



Commission on Labor

ACTION CALENDAR

April 1, 2014

To: Honorable Mayor and Members of the City Council
 From: Commission on Labor
 Submitted by: Sam Frankel, Chairperson, Commission on Labor
 Subject: Increase to the Minimum Wage in Berkeley

RECOMMENDATION

Adopt first reading of an Ordinance amending the Berkeley Municipal Code to establish a municipal minimum wage ordinance affecting all workers employed within the City of Berkeley (as other California cities have done), that will:

1. Tie the minimum wage to the Consumer Price Index via annual adjustment.
2. Include a medical benefit requirement to ensure workers' access to adequate health care.
3. Establish the minimum wage in line with the living wage, starting at \$10.74.

Furthermore, the Labor Commission recommends that the City take action to investigate, pursue, and implement other complementary policies identified during the research and deliberation around the proposed minimum wage ordinance. The purpose of these policy recommendations is to stimulate a sustainable and ethical local economy while protecting and promoting the welfare of Berkeley's unique small business community. These recommendations include, but are not limited to:

1. The development and implementation of commercial rent control and other such policies to reduce the cost of renting and leasing commercial space within the city;
2. Active advocacy for consumer choice and high quality health care through a single payer system that finally and completely removes the burden of providing health care insurance as the responsibility of business while still ensuring and providing access to adequate care for working people;
3. The expansion and improvement of public transportation to help bring customers and employees to and from Berkeley to shop and work more easily and affordably;
4. Committing to work with our Congressional representatives on federal tax code reform to allow for tip-sharing among all the service workers within a business establishment;
5. The development and implementation of policies to reduce and alleviate homelessness among Berkeley residents in a socially productive and ethically

sound manner;

6. Support and advocacy for the expansion of municipal minimum wage ordinances in all member cities and organizations of the Association of Bay Area Governments (ABAG) and other relevant Governmental bodies in order to establish functional region-wide policies including a livable minimum wage; and
7. Work collaboratively with the Berkeley Chamber of Commerce in order to educate the regional business community and consumer base about the value of living wages and other ethical business practices.

SUMMARY

At the regular meeting of the Commission on Labor on January 29, 2014, the commission approved the following motion:

M/S/C (Teter/Yu) to recommend to council that they adopt the Minimum Wage Ordinance as amended at today's meeting.

Ayes: Bloom, Fillingim, Frankel, Kessler, Kothari, Yu

Noes: None

Abstention: Mitrani-Belle

Leave of Absence: Levitt

Since its peak in 1968, the buying power of the minimum wage has eroded significantly and its real value has remained stagnant in comparison to the cost of living, economic productivity, and average wages. The prevailing state minimum wage of \$8.00 per hour equates to an annual take-home of \$16,400 which is roughly half the cost of living in Alameda County for a single worker. An increase of the legal minimum wage is necessary to lift up the standard of living for working people in Berkeley, and will have a beneficial effect on the economy overall. Although the state legislature recently passed AB10, which will raise the state minimum wage to \$10 per hour by 2016, the law fails to address the systemic need to adjust the minimum wage for inflation; it neglects medical benefits for minimum wage workers, and falls short of lifting working people above the poverty line. Recent federal proposals around the minimum wage share some of the same shortcomings, as well as failing to properly address the plight of tipped service workers. Federal proposals also face significant partisan opposition and political gridlock in the federal legislature prior to their potential eventual implementation. In light of this, immediate action on the level of local governments to address the situation is called for. Other Bay Area cities, such as San Francisco and San Jose, have already successfully implemented such ordinances, and several other East Bay cities, such as Oakland and Richmond have begun the process of raising their own minimum wages. The Commission recommends that the City establish a municipal minimum wage, tied to inflation, which will gradually rise to meet the cost of living and also to provide further protection and benefits for minimum wage workers, as described below.

The proposed Berkeley Municipal Minimum Wage Ordinance is modeled after the San Francisco Minimum Wage Ordinance and the Berkeley Living Wage Ordinance. The

first increase to the minimum wage proposed by the new ordinance will occur on June 30, 2014. For small businesses with 50 employees or less and non-profits, which comprise an overwhelming majority of businesses in Berkeley, the new minimum wage will be \$10.74 per hour. For corporate franchises or large businesses with over 50 employees, the minimum wage shall increase to the equivalent of the Berkeley Living Wage, which is currently \$13.34 per hour. On June 30 of every year thereafter, the minimum wage for all businesses will be adjusted according to the prior year's change in the Consumer Price Index for Urban Wage Earners in the San Francisco-Oakland-San Jose metropolitan area. On June 30, 2015, an additional health care requirement equivalent to the health care requirement of the Berkeley Living Wage (currently \$2.22 per hour) will be added to the minimum wage for all businesses. Starting on June 30, of 2016, the minimum wage for small businesses and nonprofits is increased by \$0.55 each year after applying the increase of the CPI until it reaches parity with the Berkeley Living Wage, which is projected to occur in 2022. From that point onwards, the minimum wage for all workers and businesses in the City shall be equivalent and will only change according to the annual adjustment for changes in the CPI.

In order to minimize the cost of implementation and the workload for city staff, the ordinance utilizes an anonymous, complaint-driven process that provides the City Finance Department with the authority to implement and enforce the ordinance by investigating complaints and seeking remedy for violations. The ordinance allows six months for informal resolution between violators and city staff, provides the City the flexibility of three formal enforcement mechanisms (administrative citations, compliance orders, and civil injunctions) and allows employers to appeal a decision by the Finance Department to the City Council. Employers are expected to adhere to the new minimum wage and are also required to post notice of the new minimum wage and to make the last four years of their payroll records available to the City upon request.

Violators are required to repay all back wages to their workers, including interest on those wages, plus an additional fine of \$50/per day of violation to be paid to each employee whose rights were violated. Violators can also be required to reimburse the City for the costs of enforcement, and to post public notice of their violation. Repeat violators can also be subjected to an additional fine of \$50/per day per violated employee. The ordinance empowers the City to suspend a violator's business license until their violation has been fully remedied, and prevents outstanding violators from renewing their business licenses until full remedy has been made. The ordinance also protects workers from retaliation via a 90-day period after a complaint is filed during which the Employer carries the burden of proving the legality of employee terminations. Employers that violate the programmatic requirements and other provisions of the ordinance are subject to administrative citations of varying amounts, depending on the severity of the infraction.

The ordinance reserves private and third-party right of action, all its clauses and provisions are fully severable from one another, and no part of the ordinance can preempt stronger wage or labor laws that would otherwise be applicable. The remedies

and procedures set forth in the ordinance are cumulative and non-exclusive of other procedures, remedies, and laws relating to the minimum wage and worker protection. The requirements of the ordinance can be waived via a bona fide collective bargaining agreement.

