



Office of the City Manager

## ACTION CALENDAR

February 9, 2016

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, Berkeley Municipal Code Chapter 13.99

### RECOMMENDATION

Review and consider information regarding the activities and costs associated with implementing and enforcing the proposed amendments to the Minimum Wage Ordinance (MWO), including the potential impact of the proposed amendments on the City's minimum wage employees, employers, on-call workers and Youth-in-Training program workers, and either:

- 1) Adopt the first reading of an Ordinance amending Berkeley Municipal Code Chapter 13.99 which includes revisions to the Ordinance per the Council directive and proposal presented at the November 10, 2015 Council meeting; or
- 2) Refer the MWO back to the City Manager for further analysis and revisions.

### SUMMARY

At its November 10, 2015 meeting, Council directed staff to prepare a revised MWO incorporating specified changes. These changes between businesses based on size, establish a new wage schedule, limit the use of service charges, add an exemption for youth, eliminate an exemption for on call workers, and clean up language regarding Welfare to Work, collective bargaining and administrative citations to be consistent with state and federal law and the city's administrative citation procedures. The attached ordinance includes those changes, and the report discusses additional considerations related to differentiating between large and small businesses and limitations on service charges.

### FISCAL IMPACTS OF RECOMMENDATION

Adopting the proposed amendments to the ordinance would significantly increase dedicated staff time required to:

- Investigate and evaluate claims related to alleged non-compliance of the two-tier wage schedule, collection and distribution of service charges, the applicability of

Youth-in-Training exemptions, and the applicability of the MWO to previously exempt “on-call” workers;

- Investigate and evaluate claims relating to staffing levels and determining whether a business is required to adhere to the small or large business requirements; and
- Outreach to covered businesses, update the City’s website, FAQs and literature on the MWO, particularly the two-tiered wage schedule, Youth-in-Training exemptions and the collection and distribution of service charges.

### CURRENT SITUATION AND ITS EFFECTS

The Council considered proposed amendments to the MWO from the Labor Commission and staff at its November 10, 2015 meeting and referred proposed changes to staff for the development of a new draft ordinance. The proposal included changes to the minimum wage schedule, including creating a two-tiered schedule for small and large businesses, establishing rules for the distribution of service charges, establishing an exemption for a Youth-in-Training program and removing the exemption for on-call workers. The attached draft incorporates changes referred by Council.

Additional issues related to the two-tiered system, including limitations on service charges are discussed in further detail below.

#### *Two-Tiered Wage Schedule*

Currently, the MWO refers to an “employee”, meaning someone who works for two hours or more in a week for an employer within the geographic limits of the City, and does not otherwise address the amount of time each person works. Investigating a complaint requires examining only the records for the affected employee(s), not payroll data for every employee within the company.

The Council proposal would establish a two-tiered wage schedule for small and large businesses, with small businesses defined as those that have 55 or fewer full-time employees. In addition to incorporating this change, staff also included a definition of “full-time employees” within the attached ordinance that is consistent with the California Department of Labor definition: “Full-time Employee” shall mean employment in which an employee is employed for 40 hours per week, consistent with California Labor Code Section 515(c).

Defining the small/large business threshold by using the number of “full-time employees” throughout the business and not just those working within the city of Berkeley may make investigations difficult due to the time-intensive task of reviewing a business’s payroll records to determine the number of full-time employees and whether the business qualifies as a large or small employer. Neither the city nor the State Employment Development Department (EDD) collect employment data that differentiates between hourly, part-time and full-time employees and therefore staff

would not be able to rely on the State EDD data in determining a full-time employee count while doing investigations.

For businesses with a count of at least 56 employees, staff would need to examine payroll records to determine how many hours each employee was working to determine the count of “full-time” employees and determine applicability of either the “small business” wage schedule or the “large business” wage schedule. Expanding the data reviewed from just the affected employee to all employees could significantly expand the amount of work involved in investigating a complaint.

Additionally, the Labor Commission’s proposed Paid Sick Leave Ordinance, which will be before Council on April 26, 2016, distinguishes between small and large businesses using ten employees as the threshold. Different numerical threshold definitions for the two related ordinances could prove confusing for employers and require additional outreach. Council could consider using the same definition for both ordinances.

Below is a table with the latest data (2014 Q4) from the State EDD which indicates the number of employees that Berkeley businesses reported having during the last quarter of 2014.

<b># of Employees</b>	<b>Total # of Businesses</b>	<b>Percentage of Berkeley Businesses</b>	<b>Total Number of Employees</b>	<b>% of Berkeley Workforce</b>
0-1	2,161	43%	2,161	5%
2-10	1,930	38%	8,081	18%
10-24	580	12%	8,633	19%
25-39	157	3%	4,697	10%
40-55	79	2%	3,621	8%
56+	146	3%	18,613	41%
<b>TOTAL</b>	<b>5,053</b>	<b>101%</b>	<b>45,806</b>	<b>101%</b>

Note: Percentages do not add to 100% due to rounding. Total Number of Businesses and Total Number of Employees do not count some major large employers such as UC Berkeley and the Labs, BUSD, Peralta Colleges or the U.S. Postal Service because they are not subject to the MWO. Total number of businesses with 56+ employees may include other employers that would not be subject to the MWO and non-profits that would be subject to the “small” business wage requirements.

