Bay Area Minimum Wage Requirements**, adopting the Labor Commission’s proposed minimum wage rate schedule would make

Berkeley's minimum wage requirement the highest in the Bay Area by October 1, 2018, at a required minimum wage rate of \$16.00 an hour.

If Council wanted a wage closer to other Bay Area cities', adopting the Labor Commission's recommendation through the year 2017 or 2018, and increasing with the Consumer Price Index (CPI) for urban wage earners in the Bay Area region thereafter would make Berkeley's minimum wage requirements closer to those of Emeryville, Oakland, Richmond and San Francisco.

In order to encourage participation in the Labor Commission's meetings and discussions on revisions to the MWO, staff sent out an electronic flyer invitation for the Commission's January 21, 2015 meeting to over 5,800 employers and business associations via email as well as informing the Berkeley Chamber of Commerce about the meeting and issues relating to the proposals. The following concerns regarding increases in the minimum wage were expressed during Labor Commission meetings and a meeting held in February of this year hosted by the Berkeley Chamber of Commerce:

- Some industry sectors may have particular difficulty in adjusting to higher minimum wage standards, including the food service industry, small, independent retailers, non-profit organizations, and caregiver for children, the elderly and people with disabilities.
- Restaurant representatives and small local businesses are concerned that increases in minimum wage would make their businesses less competitive with other businesses outside of the City of Berkeley that do not have local minimum wage requirements.
- Small, local businesses such as bookstores and other retailers that compete with web-based sales giants like Amazon will have a widening disadvantage and may risk losing sales to web-based retailers.
- Non-profit organizations and government sponsored programs may have to reduce their services as costs of labor increase.

Paid Sick Leave

The Labor Commission's proposed ordinance incorporates paid sick leave requirements. If Council wishes to adopt paid sick leave requirements, staff recommends creating a separate Paid Sick Leave Ordinance and therefore the attached ordinance excludes the paid sick leave requirements.

The state paid sick leave law (AB1522)¹ went into effect in California on July 1, 2015. The Commission's proposal would increase the benefits for employees in the City of Berkeley above the state mandates when it would go into effect October 1, 2016.

¹ http://www.dir.ca.gov/dlse/Paid_Sick_Leave.htm

The table in **Attachment #4** – Comparison of Paid Sick Leave Requirements Chart – provides a detailed comparison between the state law, San Francisco’s paid sick leave laws passed in 2007, and the proposed regulations. The Labor Commission’s proposed paid sick leave mandates for the City of Berkeley would differ from the state mandate in that:

- The Commission’s proposal would allow employees of large employers (more than 10 employees) to accrue more paid sick leave (72 hours instead of 48);
- The Commission’s proposal would allow employees to use all of the paid sick leave that they have earned, instead of allowing employers to limit use of paid sick leave to 24 hours per year as in the state law; and
- The Commission’s proposal would allow employees to take sick leave to care for a non-family member, unlike the state law.

While it is the Commission’s intent to apply paid sick leave requirements to all employees, embedding paid sick leave regulations within the MWO may be confusing for the public and may misguide people that the regulations only apply to minimum wage employees. Therefore, if Council wishes to adopt these requirements, staff recommend that Council refer this issue back to staff to develop a stand-alone Paid Sick Leave Ordinance, as was done in San Francisco, so that the requirements and applicability are clearer. Additionally, because state paid sick leave law went into effect only in July of this year, and many issues with application and enforcement are likely to arise, staff recommend waiting to see what problems arise in the administration of the state law, in order to be able to craft a more workable local ordinance. The attached version of the MWO omits paid sick leave requirements for this reason.

Service Charges

Some businesses, primarily higher end full service restaurants and catering companies, charge customers a service fee. In many instances, this fee is presented by the employer or perceived by the customer as replacing the optional gratuity. While California labor law precludes distributing tips to anyone but the service provider (typically the server), there are no such limits on service charges. In response, labor advocates have proposed, and the City of Oakland has adopted through Measure FF, limits on the use of service charges to ensure they go directly to the employee, as a tip would.