FISCAL IMPACTS OF RECOMMENDATION

Based on the design of the ordinance and other cities' experiences with similar laws, the implementation and ongoing enforcement of the minimum wage ordinance will cost the City a relatively minimal amount. The precise amount and distribution of costs cannot be known until after implementation, but through collaboration with the business community and community based organizations, these costs can be further minimized. An initial, upfront expenditure may be necessary to fund community education and outreach effort in Berkeley around the new minimum wage ordinance and promote a smooth and effective implementation. Ultimately, the ordinance empowers the City to impose fees and penalties on businesses in order to offset and recover the costs of enforcement. The Finance Department, along with any other such departments that City Council designates, will enforce and administer the ordinance in Berkeley.

1. San Francisco Experience:

The minimum wage ordinance is enforced by the Office of Labor Standards Enforcement (OLSE) in San Francisco. There are approximately 585,000 employees who work for wages (not including self-employed workers), and there are about 53,000 businesses in San Francisco. The OLSE works with several attorneys on the San Francisco City Attorney's labor team. No individual attorney is dedicated full time to OLSE. The San Francisco City Attorney provides a baseline amount of service to OLSE, part of which is consultation on the enforcement of the minimum wage ordinance.

OLSE recovers penalties from employers to compensate the San Francisco City Attorney's cost back to them. To assist with implementation, the OLSE contracted with three community based organizations (the Chinese Progressive Association, the Filipino Community Center and La Raza Centro Legal) for about \$195,000 per year for the first five years after the ordinance passed. In 2013, the San Francisco Board of Supervisors increased the amount from \$195k to \$395k, and the number of community based organizations collaborating increased from three to six.

Studies on the impact of the minimum wage on the economy of San Francisco show that the policy successfully increased both worker pay and reduced income inequality. No detectable loss of employment among restaurants or other sectors was found. Fast food restaurants experienced slight increases in the price of goods, the job tenure of their workers, and the proportion of full-time workers, but table-service restaurants were not affected.

2. San Jose Experience:

The minimum wage in San Jose was passed on Nov. 6, 2012, by ballot, and went into effect on March 11, 2013. The enforcement and implementation of the minimum wage ordinance is monitored through the Office of Equality Assurance. Regarding enforcement, all investigations are done by the Contract Compliance Specialist/Coordinator, with help from the office staff who have audit experience. One of the four lawyers working in Public Works in the San Jose Attorney's Office was assigned to help on the minimum wage issue. The Office of Equality Assurance meets with the city attorney, but rarely has questions for the city attorney. According to city staff, the enforcement of the minimum wage ordinance is an extremely small part of their work. After the Office of Equality Assurance levies fines and fees, the Finance Department then works to collect the fees.

There are roughly 70,000 businesses in San Jose. In the three month period after its passage, but prior to its implementation, the City received 53 emails and 97 phone calls requesting information or clarification regarding the ordinance. Since its implementation, the City has received 50--60 email requests and numerous phone calls, but only 25 of these were complaints. Most of the complaints fell into categories that were not enforceable (i.e. outside jurisdiction, waived by collective bargaining agreements, commissioned work, etc.) and were simple to close. As the community has grown more familiar with the new minimum wage over time, the numbers of complaints and requests have dropped. No peer-reviewed data is available yet on the effects of San Jose's minimum wage, but testimony by residents and city staff has been entirely supportive of the measure. In conclusion, the process has been manageable for San Jose with their present levels of city staffing.

3. Impacts on YouthWorks program

One potential fiscal impact to the City itself identified by the Commission is the effect on the Youth Works Program. The Youth Works Program currently has an annual approved budget of \$513,726. In 2012, it paid the youth workers \$8 per hour, and in January 2014, the wage for the youth worker program was raised to \$9 per hour. The recommended minimum wage of \$10.74 per hour would reduce the number of youth workers that the program can support on its fixed budget. The program currently has the capacity to offer 295 positions for the youth workers. By increasing the minimum wage to \$10.74 per hour the number of positions will be reduced to 252, unless funding is increased accordingly.

4. Impacts on Berkeley Business Community

Although business owners gave testimony and participated in the public process expressed support for raising the minimum wage, they also consistently expressed concern for its potential impact on their businesses in Berkeley. While some potential short term fiscal impact may be unavoidable for certain business owners, especially

those currently relying on minimum wage labor, the overall impact of raising the minimum wage on the community and local economy is clearly a net benefit. The overwhelming majority of peer-reviewed economic research shows that increases in the minimum wage have had little or no negative effect on the employment of minimum wage workers, even during times of weakness in the labor market. Rather, research shows that an increase in the minimum wage would have a stimulating effect on the economy as low-wage workers spend their additional earnings, raising demand and driving job growth. With the exception of certain sectors, such as fast food restaurants, no significant increase in the price of goods and services was found [see Exhibitions, “Economist Statement on Minimum Wage” and “Dime a Day – ROC”]. Additionally, public testimony given by consumers and Berkeley residents repeatedly and unanimously expressed their desire to be ethical consumers, their preference to patronize businesses in the community that provide living wages to their workers, and their willingness to support such businesses in making the necessary adjustments to comply with the proposed ordinance.

CURRENT SITUATION AND ITS EFFECTS

Inequality nationwide in the U.S. currently is at an all-time high, exceeding even the historic extremes seen during the Great Depression. Berkeley is also currently the most unequal city in the Bay Area, with a GINI coefficient of 0.516 (well above the national average of 0.469). Social and economic stratification in Berkeley has increased in recent years, fueled by the rising cost of living and stagnant wages in Berkeley and serious concern among the community regarding this trend has grown alongside it. The cost of living in Berkeley is 10.1% higher than the California average, and 44.4% higher than the national average. As a result of the high cost of living in Berkeley, most workers cannot afford to live in the city. Currently, only 17% of the City’s workforce lives in Berkeley. All of these workers contribute to the quality of life in Berkeley through the provision of their labor and services, which in turn drives up the cost of living. However, since minimum wage workers are not compensated adequately enough to afford the cost of living here, these workers are, in essence, working to push themselves out of the community they serve and drive the ongoing processes of stratification and gentrification. This trend is likely to continue unless the cost of living can be brought in line with worker compensation or vice versa.

The most recent data shows that California’s poverty rate, 8.7% as of October 2013, is not only above the national average of 7.3%, but is among the highest in the nation. The poverty rate for the City of Berkeley is currently 18.9%. (See Exhibition, “2007 - 2011 American Community Survey - 5 Year Estimates”). According to the data and analysis of Berkeley’s Office of Economic Development, there are currently approximately 64,088 workers employed in Berkeley, approximately 8,400 of whom will immediately benefit from the proposed municipal minimum wage ordinance, primarily in the Retail Trade and Accommodation and the Food Service Sectors [see Exhibit - OED Estimate of Affected Workers]. By the projected time the schedule of increases is complete, thousands more impoverished workers will also be affected, although this number cannot be exactly determined.

