



Commission on Labor

SUPPLEMENTAL AGENDA MATERIAL

Meeting Date: May 1, 2014

Item Number: 1a

Item Description: Minimum Wage Ordinance

Submitted by: Sam Frankel, Commission on Labor

The Commission on Labor held a Special Meeting on April 23, 2014 and approved the following modifications to the 1) proposed Minimum Wage Ordinance, and 2) the complementary policy No. 4 as described in the Commission's recommendation to Council.

M/S/C (Bloom/Yu) to accept revisions to ordinance and accompanying council report as recommended by subcommittee.

Ayes: Teter, Frankel, Yu, Kessler, Bloom

Noes: None

Absent: Mitrani-Belle (departed @ 9:15pm) Fillingim, Levitt, Kothari.

1. Modification to 13.99.030 Definitions
2. Exemptions
3. Modification to implementation dates
4. Modification to health care section
5. Addition of Paid Sick Leave Language
6. Modification to the Commission's Report to City Council

Included in this supplemental report is the revised proposed ordinance with the strikeouts.

1. Modification to 13.99.030 Definitions

G. "Nonprofit Corporation".

Specify the definition of the "Nonprofit Corporation" under the Berkeley Minimum Wage Ordinance. Add in phrase of "or any non-profit educational organization qualified under Section 23701 (d) of the Revenue and Taxation code. (Ord. 6583-NS § 2, 2000: Ord. 6548-NS § 2, 2000)" so that the definition of "Nonprofit Corporation" in the Berkeley Minimum Wage Ordinance is consistent to the definition of "Nonprofit" organization in the Berkeley Living Wage Ordinance.

J. "Health care expenditure"

Shall mean any amount paid by an Employer to its covered Employees or to a third party on behalf of its covered employees for the purpose of providing health care services, as defined under Section 213 of the United States Internal Revenue Code, or any other medical care, services, or goods having substantially the same purpose or effect as such deductible expenses for covered employees or reimbursing the cost of such services for its covered employees. Notwithstanding any other provision of this ordinance, "health care expenditure" shall not include any payment made directly or indirectly for workers' compensation or Medicare benefits. Valid forms of health care expenditures include, but are not limited to:

1. Contributions designated or paid by such employer on behalf of its covered employees to a health savings account as defined under section 223 of the United States Internal Revenue Code or to any other account having substantially the same purpose or effect without regard to whether such contributions qualify for a tax deduction or are excludable from employee income. Any such contribution that is not irrevocably paid to a third party on behalf of a covered employee, shall not constitute a "health care expenditure" unless all of the following conditions are met:

(i) The contribution is reasonably calculated to benefit the employee;

(ii) Except as provided in clause (v)(a), the contribution remains available to the employee (and any other person eligible for reimbursement for health care expenses through the employee) for a minimum of twenty-four (24) months from the date of the contribution.

(iii) On January 1 of each year, the account contains an amount equal to the balance in the account at the close of business on December 31 of the prior year, if any.

(iv) The employee receives a written summary of the contribution, within 15 days of the contribution which shall include: (a) the name, address, and telephone number of any third party to whom the contribution was made; (b) the date and amount of the contribution; (c) the date and amount of any other debits or credits to the account since the most recent written summary provided to the employee; (d) the balance in the account; and, (e) any applicable expiration dates for the funds in the account.

(v) If the employee separates from employment with a positive balance in a reimbursement account: (a) the balance in the account shall remain available to the employee (and any other person eligible for reimbursement for health care expenses through the employee) for a minimum of ninety days from the date of separation, and, (b) the employee shall receive, within three days following the separation, a written notice, which shall include the balance in the account and any applicable expiration

dates for the funds in the account.

2. Reimbursement by an Employer to its covered Employees for expenses incurred in the purchase of health care services;
3. Payments by an Employer to a third party for the purpose of providing health care services for covered employees;
4. Costs incurred by an Employer in the direct delivery of health care services to its covered employees; and
5. Expenditures made by self-insured and/or self-funded insurance programs

2. Exemptions

While the current proposed minimum wage ordinance does not include any exemptions, the Commission on Labor now recommends these exemptions to the proposed minimum wage ordinance:

1. A participant in a temporary job-training or youth up to age 25 participating in and employed by non-profit or governmental entities for after-school or summer employment or as on-the-job training for a period not longer than 120 days.
2. 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.

3. Modification to implementation dates

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~~ 90 days from the enactment of this ordinance, 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~~ 90 days from the enactment of this ordinance. 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.