### Service Charges

Staff has included a definition of “Service Charges” and regulations relating to the distribution of Service Charges collected in the attached ordinance. Per the Council referral, these regulations apply only to food service and hospitality businesses.

The Council proposal includes direction that “for employers who charge a service fee, there shall be no reduction in wages or existing benefits”.

Staff recommends incorporating the following language:

Section 13.99.040.E.3

“No Employer or agent thereof shall deduct any amount from wages due to an Employee on account of a Service Charge or gratuity, or 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 to the Employee from the Employer or reduce other required benefits of an Employee.”

This language would make it clear that an employer cannot use revenue obtained through service charges to pay an employee’s minimum wage requirements or to pay for other required benefits such as paid time off in order to meet the state or city’s paid sick leave requirements.

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.

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.

Adopting the proposed amendments to the MWO could increase the complexity of investigations and enforcement and may require additional staff time for enforcement. For example, the number of establishments affected by the service charge requirement may be small, but enforcement would require more in-depth analysis of financial information that required currently. Depending on how and to what extent the proposed changes to the MWO affect staff’s ability to enforce the ordinance, staff may need to report back after an ordinance is adopted with a review of the number of complaints and staffing required.

ENVIRONMENTAL SUSTAINABILITY

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

RATIONALE FOR RECOMMENDATION

This report and the attached draft ordinance were prepared based on the referral from City Council on November 10, 2015.

ALTERNATIVE ACTIONS CONSIDERED

None.

CONTACT PERSON

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

Attachments:

1: Ordinance

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 is amended to read as follows:

**Chapter 13.99**

**MINIMUM WAGE**

**Sections:**

- 13.99.010 Title and Purpose.**
- 13.99.020 Authority.**
- 13.99.030 Definitions.**
- 13.99.040 Minimum Wage.**
- 13.99.050 Waiver Through Collective Bargaining.**
- 13.99.060 Notice, Posting and Payroll Records.**
- 13.99.070 Retaliation Prohibited.**
- 13.99.080 Implementation.**
- 13.99.090 Enforcement.**
- 13.99.100 Relationship to Other Requirements.**
- ~~**13.99.110 Application Of Minimum Wage To Welfare-To-Work Programs.**~~
- 13.99.120 Fees.**
- 13.99.130 Exemptions.**

**13.99.010 Title and Purpose.**

This ordinance shall be known as the "Minimum Wage Ordinance."

The purpose of this ordinance is to protect the public health, safety and welfare. It does this by requiring that employees are compensated by their employers or respective subcontractors in such a manner as to enable and facilitate their individual self-reliance within the City of Berkeley.

**13.99.020 Authority.**

This Chapter is adopted pursuant to the powers vested in the City of Berkeley under the laws and Constitution of the State of California including but not limited to, the police powers vested in the City pursuant to Article XI, Section 7 of the California Constitution and Section 1205(b) of the California Labor Law.

**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. "Full-Time Employee" shall mean those employees employed for 40 hours or more per week, consistent with California Labor Code Section 515(c).

F. "Large Business" shall mean an Employer with fifty-six (56) Full-Time Employees or more. In determining the number of employees, all persons, including employees locally, nationally or internationally that perform work for the firm will be counted, including persons made available to work through the services of a temporary services or staffing agency or similar entity. In determining size, franchises must be counted at the national or multinational firm size. Nonprofit Corporations, regardless of size, shall be subject to the small business wage schedule.

G. "Local CPI" shall be 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 by the U.S. Department of Labor, Bureau of Labor Statistics. 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.

~~E.~~ H. "Minimum Wage" shall have the meaning set forth in Section 13.99.040 of this Chapter.

~~F.~~ I. "Nonprofit Corporation" shall mean a nonprofit corporation, duly organized, validly existing and in good standing 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.

J. "Service Charge" shall mean all separately-designated amounts collected from customers by an Employer at a food-service establishment, hotel or other hospitality focused business, when the Employer indicates to customers that no gratuities are needed or no tip line is included in the electronic payment format.

K. "Small Business" shall mean an Employer with fifty-five (55) full-time employees or fewer. In determining the number of employees, all persons, including employees locally,

nationally or internationally that perform work for the firm will be counted, including persons made available to work through the services of a temporary services or staffing agency or similar entity. In determining size, franchises must be counted at the national or multinational firm size. Nonprofit Corporations, regardless of size, shall be subject to the small business wage schedule.