The state minimum wage is currently \$8.00 per hour. With this wage, an employee in California working a full-time, 40-hour work week for 52 weeks a year earns only \$64.00 per day, or \$16,640.00 per year, prior to taxes. The recently passed California State Assembly Bill AB10 is scheduled to raise the state minimum wage, on July 1, 2014, to \$9.00 per hour, and would further increase the state minimum wage on January 1, 2016, to \$10.00 per hour. Although this is undoubtedly good news for struggling workers and their families, these rates are not high enough to lift workers out of poverty and up to the standard of living, especially not in Berkeley or the rest of the Bay Area. At the rate of \$10.00 per hour, a full time worker in California would earn a pre-tax income of \$20,800.00, which is still below the federal poverty line for working families, and significantly below the local poverty line. The current pre-tax "very low income" threshold for the Oakland-East Bay region is \$31,250.00 for a single-earner household and over twice that amount for a family of 4. Furthermore, because these rates are not tied to inflation or the cost of living, their real value is guaranteed to erode and lose buying power over time.

The current federal minimum wage is \$7.25 per hour, and is thus superseded by the state minimum wage, but there are currently several initiatives on the federal level, sponsored by the Obama administration and the Democratic Party, that would raise the federal minimum wage above this level. The Fair Minimum Wage Act of 2012 which Congress now is discussing would raise the federal minimum wage to \$9.80 in 2014. Similar to AB10, however, none of the hourly rates in these federal proposals go far enough to address the plight of workers in Berkeley and the surrounding communities of the East Bay. Furthermore, none of these proposals address the major flaw in the federal minimum wage, specifically that it does not fully apply to tipped workers, and effectively excludes the most disadvantaged section of the work force that needs and would benefit from the minimum wage the most. Neither the state nor the federal minimum wages include a medical benefit requirement to compensate for the adverse incentives created by the structure of the Affordable Care Act and help ensure workers have access to adequate health care.

In light of this, municipal and local minimum wage ordinances are currently the most effective and expedient method for communities such as Berkeley to address the growing issues of working poverty and economic stratification, and to lift the living standard of working families. Public attention around the issue of wage inequality and support for government action has grown considerably in recent years, both nationally and locally. Two of the major urban centers in the Bay Area, San Francisco and San Jose, have already enacted city-wide minimum wages, and several other cities in the region have sector specific minimum wage laws or ordinances similar to the Berkeley Living Wage that govern private contractors working for public agencies. This year, Oakland and Richmond, have begun the process of raising their own minimum wages, which will reinforce the positive benefits on the regional economy and minimize local impacts from disparities in the minimum wage between communities. The proposal to raise the minimum wage in Berkeley affords the City the opportunity to correct the

shortcomings of the state and federal minimum wage laws, and for the City to become a regional leader in improving the lives of working families both within the City and in the surrounding communities.

Current Federal Minimum Wage Rate: \$7.25/hr (un-tipped), \$2.13/hr (tipped)
Current California Minimum Wage Rate: \$8.00/hr
Current San Jose Minimum Wage Rate: \$10.15/hr
Current San Francisco Minimum Wage Rate: \$10.74/hr
Current Oakland Living Wage Rate: \$11.96/hr + \$1.79 health benefits
Current Berkeley Living Wage Rate: \$13.34/hr + \$2.22 health benefits

BACKGROUND

In the US, the real value of the minimum wage peaked in 1968 and has eroded significantly since then. If the 1968 minimum wage of \$1.65 per hour had been tied to inflation, it would be \$11.05 today compared to the current rate of \$8.00 per hour, not including the increase in economic productivity over this period of time [See exhibition, Bureau of Labor Statistics' Consumer Price Index Inflation Calculator]. If the minimum wage had been increased in parity with the growth of economic productivity, the federal minimum wage today would be \$21.72.

The California State Assembly passed AB10 in September of 2013. This bill will increase the state minimum wage, on July 1, 2014, to \$9 per hour, and will further increase the state minimum wage on January 1, 2016, to \$10.00 per hour. Prior to that, the last time that the state acted to raise the minimum wage was in 2006, when it was raised, in two steps, from \$6.75 per hour to its current rate of \$8.00 per hour. The last time the federal minimum wage was raised was 2009.

While both the state and federal legislatures are working to increase the minimum wage, none of their proposals to date go far enough to bring the eroded value of the wage back into line with the inflated cost of living. Furthermore, they completely overlook the critical fact that it is necessary to incorporate adjustments for inflation into the structure of the minimum wage. Additionally, there has been no consideration of the impact of the Affordable Care Act on employment structures, and both state and federal proposals are incapable of addressing the high cost of living in particular areas such as Berkeley. The Berkeley Minimum Wage Ordinance will be a comprehensive legislative effort to address the unique culture and environment in Berkeley, making the minimum wage a living wage.

Nationally, the need to increase minimum wage has been acknowledged on local levels around the country. On November 19, 2013, the Massachusetts Senate voted to increase the minimum wage to \$11.00 per hour by 2016, and the bill is pending on the House. The City of Santa Fe passed a minimum wage ordinance of \$10.51 per hour, effective March 1, 2013. The City of SeaTac passed a minimum wage ordinance of \$15.00 per hour in December, 2013. Many other states and cities are taking, or have already taken, similar actions [For more information, see Exhibition Minimum Wage

Ordinance Matrix]. Beyond official legislative initiatives to raise the wage above \$10 per hour, since November 2012, there has been a growing nationwide effort to raise minimum wage to \$15 per hour for fast food workers.

One of the major models for the proposed minimum wage was the Berkeley Living Wage. This ordinance, enacted in June 11, 2000 was also an effort by the city to lift the standard of living for people who work in Berkeley. As of June 30, 2013, the living wage in Berkeley is \$13.34 per hour with a medical benefit requirement of \$2.22 per hour. It also includes adjustment for inflation based on the Consumer Price Index (CPI) and 22 days off per year for sick leave, vacation, or personal necessity.

The work on the proposed Berkeley Minimum Wage Ordinance officially began on April 30, 2013, when the resolution proposed by Mayor Tom Bates and co-sponsored by Councilmembers Kriss Worthington and Jesse Arreguin was passed unanimously by the City Council. This resolution directed the Commission on Labor to begin researching and drafting a minimum wage ordinance, similar to San Francisco's and the Berkeley Living Wage, for consideration by the City Council. The Labor Commission began this work in May, 2013, with the creation of the Minimum Wage Subcommittee. Since then, both the Commission and Subcommittee have conducted exhaustive research, held extensive public debate, and heard testimonials from hundreds of community members and experts around the minimum wage issue. The Subcommittee released its first rough draft in October 2013, and after several more public meetings, amendments, and revisions, approved the final draft in January 2014.