4. Modification to health care section

~~D. Beginning June 30, 2015, a medical benefit requirement shall be added to the Minimum Wage for all Employers~~ all Employers shall make required health care expenditures to or on behalf of their covered Employees each pay period. The required health care expenditure for an Employer shall be calculated by multiplying the total number of hours paid for each of its covered Employees during a given pay period by the applicable health care expenditure rate. The value of this ~~medical benefit~~ health care expenditure rate 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~~ health care expenditure rate shall be announced by May 1 of each year and shall become effective on June 30 of that year. Each Employer shall have discretion as to the type of health care expenditure it chooses to make for its covered employees. ~~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 and method of its required health care expenditures ~~, 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.~~

5. Addition of Paid Sick Leave Language

A. ACCRUAL OF PAID SICK LEAVE

1. For Employees working for an Employer on or before the operative date of this Chapter, Paid Sick Leave shall begin to accrue as of the operative date of this chapter. For Employers hired by an Employer after the operative date of this Chapter, Paid Sick Leave shall begin to accrue 90 days after the commencement of employment with the Employer.
2. For every 30 hours worked after Paid Sick Leave begins to accrue for an Employee, the Employee shall accrue one hour of Paid Sick Leave. Such leave shall accrue only in hour-unit increments; there shall be no accrual of a fraction of an hour of such leave.
3. For Employees of Small Businesses, there shall be a cap of 40 hours of accrued Paid Sick Leave. For employees of Large Businesses, there shall be a cap of 72 hours of accrued Paid Sick Leave. Accrued Paid Sick Leave for Employees carries over from year to year (whether calendar year or fiscal year), but is limited to the aforementioned cap.

4. If an Employer has a paid leave policy, such as a paid time off policy, that makes available to Employees an amount of paid leave that may be used for the same purposes as Paid Sick Leave under this Chapter and that is sufficient to meet the requirements of Paid Sick Leave as stated in subsections

6. Modification to the Commission's Report to City Council

The Commission on Labor recommended seven policies for the City to take action as complimentary policies to the Minimum Wage Ordinance in the report to the City accompanied the Minimum Wage Ordinance. The Commission on Labor now modifies item No. 4 as followed: "committing to work with our Congressional representatives or federal tax code reform to allow for **voluntary** tip sharing among all the service workers within a business establishment".

AMENDING THE BERKELEY MUNICIPAL CODE (BMC) TO ADD CHAPTER 13.99 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 Chapter 13.99 is hereby added to the Berkeley Municipal Code 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.

J. "Health care expenditure" shall mean any amount paid by an Employer to its covered Employees or to a third party on behalf of its covered Employees for the purpose of providing health care services, as defined under Section 213 of the United States Internal Revenue Code, or any other medical care, services, or goods having substantially the same purpose or effect as such deductible expenses for covered Employees or reimbursing the cost of such services for its covered Employees. Notwithstanding any other provision of this ordinance, "health care expenditure" shall not include any payment made directly or indirectly for workers' compensation or Medicare benefits. Valid forms of health care expenditures include, but are not limited to:

1. Contributions designated or paid by such Employer on behalf of its covered Employees to a health savings account as defined under section 223 of the United States Internal Revenue Code or to any other account having substantially the same purpose or effect without regard to whether such contributions qualify for a tax deduction or are excludable from Employee income. Any such contribution that is not irrevocably paid to a third party on behalf of a covered Employee, shall not constitute a "health care expenditure" unless all of the following conditions are met:

(i) The contribution is reasonably calculated to benefit the Employee;
(ii) Except as provided in clause (v)(a), the contribution remains available to the Employee (and any other person eligible for reimbursement for health care expenses through the Employee) for a minimum of twenty-four (24) months from the date of the contribution.

(iii) On January 1 of each year, the account contains an amount equal to the balance in the account at the close of business on December 31 of the prior year , if any.

(iv) The Employee receives a written summary of the contribution, within 15 days of the contribution which shall include: (a) the name, address, and telephone number of any third party to whom the contribution was made; (b) the date and amount of the contribution; (c) the date and amount of any other debits or credits to the account since the most recent written summary provided to the Employee; (d) the balance in the account; and, (e) any applicable expiration dates for the funds in the account.

(v) If the Employee separates from employment with a positive balance in a reimbursement account: (a) the balance in the account shall remain available to the Employee (and any other person eligible for reimbursement for health care expenses through the Employee) for a minimum of ninety days from the date of separation, and, (b) the Employee shall receive, within three days following the separation, a written notice, which shall include the balance in the account and any applicable expiration dates for the funds in the account.

2. Reimbursement by an Employer to its covered Employees for expenses incurred in the purchase of health care services;

3. Payments by an Employer to a third party for the purpose of providing health care services for covered Employees;

4. Costs incurred by an Employer in the direct delivery of health care services to its covered Employees; and

5. Expenditures made by self-insured and/or self-funded insurance programs

13.99.035 EXEMPTIONS

1. A participant in a temporary job-training or youth up to age 25 participating in and employed by non-profit or governmental entities for after-school or summer employment or as on-the-job training for a period not longer than 120 days.
2. 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.
- 3.

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~~ 90 days from the enactment of this ordinance, 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~~ 90 days from the enactment of this ordinance. 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~~ all Employers shall make required health care expenditures to or on behalf of their covered Employees each pay period. The required health care expenditure for an Employer shall be calculated by multiplying the total number of hours paid for each of its covered Employees during a given pay period by the applicable health care expenditure rate. The value of this ~~medical benefit~~ health care expenditure rate 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~~ health care expenditure rate shall be announced by May 1 of each year and shall become effective on June 30 of that year. Each Employer shall have discretion as to the type of health care expenditure it chooses to make for its covered Employees. ~~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~~ 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 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.

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.