Most businesses that utilize a Service Charge model use the revenue to pay living wages and other benefits for the employees. Some businesses may collect Service Charge revenue in order to subsidize the operating costs of the business, including paying employees minimum wage.

Staff has no recommendation on the policy question of whether the City should regulate service charges.

According to several Berkeley restaurateurs, their use of the service charge model has allowed them to decrease the pay inequity between front of the house staff (like food servers and bartenders) and back of the house staff (like dishwashers and cook staff) by using the services charges to raise the pay for the back of the house staff and stabilize the hourly pay for front of the house staff. California state law makes it illegal to distribute gratuities in this way. Additionally, several restaurateurs contend that the service charge model allows the employer to establish equitable revenue sharing models and to pay for health care benefits, paid sick leave and even retirement plans.

If Council wishes to regulate service charges, staff recommend narrowing the definition of the service charge as in the attached ordinance to limit it to food service and hospitality uses as the Commission intended, and make enforcement clearer and more efficient. Staff believes that the Commission's proposed language is too broad, and would create unanticipated consequences and difficulties with enforcement. Specifically, the attached ordinance includes revisions to:

- Narrow the applicability of Service Charge requirements to food-service uses and the hospitality industry; and
- Require employers to share complete service charge financial records only with City staff for enforcement purposes, not with all employees.

Staff recommend limiting the application of Service Charge regulations to food service and hospitality businesses because these are the industries that are most likely to adopt a Service Charge model in the place of more traditional gratuities systems, and those primarily discussed by the Commission. Staff believes that the Commission's proposal is too broad and would have negative unanticipated consequences. For example, if a furniture business were to assess a "delivery fee" for delivering and setting up furniture, in order to compensate for the businesses expenses of gas, insurance and the delivery truck as well as labor costs, under the Commission's proposal (13.99.030.I), 100% of the "delivery fee" would need to be paid to the employee in wages or benefits.

In addition, sales receipts are private and proprietary information. The Labor Commission's requirement for employers to provide all service charge data to employee effectively requires businesses to make sales information public (13.99.040.E.4). The attached ordinance limits this disclosure to City staff for enforcement purposes.

To enforce this portion of the ordinance, City staff would need to request full access to a business' financial records in order to ascertain whether all service charges were paid out as wages, according to the posted distribution formula. This will require more complex analysis and investigation than the current wage requirements. Narrowing the service charge definitions to focus on food-service and hospitality sectors as the Labor Commission intended will also leave fewer unintended applications for enforcement to sort out.

Retaliation

The Labor Commission's new retaliation language in Section 13.99.070.B would prevent businesses from making any changes to non-mandated employee compensation and benefits after the ordinance is adopted. Staff believe this proposal would put an undue burden on employers and would be very difficult for staff to investigate and enforce, and therefore struck this language from the attached ordinance. For example, if an employer is currently providing bus passes for employees but finds it cannot afford to do so after the \$5 hourly pay increase by 2018, the ordinance would not allow the employer to eliminate that benefit. In addition, staff would have to prove that employers were reducing non-mandated pay and benefits in order to meet increased wage requirements of the MWO and make a determination of what benefits were in place at the time the ordinance was adopted for comparison purposes.

On-Call Employees

The Labor Commission's proposed amendments eliminate the exemption from the MWO for "on-call" employees. While employers use the term "on-call" in many senses, the ordinance would mandate only that employees required to have a phone or pager on so that they can be contacted and called into work within a specific time frame would need to be paid the minimum wage while standing by. This type of on-call workers are not required to be paid while standing by under current California labor law.

Staff research found health care providers to be the most frequent employer of this type of on-call workers. Employers contacted did not express significant concerns with this change, primarily because many current on-call workers are highly skilled and have wages far in excess of the minimum, or are covered by a collective bargaining agreement which would exempt them from this requirement. Therefore, staff takes no position the Commission's recommendation to remove the exemption from the MWO for "on-call" employees.

Removing the exemption for "on-call" employees would not significantly increase staff's responsibility for investigations and enforcement.