ENVIRONMENTAL SUSTAINABILITY

As both a cause and outcome of environmental degradation, poverty is a major issue that public policy-makers and advocates of environmental sustainability should be concerned with. Obviously, a system that does not provide workers with enough compensation to sustain themselves and their families is not sustainable in any sense, environmental or otherwise. In our current market economy, making environmentally sustainable consumer choices is often more expensive than alternatives that subsidize and externalize costs through economically efficient but environmentally unsustainable practices. Unfortunately, this quite often means that making sustainable consumer choices and being an environmentally ethical citizen is impossible for low-income workers, irrespective of their desire or inclination to do so. Raising the income of the minimum wage workers in Berkeley and the rest of the East Bay will provide them the economic freedom necessary to have real choice and enable them to live sustainable lifestyles. In addition, raising the wages of the poorest workers will help them compensate for the disproportionately large burden of negative environmental impacts that the families and communities of these workers face in comparison to higher income communities. Lastly, bringing the minimum wage of Berkeley's workforce closer to the cost of living in Berkeley will also enable the workers to live significantly closer to the place of their employment, which will reduce the length of daily commuting, ease the burden on transportation infrastructure, improve air quality and reduce the overall carbon footprint of the region. Overall, raising the minimum wage through the proposed

ordinance will have a net positive effect on environmental sustainability through a variety of direct and indirect factors.

RATIONALE FOR RECOMMENDATION

Based on the shortcomings of state and federal legislation regarding the minimum wage, the urgent need to combat the growth of poverty and inequality in our society, the moral imperative to ensure workers are adequately compensated and protected from exploitation, as well as the overwhelming level of public support for this proposal, the Labor Commission recommends that the Berkeley City Council adopt the proposed Berkeley Minimum Wage Ordinance upon first reading.

Raising the minimum wage has a wide variety of demonstrable positive impacts on the lives of workers, their families, and the welfare of the community as a whole. The most important and most directly apparent effect of providing fair compensation to working families is their increased ability to afford basic necessities such as food, gas, and rent, as well as school fees and hospital bills. The beneficial impact of such vital goods and services among families that would otherwise be unable to access them cannot be understated. Raising the minimum wage to a sustainable level also helps reduce poverty among working people, which in turn reduces crime and makes our neighborhoods into safer, happier places, while simultaneously helping restore dignity and self-respect among workers and fostering their good will towards the communities they serve.

The local economy and businesses in Berkeley will also benefit from the proposed ordinance. Increasing the minimum wage has been shown to improve worker tenure and decrease turnover, which saves businesses money and provides greater stability in the workplace. Offering fair wages will also help attract more skilled and dedicated workers to the local labor market, especially if the wage is higher than it is in surrounding communities. By holding all businesses up to the same standard, the ordinance also levels the playing field for the many responsible employers in Berkeley that are already paying decent wages to their employees by removing the economic advantage of competing firms that pay sub-par wages. Recent financial reports by the Federal Reserve Bank indicate that every \$1.00 increase in the hourly wage for a minimum wage worker results in \$2,800 in new taxable consumer spending by their household over the following year. This spending stimulates the economy from the bottom up, boosts demand, and drives job growth, while generating both direct and indirect increases in tax revenue for the City, state, and federal government. Ensuring that workers can support and sustain themselves on their wages also reduces government costs associated with social services and programs, since every dollar earned and spent on essential goods and services by a worker living below the poverty line is a tax dollar that the public does not need to spend on their behalf through social support programs that would otherwise fill the gap. In this way, businesses that rely on minimum wage labor are essentially subsidized by tax dollars spent through social support programs for their workers. It is the determination of the Labor Commission that this is not an ethical business policy nor an appropriate expenditure of public resources

and the Commission further declares that the City of Berkeley should not tacitly endorse these practices by allowing them to continue unabated when a clear remedy has been identified.

Above all, the strongest argument for raising the minimum wage and guaranteeing that workers receive fair compensation for their labor is the simple and undeniable moral imperative to do so. As demonstrated by the high level of public support, this ordinance is in-line with our City's progressive values and sets an ethical example for other communities around the Bay Area and the nation to follow. Honest pay for honest work is a universal ethical value and a fundamental tenet of the American dream. Hard working and law abiding citizens should never be forced to struggle with poverty and businesses should not be allowed to turn a profit at the expense of their workers and the community at large. In the determination of the Labor Commission, this situation violates basic principles of fairness and justice, and it should not be tolerated to continue in our community.

The following text outlines the primary issues discussed by the Labor Commission and the public as part of the creation of these documents. It reflects the Labor Commission's recommendations and identifies areas where there are different public positions.

A. Tie the minimum wage to the Consumer Price Index through annual adjustments.

Regular periodic adjustment for inflation based on the CPI is necessary to keep the minimum wage from deteriorating. To be effective, the Minimum Wage Ordinance must be a "policy in motion". Wage stagnancy is a systemic problem and cannot be solved with a one-time solution. Both inflation and the cost of living will rise over time and can only be accounted for by increasing the minimum wage annually as determined by the CPI. Neither the state nor the federal minimum wage laws acknowledge this need or include automatic adjustment to the minimum wage. Scheduled increases of fixed amounts are less effective than automatic adjustment based on CPI because the actual buying power of the fixed amount erodes over time due to inflation. By the time the minimum wage in California reaches an hourly rate of \$10 in 2016, that \$10.00 will be have less buying power than it does now, possibly even less than the current hourly rate of \$8.00 has now.

In order to protect the underlying principle that employees have a right to a fair minimum wage, the commission recommends the City adopt the minimum wage with annual adjustment for inflation based on the Consumer Price Index (CPI) for urban wage earners and clerical workers in the San Francisco-Oakland-San Jose metropolitan area. This will be applied to both the minimum wage and the medical benefit every year, just as the Living Wage Ordinance in Berkeley does.

The following table illustrates the historic effect of the CPI on the Berkeley Living wage:

<u>Fiscal Year</u>	<u>CPI</u>	<u>Wage Rate</u>	<u>Health Differential</u>	<u>Effective Wage Rate</u>
2000		\$9.75	\$1.62	\$11.37
2001	5.8%	\$10.32	\$1.71	\$12.03
2002	2.1%	\$10.53	\$1.75	\$12.28
2003	2.2%	\$10.76	\$1.79	\$12.55
2004	0.5%	\$10.81	\$1.80	\$12.61
2005	2.1%	\$11.04	\$1.84	\$12.87
2006	3.2%	\$11.39	\$1.89	\$13.28
2007	3.3%	\$11.77	\$1.96	\$13.73
2008	2.9%	\$12.11	\$2.01	\$14.12
2009	0.8%	\$12.20	\$2.03	\$14.23
2010	1.7%	\$12.41	\$2.06	\$14.47
2011	2.8%	\$12.76	\$2.12	\$14.88
2012	2.1%	\$13.03	\$2.17	\$15.20
2013	2.38%	\$13.34	\$2.22	\$15.56

Issues Discussed:

1) The choice of CPI for the COLA:

When considering which index to use for the cost of living adjustment, the CPI for urban wage earners and clerical workers in the San Francisco-Oakland-San Jose metropolitan area was determined to be the most appropriate because it best reflects the general economic situation in the region, and is the same index used for adjusting Berkeley's Living Wage, as well as the minimum wage of San Francisco and San Jose. While concerns have been raised about the rising cost of minimum wage labor for certain business owners, we conclude that built-in compensation for inflation is necessary to prevent systemic wage stagnation. Without annual automatic adjustment for the rising cost of living, it becomes necessary for policy-makers to revisit the issue every few years and legislate a new, appropriate minimum wage, which is an inefficient use of public resources and creates unpredictable fluctuations in costs for business owners. As shown in the table, the annual adjustments since 2000 have been minor, and future incremental adjustments of this type will be more easily absorbed by the market than large sporadic wage hikes.