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

**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.

<b>Date</b>	<b>Minimum Wage</b>	<b>Hourly</b>
October 1, 2014	\$10.00	
October 1, 2015	\$11.00	
October 1, 2016	\$12.53	

<u>Date</u>	<u>Small Business Wage Schedule</u>	<u>Large Business Wage Schedule</u>
<u>October 1, 2017</u>	<u>\$13.00</u>	<u>\$13.70</u>
<u>October 1, 2018</u>	<u>\$13.60</u>	<u>\$15.00</u>
<u>October 1, 2019</u>	<u>\$14.25</u>	<u>+ Local CPI</u>
<u>October 1, 2020</u>	<u>\$15.00</u>	<u>+ Local CPI</u>
<u>October 1, 2021</u>	<u>+ Local CPI</u>	<u>+ Local CPI</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, 2019 for Large Businesses and on October 1, 2021 for Small Businesses, the Minimum Wage shall increase annually each October 1<sup>st</sup> by the Local CPI.

E. Distribution of Service Charges

1. Service Charges shall be used by the Employer to directly benefit the Employee by providing increased wages and benefits beyond what is otherwise already required by law. 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 customers, and then at

no higher rate of compensation than the average of what is paid to 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 to an Employee on account of a Service Charge or gratuity, or 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 to the Employee from the Employer or reduce existing benefits of an Employee.

4. Each Employer shall define the chain of service and associated job duties entitled to a portion of the distributed service charges and 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 on the amount of service charges collected and amounts distributed to employees 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.

### **13.99.050 Waiver Through Collective Bargaining.**

To the extent required or allowed by state or 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.

### **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. 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 13.99.090, 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 [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 [13.99.090](#), Subsection A, of this Chapter.

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 [13.99.090](#), Subsection A, of this Chapter.

[E. Every Employer shall post a notice in a conspicuous place at any workplace or job site in the City where any Employee works, explaining which employees are included in the chain of service and distribution of the Services Charges and how Service Charges are distributed among Employees. Employers shall report the amount of money collected as Service Charges to Employees no later than the end of the pay period when they were collected. In order to ensure that the distribution of Service Charges is lawful, Employers shall, upon request by city staff, make available their records of sales and associated Service Charges in a given pay period. These records shall be for the purpose of investigation by the Department and for determining if the Employer has appropriately distributed the Service Charges collected and shall not be public records.](#)

### **13.99.070 Retaliation Prohibited.**

It shall be unlawful for an Employer or any other party to discriminate in any manner or take any adverse action (including action relating to any term, condition or privilege of employment) 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 or otherwise educate any person about this Chapter or 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 ninety (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. Failure to comply with this provision shall render the Employer subject to administrative citation, pursuant to Section [13.99.090](#), Subsection A, of this Chapter.

### **13.99.080 Implementation.**

A. Guidelines. The Department shall be authorized to coordinate implementation and enforcement of this Chapter and may promulgate appropriate guidelines or rules for such purposes. The Department shall seek out partnerships with community-based organizations and collaborate with the Labor Commission to facilitate effective

implementation and enforcement of this Chapter. Any guidelines or rules promulgated by the Department 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 guidelines or rules~~The Department 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 Department in writing any suspected violation of this Chapter. The Department 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 Department 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 Department notifies an Employer that the Department is investigating a complaint, the Department shall require the Employer to post or otherwise notify its Employees that the Department is conducting an investigation, using a form provided by the Department. Failure to post such notice shall render the Employer subject to administrative citation, pursuant to Section 13.99.090, Subsection A, of this Chapter.

C. Investigation. The Department shall be responsible for investigating any possible violations of this Chapter by an Employer or other person. The Department 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 Department shall make every effort to resolve complaints informally, in a timely manner, and shall have a policy that the Department shall take no more than six months to resolve any matter, before initiating an enforcement action. The failure of the Department to meet these timelines within six months shall not be grounds for closure or dismissal of the complaint.

### **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; and

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.~~

~~32. The City may initiate a civil action for injunctive relief and damages and civil penalties in a court of competent jurisdiction.~~

B. ~~Any~~ The City or any or any 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.

### **13.99.100 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. (Ord. 7352-NS § 1 (part), 2014)

### **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.~~

### **13.99.120 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.

### **13.99.130 Exemptions.**

The requirements of Section 13.99.040 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.~~

1.-2. Job training program participants up to 25 years of age in temporary youth job training programs operated by Nonprofit Corporations or governmental agencies (Youth-in-Training participants). This exemption shall not apply to participants that work in excess of 1,040 hours in the program within a consecutive 365 day period.

2. Youth-in-Training participants may be paid 80% of the Minimum Wage requirement as long as all of the following conditions are met:

A. The youth employee is aged 21 or younger.

B. The youth employee's position includes stated learning objectives, close supervision, and guidance, and provides skills training for the youth employee.

C. Youth-in-Training participants cannot do the same work as their older counterparts where the only difference is that they are paid less.

D. The Youth-In-Training wage is paid only during the first 1,040 hours of employment of the first calendar year of employment. After 1,040 hours or the first calendar year of employment, whichever comes first, youth shall be paid the Minimum Wage.

Section 2. 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.