Youth Job Training Programs

Staff takes no position the Commission's recommendation limiting the number of hours a "youth job training" program employee could work to 1,040 hours within a 365 day period in order to be exempt from the MWO. Because most youth job training programs are already part time or seasonal, staff does not believe that this provision will drastically affect youth job training programs, including the city's Youth Works program. Adopting a 1,040 hour limit for Youth Job Training programs would not significantly increase staff's responsibility for investigations and enforcement.

Welfare-to-Work Programs

Employers who employ participants in the Welfare-to-Work program are already bound to the requirements of local minimum wage ordinances so the current language is

unnecessary. The Commission has acknowledged this and has proposed eliminating Section 13.99.110 relating to the applicability of the MWO to this program. Staff's recommendation, as reflected in the attached ordinance, simply removes reference to Welfare-to-Work in the MWO's index and in Section 13.99.030 to be consistent with the Commission's other changes.

BACKGROUND

On June 10, 2014, the Berkeley City Council adopted a Minimum Wage Ordinance. Beginning October 1, 2014, all employers must pay to each employee who performs work within the geographic boundaries of Berkeley, wages not less than ten dollars (\$10.00) per hour; not less than eleven dollars (\$11.00) per hour effective October 1, 2015; and not less than twelve dollars and fifty-three cents (\$12.53) effective October 1, 2016. Non-profits are exempt from the MWO until October 1, 2015.

In September 2014, the City's Health Housing and Community Services Department (HHCS) added 1.0 FTE Community Development Project Coordinator to staff enforcement of the MWO. HHCS worked with 311 to establish protocols for receiving complaints and the Department has developed administrative procedures for investigation and enforcement as required by the MWO.

Under the current MWO:

- Seven claims have been submitted. Three claims were valid and informal resolutions were reached; three claims were not valid; one claim is currently under investigation.
- The three claim resolutions yielded \$1,076 in back wages for 15 employees.

City staff has responded to dozens of inquiries relating to the MWO and has performed outreach to employees and employers by distributing information about the MWO, posting information at community facilities such as senior centers, community centers, libraries and other establishments, both private and public.

ENVIRONMENTAL SUSTAINABILITY

There are no identifiable environmental effects or opportunities associated with the subject of this report.

RATIONALE FOR RECOMMENDATION

The Labor Commission's proposed ordinance poses complicated policy issues for the Council to consider: whether to raise the wage and if so, by how much, whether the City should regulate paid sick leave and the use of services charges, how paid sick leave and service charges should be used, and other related requirements for employers.

The attached ordinance modifies the paid sick leave, service charge, and retaliation requirements as described above to limit unintended consequences and improve

enforcement. The reasons for these changes are: 1) staff believes that paid sick leave should be its own ordinance and not embedded within the MWO, 2) the Commission's definition of Service Charges is too broad and would have unintended consequences and enforcement complications, and 3) the Commission's proposal to require that employers maintain employee benefits that are not otherwise mandated creates an undue burden on employers as they adjust to minimum wage requirements.

ALTERNATIVE ACTIONS CONSIDERED

Council could adopt the Labor Commission's ordinance as written, but it could result in confusion and enforcement problems with the paid sick leave requirements, unintended consequences and enforcement complications with the service charge, and onerous burdens for employers and enforceable requirements regarding future changes in non-mandated wages and benefits.

CONTACT PERSON

Nathan Dahl, Community Development Project Coordinator, (510) 981-5405

Attachments:

- 1: Ordinance
2. Comparison of Bay Area Cities Minimum Wage Laws
3. Graph of Bay Area Cities Minimum Wage Requirements
4. Comparison of state paid sick leave law, SF sick leave law and Berkeley proposed sick leave law

ORDINANCE NO. -N.S.