B. Build in a medical benefit requirement to ensure workers receive adequate health care.

Based on the prior recognitions and acknowledgements made by the Berkeley City Council under the Berkeley Living Wage Ordinance and also to support the implementation of the Patient Protection and Affordable Care Act in the city of Berkeley, the Commission recommends the City Council include a medical benefit requirement as an integral part of the Minimum Wage Ordinance and the effort to lift the living standards of minimum wage workers, ensure their access to adequate and affordable health care, and eliminate the negative effects of poverty on both individual and community health.

Issues Discussed:

• Relation to the Affordable Care Act

Starting in 2015, the Patient Protection and Affordable Care Act requires business with more than 50 full-time employees to either offer their full-time employees coverage that meets a minimum standard or make a contribution toward the Covered California Exchange. Smaller businesses (with less than full-time 50 employees) are exempt from this requirement. However, concerns have been raised that businesses may shift their employment towards part-time workers (which most minimum wage workers are) to avoid reaching the requirement of 50 full-time employees or being required to provide benefits to such employees. The medical benefit requirement is included in the proposed ordinance in order to compensate for the PPACA's shortcomings by recognizing and ensuring that all workers need and deserve health care or the means to acquire it, regardless of the size of their employer or their status as part-time or full-time workers. The addition of the medical benefit requirement removes the incentive for

employers to 'game the system' through part-time employment models, and encourages them to offer more robust and durable forms of employment, as well as adequate compensation, to their workers.

- **Effective Date & Implementation Schedule**

The implementation date of the medical benefit requirement was originally set by the subcommittee as June 30, 2014, but after deliberation by the Labor Commission, this was pushed back to June 30, 2015 in the final version of the ordinance. This makes it easier for employers to comply with the law in several ways. The delay in implementing the medical benefit requirement gives employers more time to become familiar with the mandates of the Affordable Care Act and to plan for the adjustments necessary to reach compliance, as well as allow more time for the markets and exchanges in health insurance to develop and stabilize. Postponing the addition of the requirement to 2015 also distributes the proposed increases over a longer period and reduces the size of the initial increase, which gives employers more time to adapt and allows them to benefit from the stimulus of the partial increase in wages and consumer spending before being required to provide the rest of the increase.

- **Minimum/Maximum Amount of the Medical Benefit**

The Berkeley Living Wage Ordinance recognizes the responsibility of the employers to provide medical benefits of at least \$2.22/ hr in 2013 for their employees. In the Berkeley Living Wage Ordinance, this amount is both the minimum that an employer must spend on healthcare to qualify for a reduction in their wage obligation, as well as the maximum amount that the obligation can be reduced by. The medical benefit requirement in the proposed city-wide ordinance uses the same amount already defined by the Living Wage, and functions almost identically to that of the Berkeley Living Wage, with the one difference. Under the proposed city-wide ordinance, employers can claim any amount spent on health care for their workers for a reduction in their wage obligation up to a maximum of the amount defined as the medical benefit. There is no minimum amount that an employer must spend to qualify. This change was made in order to make the medical benefit requirement more flexible for employers by recognizing any and all contributions they make towards the health care of their employees.

C. Raise the minimum wage incrementally to living wage

The Commission recommends the City Council increase the Minimum Wage incrementally to eventually achieve parity with Berkeley's Living Wage. The Berkeley Municipal Code Chapter 13.27, the Living Wage Ordinance, was enacted on June 21, 2000. The ordinance requires businesses with a contractual relationship with the City of Berkeley to pay a living wage of \$13.34 per hour plus a medical benefit equivalent to at least \$2.22 per hour in 2013. If the employer does not provide the employee at least \$2.22 per hour toward an employee medical benefits plan, the employer shall pay an hourly wage of not less than \$15.56. These amounts are adjusted annually according to the CPI.

Under the Berkeley Minimum Wage ordinance, effective June 30, 2014, the minimum wage for small businesses (less than 50 employees) will be \$10.74 per hour. The minimum wage for large businesses with 50 or more employees or franchises will be set equivalent to the Berkeley Living Wage, which is currently \$13.34. Starting in June of 2016, the minimum wage for small business and non-profits will increase by \$0.55 each year until it reaches full parity with the Berkeley Living Wage. The Commission projects that this will likely occur in 2022. Implementing a living wage gradually over a longer period reduces the size of the individual yearly increases, gives employers more time to adapt and allows them to benefit from the positive economic stimulus of each partial increase in wages and consumer spending before being required to provide the next step of the increase.

D. Implementation

In order for the ordinance to be effective with its passive, complaint-driven model, both employers and employees must be aware of the ordinance and understand its effects. To this end, a collaborative partnership should be formed in order to facilitate public awareness, led by the Finance Department with assistance from the Labor Commission, the Berkeley Chamber of Commerce, and other relevant community based organizations and student groups, particularly those representing immigrants, women, people of color, and veterans. This collaborative partnership shall produce educational materials, such as posters and pamphlets, which can be distributed among workers and employers in the city as well as hosting a series of educational workshops for the initial implementation period, and other such methods as they deem effective and worthwhile. The educational materials and programs utilized by the City of San Francisco shall serve as a blueprint for these efforts.

In addition to promoting awareness and understanding of the Berkeley Minimum Wage Ordinance, this partnership should work to educate the regional business community and consumer base about the value of living wage employment and other ethical business practices. The goal of these efforts should be to expand such policies and practices to other cities and businesses in the region, as well as to encourage ethical consumerism and promote the value of living wage employment in the eyes of local consumers.

E. Enforcement

Based on consultation with city staff in San Francisco and San Jose about their experiences in implementing their respective minimum wage laws, the process for enforcing and remedying violations under the proposed Berkeley Minimum Wage Ordinance has been expanded and strengthened. A time-limit of 6 months was put in place, starting on the date a complaint is received, and during which complaints may be informally resolved, but after which an official investigation and/or enforcement action by the City becomes mandatory. After an investigation has been performed and if a

violation is found, the ordinance provides the City with 3 separate enforcement mechanism to seek remedies from violators, as well as the flexibility to use whichever mechanism it deems most appropriate on a case-by-case basis. The first way the City can enforce the ordinance is through the issuance of a basic administrative citation to the violator, which is handled by the City like any other administrative citation, such as a parking ticket, with the exact amount of the citation determined by the severity of the violation. All remedies are collected by the City and then disbursed to the aggrieved parties. The second enforcement mechanism available to the City is through the issuance of a compliance order. In this process, the City acts much like a court by sending out a notice to the violator that describes the violation and all steps that they must take to affect remedies, warns them of the consequences of non-compliance, and offers them a hearing with city staff as well as a chance to appeal to City Council. The final enforcement mechanism is simply an explicit authorization for the city to initiate civil action through the courts to seek injunctive relief, damages and civil penalties pursuant to the ordinance. The purpose of the expanded and improved enforcement process is to ensure that the City is able to extract full remedies from violators, including reimbursement for the cost of enforcement, which has been problematic for San Francisco in the past.

4. Determination of Effective Dates

In the discussion and deliberation over the precise date when the initial implementation and annual adjustments of the minimum wage should become enforceable, the Labor Commission considered aligning the schedule of the ordinance with that of other minimum wage laws, such as the San Francisco Minimum Wage or AB10, in order to promote regional consistency. The Commission has decided, however, to align with the existing schedule of the Berkeley Minimum Wage Ordinance in order to be internally consistent and to maximize efficiency and minimize the workload for city staff. As a result, all adjustments and changes to the prevailing minimum wage will be announced on May 1 of each year and go into effect on June 30 of that same year.

F. Tipped Workers and Restaurants

Many businesses owners, particularly restaurateurs, have attended Labor Commission meetings and proposed a tip-credit system which would exempt the service workers who receive tips as a form of compensation from the recommended Minimum Wage Ordinance, or that would allow employers to legally claim tips left by customers as part of the compensation they, as employers, are obligated to provide to their workers. In response, the Commission has conducted extensive research and discussion around the impact of raising the minimum wage on the restaurant industry and the issue of how tips are treated under minimum wage laws.

According the City's Office of Economic Development, there are currently 391 establishments in the sector of Accommodation & Food Service in the City of Berkeley, and an estimated 50% of their workforce is currently receiving compensation below the

proposed minimum wage [see exhibition, EDD-Labor Market Information Division], though this estimation does not include the tips and other forms of income that the workers may receive. The vast majority of restaurants in Berkeley are not fine dining establishments with well-tipped workers, however, and such restaurants are best positioned among the local restaurant community to most easily adapt to a raise in the minimum wage for their tipped service staff. The possible utility of distinguishing between full-service and quick-service restaurants was raised before the Commission, but eventually dismissed after some discussion and consultation with the Office of Economic Development. No significant data can be accessed through the City of Berkeley on the number of quick-service vs. full service restaurants, nor are there reliable definitions that city staff can use to distinguish between the two models. This would likely create confusion and lead to inconsistent rulings, which could also potentially incentivize businesses to utilize a hybrid model in order to cut costs, which would lead to further confusion. Because the ordinance would only affect restaurant workers earning less than the proposed minimum wage, and because the majority of such workers in restaurants also earn tips in some way, the discussion around different types of restaurants was still, in essence, a discussion around different types of workers, specifically between tipped and un-tipped workers.

The implementation of a tip credit system on the federal level and in other states has been shown to have an adverse impact on workers, particularly on the most vulnerable and disadvantaged portions of the workforce that would benefit the most from an increase in the minimum wage. [see Exhibit – Memorandum from Restaurant Opportunity Center]. Compared to other types of workers, tipped workers are more likely to live below the poverty line or use food stamps since tipped work is often unpredictable and inconsistent, and although a worker's tips fluctuate constantly based on variety of factors (such as the type and location of the business, the day and time of the worker's shift, and the particular customers they serve) the cost of living does not vary or distinguish between tipped and non-tipped workers. While 13.6% of tipped restaurant workers in states without a tip credit fall below the poverty line, 19.4% of servers in states with a tip credit live in poverty, demonstrating that even with tips, most tipped workers are still not being adequately compensated. No other employment sector depends on the generosity of customers to subsidize labor costs. Although employers are legally obliged to make up the difference between a workers' tips and their full due wages, tip credit systems have proven to be very difficult and burdensome to properly enforce and as a result, the existence of tip credits is the leading cause of wage and tip theft against workers by their employers in states where they exist.

Demographically, tip credits have a disproportionately negative impact on women and people of color, as the majority of tipped workers are drawn from these already disadvantaged social groups [see exhibition, Tipped Over the Edge]. Professional labor organizations and worker testimonies strongly assert that tip credit policies force workers to depend on tips to survive and are fundamentally unethical, as they leaves service workers systemically vulnerable to sexual harassment and racial discrimination. Moreover, such a policy would create significant additional levels of complexity in

implementation, enforcement, and record-keeping for businesses, workers, and the City itself. As reported in the Bureau of Labor Statistics, median wages for food prep and service workers in Alameda County are below the proposed minimum wage as well as the regional poverty line. [see Exhibitions, “Memorandum from the Restaurant Opportunity Center of the Bay” and “OES Survey”]. Thus, the benefits of raising the minimum wage for the tipped workers under this ordinance are significant.

California has the largest restaurant industry in the nation and one of the highest state-wide minimum wages. Unlike the federal minimum wage, none of the other municipal minimum wage laws in the state, nor the state minimum wage itself, excludes tipped workers or treats them differently from un-tipped workers. According to the Berkeley City Attorney’s Office, the State of California has precluded the creation of a tip-credit system, as it would violate California Labor Code [see Exhibition – California Labor Code 350-356]. It is the determination of the Labor Commission that the City Council should not seek to circumvent, override, or undermine state law, nor should they attempt to set such a regressive precedent of rolling back workers’ rights.

ALTERNATIVE ACTIONS CONSIDERED

1. Special treatment for the City’s Youth Works Program: as the Youth Works Program currently operates on a fixed budget, increasing hourly compensation rates will reduce the total number of hours offered to youth through employment in the program. Exempting Youth Works from the requirements of the ordinance would allow it to preserve current employment levels at current funding levels, and possibly provide an incentive for the youth workers to move out the program and into the local labor market where higher wages are available. Other alternatives that were discussed involved allowing youth candidates to be hired by private businesses in temporary positions that provided useful and desirable job-training, with the city providing the state minimum wage, and the businesses providing the difference between the state minimum wage and the local minimum wage, or vice versa. The Commission opted not to include such provisions in order to avoid increasing the complexity of administering the Youth Works Program and the Minimum Wage Ordinance, as well as to avoid devaluing youth labor or marginalizing impoverished youth. [see exhibit - YouthWorks Minimum Wage Scenarios]
2. Allowance for certain positions within 501(c)3 non-profit organizations that provide temporary and transitional job training to workers to be exempt from the requirements of the ordinance: A similar provision exists in the Berkeley Living Wage Ordinance. The Commission opted not to include such a provision in order to avoid increasing the complexity of the ordinance and the workload of city staff relating to implementation and enforcement.
3. Inclusion of mandatory paid sick leave for all workers in the city: Different versions of such a provision are found in both of the legal models (the Berkeley Living Wage Ordinance and the City of San Francisco’s municipal labor laws) that the City

Council referenced on April 30, 2013, in the original resolution that directed the Commission's work on the proposed minimum wage ordinance. Although the Labor Commission supports the concept of mandatory paid sick leave in general, the Commission ultimately opted not to include mandatory paid sick leave as a part of this ordinance. Based on the potential complexity of the issue, the Commission deemed that the additional amount of research, public review, and other work that would be required to create a locally-appropriate mandatory paid sick leave provision was not within the scope of the original resolution passed by the City Council and would detract from the primary focus of the work on the minimum wage.