AMENDING BERKELEY MUNICIPAL CODE CHAPTER 13.99 THE MINIMUM WAGE
ORDINANCE

BE IT ORDAINED by the Council of the City of Berkeley as follows:

Section 1. That Berkeley Municipal Code Chapter 13.99.030 is amended to read as follows:

13.99.030 Definitions.

The following terms shall have the following meanings:

- A. "City" shall mean the City of Berkeley.
- B. "Department" shall mean the Department of Finance or other City department or agency as the City shall by resolution designate.
- C. "Employee" shall mean any person who:
 - 1. In a calendar week performs at least two (2) hours of work for an Employer within the geographic boundaries of the City; 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.~~
- D. "Employer" shall mean 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, subcontractor or similar entity, employs or exercises control over the wages, hours or working conditions of any Employee, or any person receiving or holding a business license through Title 9 of the Berkeley Municipal Code.
- E. "Minimum Wage" shall have the meaning set forth in Section 13.99.040 of this Chapter.
- F. "Nonprofit Corporation" shall mean a nonprofit corporation, duly organized, validly existing under the laws of the jurisdiction of its incorporation and (if a foreign corporation) ~~in good standing~~ under the laws of the State of California, which corporation has established and maintains valid nonprofit status under Section 501(c)(3) of the United States Internal Revenue Code of 1986, as amended, and all rules and regulations promulgated under such Section, or any non-profit educational organization qualified under Section 23701 (d) of the Revenue and Taxation code.
- H. "Service Charge" shall mean all separately-designated amounts collected by an employer from customers at a food-service establishment or hotel, when the Employer indicates to the customer that no gratuities are needed or no tip line is included in the electronic payment format.

Section 2. That Berkeley Municipal Code Chapter 13.99.040 is amended to read as follows:

13.99.040 Minimum Wage.

A. Employers shall pay Employees no less than the Minimum Wage set forth below for each hour worked within the geographic boundaries of the City.

<u>Date</u>	<u>Minimum Hourly Wage</u>
<u>October 1, 2014</u>	<u>\$10.00</u>
<u>October 1, 2015</u>	<u>\$11.00</u>
<u>October 1, 2016</u>	<u>\$13.00</u>
<u>October 1, 2017</u>	<u>\$14.50</u>
<u>October 1, 2018</u>	<u>\$16.00</u>
<u>October 1, 2019</u>	<u>\$17.50</u>
<u>October 1, 2020</u>	<u>\$19.00</u>

B. For Employers that are Nonprofit Corporations, the requirements of this Chapter shall not take effect until October 1, 2015, at which time the minimum wage will be \$11.00 per hour.

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.

D. Cost of Living Adjustment. To prevent inflation from eroding its value, beginning on October 1, 2021, 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, from April 1 of the immediately preceding year to April 1 of the previous year of the Consumer Price Index for urban wage earners and clerical workers for the San Francisco-Oakland-San Jose CA metropolitan statistical area, as published in April of each year by the U.S. Department of Labor, Bureau of Labor Statistics. The adjusted Minimum Wage for all Employers shall be announced by May 1 of each year, and shall become effective as the new minimum wage on October 1 of that year.

E. Distribution of Service Charges

1. Service Charges shall not be retained by the Employer but shall be paid over in their entirety, in the form of hourly wages above the minimum or other non-mandatory benefits or forms of compensation, to the Employees performing services for the customers from whom Service Charges are to be collected. No part of these charges may be paid to Employers or supervisors except for any portion of their work time spent on nonsupervisory work serving these customers, and then at no higher rate of compensation than the average of what is paid other Employees performing similar customer service. The Service Charges shall be distributed to the Employees not later than the next payroll following the work or collection of the charge from the customer, whichever is later.

2. This section does not apply to any tip, gratuity, money, or part of any tip, gratuity, or money that has been voluntarily paid or given to or left for an Employee by customers over and above the actual amount due for services rendered or for goods, food, drink, or

articles sold or served to the customer. No part of this chapter shall be construed to limit or prohibit the amount of any tip or gratuity left for an Employee.

3. No Employer or agent thereof shall deduct any amount from wages due an Employee on account of a Service Charge or gratuity, require an Employee to credit the amount, or any part thereof, of a Service Charge or gratuity against and as a part of the wages due the Employee from the Employer.