4. Immediate implementation of the full amount of the Berkeley Living Wage for all businesses: This was advocated for by many citizens, workers, and representatives of professional labor and community organizations, based on the urgency of addressing the suffering and injustice caused by poverty among workers and their families, both currently and historically. The Commission, however, opted instead for an implementation schedule that would phase the Living Wage and other increases in more gradually for small businesses, eventually reaching completion around 2022. This model accommodates the concerns expressed by small business owners who would have difficulty adapting to such a sudden increase in labor costs and allows for a smoother and more manageable transition to compliance for both businesses and city staff, while still ensuring that workers in Berkeley are adequately compensated in the long term.
5. Changing the definition of "Small Business" to only include employers with 10 or fewer employees, and "Large Business" to include all employers with 10 or more employees: While the San Francisco Minimum Wage Ordinance defines "Small Business" as a business with less than 10 employees, the Berkeley Minimum Wage Ordinance defines "Small Business" as a business with fewer than 50 employees. According to data provided by the Department of Economic Development, there were 3744 establishments in Berkeley in 2011. Among these, 75% had less than 10 employees and 96% had less than 50 employees [see exhibition, Establishments (Workplace) by Employment Size Range: Berkeley, 2011]. Based on the data and the current definition of "Small Business" in the Berkeley Minimum Wage Ordinance, the grand majority of Berkeley's businesses will be treated as "Small Business." The Commission opted for the larger threshold of 50 in order to align with the definitions of the Patient Protection and Affordable Care Act and to place a greater portion of Berkeley's businesses under the more gradual implementation schedule that will complete around 2022.

CITY MANAGER

See Companion Report.

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Attachments:

1: Ordinance

2: Sources Reviewed by Commission

3: Community Health Commission recommendation to the Commission on Labor

ORDINANCE NO. -N.S.

AMENDING BERKELEY MUNICIPAL CODE (BMC) TO ESTABLISH A MUNICIPAL MINIMUM WAGE IN BERKELEY AFFECTING ALL WORKERS EMPLOYED WITHIN THE CITY OF BERKELEY

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

Section 1. That Berkeley Municipal Code Chapter 13 is amended to read as follows:

Chapter 13.99

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

F. "Small Business" shall mean an Employer for which fewer than fifty (50) persons perform work for compensation during a given week. In determining the number of persons performing work for an Employer during a given week, all persons performing work for compensation on a full-time, part-time, or temporary basis shall be counted, including persons made available to work through the services of a temporary services or staffing agency or similar entity.

G. "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.

H. "Large Business" shall mean an Employer for which fifty (50) or more persons perform work for compensation during a given week, or an Employer that is registered as a franchise or franchisee under the California Corporations Code, Title 4, Division 5, or under Federal law. In determining the number of persons performing work for an Employer during a given week, all persons performing work for compensation on a full-time, part-time, or temporary basis shall be counted, including persons made available to work through the services of a temporary services or staffing agency or similar entity.

I. "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 in this Section for each hour worked within the geographic boundaries of the City.

B. The Minimum Wage for Employers that are Small Businesses or Nonprofit Corporations shall be phased in incrementally in order to afford such Employers time to adjust. Beginning June 30, 2014, the Minimum Wage for such Employers shall be an hourly rate of ten dollars and seventy-four cents (\$10.74). This amount shall be adjusted annually pursuant to subsection E of this chapter in order to keep pace with the cost of living. In addition to this annual adjustment, beginning June 30, 2016, the Minimum Wage for Employees of such Employers shall be increased annually by fifty-five cents (\$0.55) until such time as it is equal to the Berkeley Living Wage as defined under the Berkeley Municipal Code, Title 13, Chapter 27. The adjusted amount shall be announced by May 1st of each year, and shall become effective as the new Minimum Wage on June 30th of that year.

C. The Minimum Wage for Employers that are Large Businesses shall be an hourly rate equal to that of the Berkeley Living Wage, as defined under Berkeley Municipal Code, Title 13, Chapter 27, effective June 30, 2014. As of June 30, 2013, this amount was thirteen dollars and thirty-four cents (\$13.34) per hour. This amount shall be adjusted annually, pursuant to subsection E, and shall remain equal to the Berkeley Living Wage as defined under the Berkeley Municipal Code, Title 13, Chapter 27. The

adjusted minimum wage for such Employers shall be announced by May 1st of each year, and shall become effective as the new minimum wage on June 30th of that year.

D. Beginning June 30, 2015, a medical benefit requirement shall be added to the Minimum Wage for all Employers. The value of this medical benefit shall be adjusted annually to remain equivalent to the amount of the medical benefit of the Berkeley Living Wage, as defined in Berkeley Municipal Code Title 13, Chapter 27. As of June 30, 2013, this amount was two dollars and twenty two cents (\$2.22). The adjusted medical benefit shall be announced by May 1 of each year and shall become effective on June 30 of that year. If an Employer offers an Employee a medical benefits plan or makes a coverage contribution under the Affordable Care Act which allows the Employee to receive Employer-compensated care from a licensed physician, then the Employer may credit against their hourly wage obligation to the Employee an amount, up to but not in excess of the value of the medical benefit, that the Employer irrevocably spent towards health care benefits for that Employee or that Employee's dependents during the same pay period. The Employer shall include a record of the exact amount, if any, credited against their wage obligation in a given pay period for each Employee in clear and unambiguous terms in both the Employer's payroll records and in such records that they provide to their Employees at the end of each pay period. If the Employee does not receive medical benefits through a plan offered by their Employer, then the Employee shall be entitled to receive the cash value of the medical benefit as part of their hourly wage. Under no circumstances shall an Employer pay less than the appropriate hourly rate set forth in subsections B and C of this chapter, regardless of the amount spent on medical benefits for Employees.

E. To prevent inflation from eroding its value, beginning on June 30, 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, 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 1st of each year, and shall become effective as the new minimum wage on June 30th of that year.

F. 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.

13.99.050 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.

13.99.060 Notice, Posting and Payroll Records.

A. By May 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 June 30. In conjunction with this bulletin, the Department shall by May 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 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 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.

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.

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 90, 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 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 90, 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

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. 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 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.

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. 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.

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.

Section 2. SEVERABILITY.