4. Each Employer shall define the chain of service and associated job duties entitled to a portion of the distributed service charges, as well as the amount of percentage of the total service charges that each Employee can expect to earn. The Employer shall notify the Employees of the distribution formula as well as provide in writing to each employee its plan of distribution of service charges to employees and shall report to employees on each payroll date the amount of service charges distributed to each employee, either by way of added compensation or the value of fringe benefits earned for each employee in the chain of service for the pay period in question. Nothing in this chapter shall be construed to limit an employer's discretion to include all of their Employees performing non-supervisory work in this plan of distribution.

5. This Section shall not be applied to any events for which the employer already had a contract in place at the time the revised ordinance is adopted.

Section 3. That Berkeley Municipal Code Chapter 13.99.050 is amended to read as follows:

13.99.050 Waiver Through Collective Bargaining.

To the extent required or allowed 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.

Section 4. That Berkeley Municipal Code Chapter 13.99.060 is amended to read as follows:

13.99.060 Notice, Posting and Payroll Records.

A. By August 1 of each year, the Department shall publish and make available to Employers a bulletin announcing the adjusted Minimum Wage rate, which shall take effect on October 1 of that year. In conjunction with this bulletin, the Department shall by August 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 shall post in a conspicuous place at any workplace or job site in the City where any Employee works the notice published each year by the Department informing Employees of the current Minimum Wage rate and of their rights under this Chapter. Every Employer shall post such notices in any language spoken by at least five percent of the Employees at the work-place or job site. In instances where an Employee does not have a regular physical location where they perform their work, the Employer shall provide a copy of the MWO public notice to the Employee when they are hired or

assigned to complete work within the City of Berkeley. The notice shall be provided to the employee before they commence work within the city limits and must be provided in the language most easily comprehended by the Employee. Every Employer shall also provide each Employee at the time of hire with the Employer's name, address, and telephone number in writing. Failure to post such notice shall render the Employer subject to administrative citation, pursuant to Section 90, Subsection A, of this Chapter.

C. Employers shall retain payroll records pertaining to Employees for a period of four years, and shall allow the City access to such records, with appropriate notice and at a mutually agreeable time, to monitor compliance with the requirements of this Chapter. Where an Employer does not maintain or retain adequate records documenting wages paid-documenting wages paid and Service Charges collected and distributed 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. Furthermore, failure to maintain such records or to allow the City reasonable access shall render the Employer subject to administrative citation, pursuant to Section 90, Subsection A, of this Chapter. documenting wages paid and Service Charges collected and distributed

D. If a violation of this Chapter has been finally determined, the City shall require the Employer to post public notice of the Employer's failure to comply in a form determined by the City. Failure to post such notice shall render the Employer subject to administrative citation, pursuant to Section 90, Subsection A, of this Chapter.

F. Reporting of Service Charges. Every Employer shall post a notice in a conspicuous place at any workplace or job site in the City where any Employee works explaining how Service Charges are distributed among Employees. In order to ensure that the distribution of Service Charges is lawful, Employers shall, upon request by the City , make available their records of sales and associated Service Charges in a given pay period

Section 5.That Berkeley Municipal Code Chapter 13.99.090 is amended to read as follows:

13.99.090 Enforcement.

A. Where prompt compliance is not forthcoming, the City and the Department shall take any appropriate enforcement action to secure compliance, including but not limited to the following:

1. The City may issue an Administrative Citation pursuant to Chapter 1.28 of the Berkeley Municipal Code. The amount of this fine shall vary based on the provision of this Chapter being violated, as specified below:

a. A fine of one thousand dollars (\$1,000.00) may be assessed for retaliation by an Employer against an Employee for exercising rights protected under this Chapter for each Employee retaliated against.

b. A fine of five hundred dollars (\$500.00) may be assessed for any of the following violations of this Chapter:

- i. Failure to post notice of the Minimum Wage rate
- ii. Failure to provide notice of investigation to Employees
- iii. Failure to post notice of violation to public
- iv. Failure to maintain payroll records for four years

- v. Failure to allow the City access to payroll records
- vi. [Failure to provide record of the amount and distribution of collected Service Charges to Employees](#)

c. A fine equal to the total amount of appropriate remedies, pursuant to subsection E of this section. Any and all money collected in this way that is the rightful property of an Employee, such as back wages, interest, and civil penalty payments, shall be disbursed by the City in a prompt manner.

2. Alternatively, the City may pursue administrative remedies in accordance with the following procedures:

a. Whenever the City determines that a violation of any provision of this Chapter is occurring or has occurred, the City may issue a written compliance order to the Employer responsible for the violation.

b. A compliance order issued pursuant to this chapter shall contain the following information:

- i. The date and location of the violation;
- ii. A description of the violation;
- iii. The actions required to correct the violation;
- iv. The time period after which administrative penalties will begin to accrue if compliance with the order has not been achieved;

v. Either a copy of this Chapter or an explanation of the consequences of noncompliance with this Chapter and a description of the hearing procedure and appeal process;

vi. A warning that the compliance order shall become final unless a written request for hearing before the City is received within fourteen days of receipt of the compliance order.

c. Following receipt of a timely request for a hearing, the City shall provide the Employer responsible for the violation with a hearing and, if necessary, a subsequent appeal to the City Council that affords the Employer due process. During the pendency of the hearing and any subsequent appellate process, the City will not enforce any aspect of the compliance order.

3. The City may initiate a civil action for injunctive relief and damages and civil penalties in a court of competent jurisdiction.

B. [The City or Aa](#)ny person aggrieved by 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 employee and all other employees affected by the employer's violations](#) or 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 as may be appropriate to remedy the violation including, without limitation, the payment of any back wages unlawfully withheld, 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 that the violation occurred or continued, reinstatement in employment and/or injunctive relief. 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.

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. The City shall not renew any such license of an Employer with outstanding violations, as finally determined under this Chapter, until such time as the violation is remedied.

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

1. Reinstatement, the payment of back wages unlawfully withheld, and 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.

4. If a repeated violation of this Chapter has been finally determined, the City may require the Employer to pay an additional sum as a civil penalty in the amount of \$50 to the City for 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.

F. The remedies, penalties and procedures provided under this Chapter are cumulative and are not intended to be exclusive of any other available remedies, penalties and procedures established by law which may be pursued to address violations of this Chapter. Actions taken pursuant to this Chapter shall not prejudice or adversely affect any other action, civil or criminal, that may be brought to abate a violation or to seek compensation for damages suffered.

Section 6. That Berkeley Municipal Code Chapter 13.99.110 is [hereby repealed](#).

~~**13.99.110 Application Of Minimum Wage To Welfare-To-Work Programs.**~~

~~The Minimum Wage established under 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 within the City of Berkeley 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.~~

Section 7. That Berkeley Municipal Code Chapter 13.99.130 is amended to read as follows:

13.99.130 Exemptions.

The requirements [of Section 40, Subsection A](#) of this chapter shall not apply to the following Employees:

~~1. Employees who are standing by or on-call according to the criteria established by the Fair Labor Standards Act, 29 U.S.C. Section 201. This exemption shall apply only during the time when the Employee is actually standing by or on-call.~~

2. Job training program participants up to 25 years of age in [temporary](#) youth job training programs operated by Nonprofit Corporations or governmental agencies. [This exemption shall not apply to participants that work an excess of 1040 hours in the program within a consecutive 365 day period.](#)

Section 8. Copies of this Ordinance shall be posted for two days prior to adoption in the display case located near the walkway in front of Council Chambers, 2134 Martin Luther King Jr. Way. Within 15 days of adoption, copies of this Ordinance shall be filed at each branch of the Berkeley Public Library and the title shall be published in a newspaper of general circulation.