If any part or provision of this ordinance, or the application of this ordinance to any person or circumstance, is held invalid, the remainder of this ordinance, including the application of such part or provisions to other persons or circumstances, shall not be affected by such a holding and shall continue in full force and effect. To this end, the provisions of this ordinance are severable.

Section 3. 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: Sources Reviewed by the Commission

1. YouthWorks Minimum Wage Scenarios, City of Berkeley YouthWorks Program.
2. Economist Statement on Minimum Wage.
<http://www.epi.org/minimum-wage-statement/>
3. A Dime A Day: The Impact of the Miller/Harkin Minimum Wage Proposal on the Price of Food, The Food Labor Research Center at UC Berkeley & ROC-United.
<http://rocunited.org/dime-a-day/>
4. 2007 - 2011 American Community Survey - 5 Year Estimates, US Census of Bureau.
http://factfinder2.census.gov/bkmk/table/1.0/en/ACS/12_5YR/DP03/1600000US0606000
5. Bureau of Labor Statistics' Consumer Price Index Inflation Calculator
http://www.bls.gov/data/inflation_calculator.htm
6. Matrix of Minimum Wage Ordinances in the United States compiled by YouthWorks intern
7. Referral from City Council on April 30, 2013:
http://www.cityofberkeley.info/Clerk/City_Council/2013/04Apr/Documents/2013-04-30_Item_23_Increase_the_Minimum_Wage.aspx
8. EDD-Labor Market Information Division, First Quarter 2012 to First Quarter 2013 NAICS Sector Level Data, City of Berkeley As Defined By Zip Codes.
9. Memorandum from the Restaurant Opportunity Center of the Bay
10. Occupational Employment Statistics (OES) Survey Results, Office of Economic Development.
11. Tipped Over the Edge: Gender Inequity in the Restaurant Industry, Restaurant Opportunities Centers United, 2012.
<http://rocunited.org/tipped-over-the-edge-gender-inequity-in-the-restaurant-industry/>
12. California Labor Code 350-356.
<http://www.leginfo.ca.gov/cgi-bin/displaycode?section=lab&group=00001-01000&file=350-356>
13. Establishments (Workplace) by Employment Size Range: Berkeley, 2011
14. Estimate of the Number of Workers in Berkeley Who Would Be Affected by a City of Berkeley Minimum Wage Requirement of \$10.74 per Hour with Benefits and \$12.96 per Hour without Benefits, Office of Economic Development.



Community Health Commission

COMMUNICATION

February 25, 2014

To: Commission on Labor
 From: Community Health Commission
 Submitted by: Charles Gibson, Thomas McClure, Antoinette Stein
 Subject: Regulation of the Minimum Wage Ordinance

INTRODUCTION

The Community Health Commission recommends:

1. Amending the Proposed Minimum Wage Ordinance language to a provision that allows any employees to opt-out of the requirement for a medical benefit as part of the hourly wage upon providing documentation of primary coverage;
2. Utilizing the Health Permit process in Chapter 12 of the City of Berkeley Municipal Code, to enforce the regulation of the Minimum Wage Ordinance, proposed by the Labor Commission as Chapter 13.99 of the Berkeley Municipal code.

SUMMARY

The Community Health Commission has two recommendations regarding implementation of the Proposed Minimum Wage Ordinance.

In order to protect employees who are covered by the Minimum Wage Ordinance, it should be amended to include a definition of health care status. This definition would provide for an alternate method to meet the health care coverage requirement. The alternate method would allow employees to submit proof of primary insurance and therefore be able to opt out of any employer mandated health care program under the \$2.22 provision of Chapter 13.99 section C of the ordinance. The employee should have the option to opt out annually. This provision should be part G of section 13.99.040.

In order to ensure compliance with the minimum wage ordinance by retail restaurants, cafes and other areas of the food industry that are regulated by the Department of Environmental Health, all such permits should have a conditional provision requiring compliance with the minimum wage ordinance. We recommend, that Chapter 12.99 be drafted and added to Health and Safety Codes providing the Department of Environmental Health with the mechanism to administer and enforce this requirement. Regulatory oversight and responsibility should be assigned to the Department of Finance.

CURRENT SITUATION AND ITS EFFECTS

The Labor Commission has proposed an amendment to Chapter 13 of the Berkeley Municipal Code to be chapter 13.99 Minimum Wage Ordinances. The proposal has been presented to the Community Health Commission and the Commission has responded with the following recommendation to the Labor Commission's draft of January 29, 2014.

BACKGROUND

Minimum wage is a strategy to shrink income inequality that gives low-income worker a living wage. It is one of the ways to raise people above the poverty level. Federal, State and local governments are promoting minimum wage strategies as a way to balance income inequities in our communities. San Francisco currently has the highest minimum wage in the nation under a voter-approved law passed in 2005. As a nation we are looking at standards raising above \$10.00 by 2015.

Clarification of the health coverage requirement, implementation, enforcement and tracking effectiveness of the Minimum Wage Ordinance once it has been passed, is the focus of this recommendation.

ENVIRONMENTAL SUSTAINABILITY

None

POSSIBLE FUTURE ACTION

Draft an ordinance for enforce of minimum wage ordinance for retail food employees under chapter 12 of the municipal code.

FISCAL IMPACTS OF POSSIBLE FUTURE ACTION

At this time both long and short term fiscal impact has not been determined. It is recommended that the city council have the city manager approve funds to implement research and tracking.

CONTACT PERSON

Gail Feldman, Secretary – Community Health Commission, Health, Housing & Community Services Department, 510-981-5232

- WHEREAS Labor Commission is tasked with drafting a new minimum wage ordinance;
- WHEREAS The Community Health Commission, upon request from the Labor Commission, was tasked with reviewing the ordinance and providing insight into the health effects of the new proposed ordinance;
- WHEREAS The Community Health Commission created a Minimum Wage Subcommittee and assigned the Subcommittee to review the proposed ordinance and make recommendations to the Commission;
- WHEREAS Upon review, the Minimum Wage Subcommittee found that the incentive for employers to adhere to the ordinance is not strong enough to make the proposed ordinance enforceable;.
- WHEREAS The Minimum Wage Subcommittee found that there was no defined method of tracking results and outcomes of this proposed ordinance;
- WHEREAS The Minimum Wage Subcommittee found that the proposed ordinance did not differentiate requirements when employees are enrolled in non-employer based health care;

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the Community Health Commission is hereby directed to draft a new ordinance for Chapter 12 of the Municipal Code that allows for the revoking of administrative health permits in the event that an employer does not adhere to the minimum wage ordinance.;

THEREFORE, BE IT FURTHER RESOLVED that the Department of Finance is hereby directed to create and administer a tracking system as part of an annual report documenting the outcomes and effects of this new ordinance on the Community;

THEREFORE, BE IT FINALLY RESOLVED by the Council of the City of Berkeley that the Labor Commission is hereby directed to amend the Proposed Minimum Wage Ordinance to include an option for employees already enrolled in other health care options to opt-out of the mandated medical care coverage in the finally adopted Minimum Wage Ordinance.