ATTACHMENT 2

Comparison of Current Minimum Wage Laws in the Bay Area

City	Nov. 19 2014	Jan. 1 2015	May 1 2015	Jan. 1 2016	Jan. 1 2017	Jan. 1 2018	Ordinance Provisions
Berkeley	\$10.00	\$10.00	\$10.00	\$11.00	\$12.53	\$12.53	Min Wage rates increase on Oct. 1 of each year through 2016. No increases past Oct. 1, 2016 have been adopted.
Emeryville	\$9.00	\$9.00	\$9.00	\$12.25 \$14.44*	\$13.00 \$14.82*	\$14.00 \$15.20*	Requires paid sick leave. Requires Hospitality employees get service charges. Also has 2-tiered program with large employers with 56+ employees paying higher rate*.
Mountain View and Sunnyvale	\$9.00	\$10.30	\$10.30	+ CPI increase	+ CPI increase	+ CPI increase	Starting Jan. 1, 2016, + inflation rate increase each year. Goal of \$15.00 minimum wage by 2018
Oakland	\$9.00	\$9.00	\$12.25	+ CPI increase	+ CPI increase	+ CPI increase	Requires paid sick leave. Requires Hospitality employees get service charges.
Richmond	\$9.00	\$9.60	\$9.60	\$11.52	\$12.30	\$13.00	Starting Jan. 1, 2019, + inflation rate increase each year.
San Francisco	\$10.74	\$11.05	\$12.25	\$13.00	\$14.00	\$15.00	Starting Jan. 1, 2019, + inflation rate increase each year. Req. paid sick leave under separate Ord.
San Jose	\$10.15	\$10.30	\$10.30	+ CPI increase	+ CPI increase	+ CPI increase	Starting Jan. 1, 2016, + inflation rate increase each year.

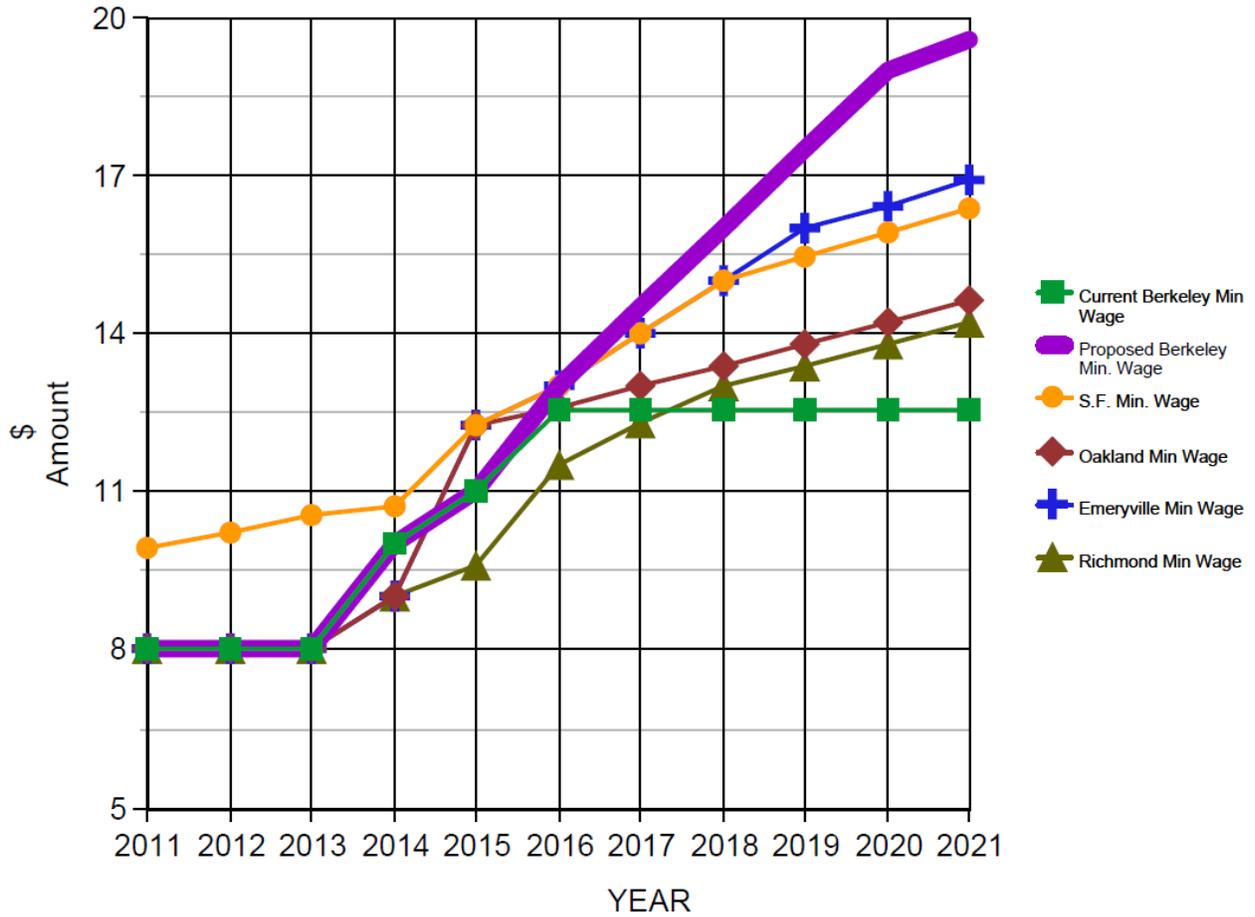
*Berkeley, Mountain View, Richmond and San Jose Min. Wage Laws were passed by City Council, Oakland and San Francisco most recent Minimum Wage laws passed by voter initiative.

The University of California system recently passed a policy to raise its minimum wage to \$15 an hour by Oct. 1, 2017.

“Various indexes have been devised to measure different aspects of inflation. The CPI measures inflation as experienced by consumers in their day-to-day living expenses... The CPI is generally the best measure for adjusting payments to consumers when the intent is to allow consumers to purchase at today's prices, a market basket of goods and services equivalent to one that they could purchase in an earlier period.” – United States Dept. of Labor, Bureau of Labor Statistics.

ATTACHMENT 3

Graph of Bay Area Cities Minimum Wage Requirements



Note: Graph assumes 3% CPI increase year over year starting in 2016.

ATTACHMENT 4

Comparison of Paid Sick Leave Requirements

State of California Paid Sick Leave Regulations Effective July 1, 2015.	City of San Francisco Paid Sick Leave Regulations. Effective Feb. 5, 2007. (Ordinance Separate from S.F.'s MWO)	Labor Commission Proposed Sick Leave Regulations. Effective Oct. 1, 2016.
1 hour of sick leave accrued for every 30 hours worked.	1 hour of sick leave accrued for every 30 hours worked.	1 hour of sick leave accrued for every 30 hours worked.
Sick leave accrued at commencement of employment or July 1, 2015, whichever is later. Applies to all employees who work 30 or more days within a year.	Sick leave accrued for existing employees on Feb 5, 2007. New employees after Feb. 5, 2007 accrue sick leave 90 days after the start of employment.	Sick leave accrued for existing employees on October 1, 2016. New employees after October 1, 2017 accrue sick leave 90 days after the start of employment.
Sick leave may only be used after 90 days of employment.	Sick leave may only be used after 90 days of employment.	Sick leave may only be used after 90 days of employment.
Accrual of sick leave may be capped at 48 hours per year (both large and small employers)	Accrual of sick leave may be capped at 40 hours per year for small employers (10 employees or less) and at 72 hours for employers with more than 10 employees.	Accrual of sick leave may be capped at 40 hours per year for small employers (10 employees or less) and at 72 hours for employers with more than 10 employees.
Accrued sick leave does not expire and may be rolled over from year to year. Although an employer may still cap use of sick leave to 24 hours per year.	Accrued sick leave does not expire and may be rolled over from year to year. There is no cap on use of sick leave.	Accrued sick leave does not expire and may be rolled over from year to year. There is no cap on use of sick leave.
Allows for sick leave to be used for "Safe Time" (sexual assault, stalking or domestic violence)	Does not allow sick leave for "Safe Time"	Allows for sick leave to be used for "Safe Time" (sexual assault, stalking or domestic violence)

Allows for sick leave to be used for Family members but not a designated person.	Allows for sick leave to be used for Family members <u>and</u> for a designated person.	Allows for sick leave to be used for Family members <u>and</u> for a designated person.
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