



CITY OF EMERYVILLE

Incorporated 1896

1333 PARK AVENUE

EMERYVILLE, CALIFORNIA 94608-3517

TEL: (510) 596-4300 FAX: (510) 596-4389

Andrew Allen
Ken Bukowski
Phillip Clark
John Gooding
Krisna Hanks
Steven Keller
Kris Owens
Bill Reuter
Geoff Sears
Mary Lou Thiercof
Councilmember Nora Davis

**Regular Meeting of the Economic
Development Advisory Committee**
Special Meeting of the Emeryville City Council
Emeryville Civic Center, 1333 Park Avenue
City Council Chambers, Emeryville, CA 94608

Wednesday March 4, 2015
12:00 noon

AGENDA

item below which are distributed to a majority of the Emeryville Economic Development Committee (including writings distributed to a majority of the Emeryville Economic Development Committee less than 72 hours prior to the meeting noticed below) will be available at the Information Counter, 1333 Park Avenue, Emeryville, California during normal business hours (9am to 5pm, Monday through Friday, excluding legal holidays).

In compliance with the Americans with Disabilities Act, a person requiring an accommodation, auxiliary aid, or service to participate in this Committee meeting should contact the City Clerk's Office or the City's ADA Coordinator (510) 450-7800 as far in advance as possible, but no later than 72 hours before the scheduled event. The best effort to fulfill the request will be made. Assistive listening devices are available for anyone with hearing difficulty from the Advisory Committee Secretary prior to the meeting, and must be returned to the Committee Secretary at the end of the meeting.

- I. Call to Order and Roll Call (12:00)
- II. Approval of Minutes of January 7, 2015 (12:05)
- III. Public Comment (12:10)
- IV. Action Items
 - a. Draft Minimum Wage Ordinance (12:15-12:50) (attachment)
- V. Staff Comments (12:50 to 12:55)
- VI. Committee Member Comments (12:55 to 1:00)
- VII. Adjournment (1:00)

All Advisory Committee meetings are noticed as Special City Council meetings so that any or all of the City Council may attend and participate in the Advisory Committee' deliberations. However, actions taken by Advisory Committee are not official actions of the City Council but must be ratified at a regular City Council. All writings that are public records and relate to an agenda

FURTHER INFORMATION may be obtained by contacting Michelle De Guzman, Committee Secretary, Acting Manager, Economic Development and Housing Division, at (510) 596-4357. The next regular meeting will be April 1, 2015.

DATED: February 25, 2015
Posting Date February 27, 2015
Post Until: March 5, 2015

KAREN HEMPHILL, CITY CLERK



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Action Minutes

Emeryville Economic Development Advisory Committee Regular Meeting

Special Meeting of the Emeryville City Council

Emeryville Civic Center, 1333 Park Avenue
City Council Chambers, Emeryville, CA 94608
Wednesday, January 7, 2015, 12:00 Noon

I. Call to Order and Roll Call:

The meeting was called to order at 12:03 pm

Members Present: Ken Bukowski, Bob Canter, Phillip Clark, John Gooding, Krisna Hanks, Steven Keller, Kris Owens, Bill Reuter, Geoff Sears, Mary Lou Thiercof, Lauren Westreich, Councilmember Nora Davis

Members Absent: None

Members Excused: Andrew Allen

Staff Present: Charles Bryant, Michelle De Guzman, Sabrina Landreth

II. Approval of Minutes

Geoff Sears moved and Steven Keller seconded a motion to approve the minutes. Minutes were approved without exception.

III. Public Comment

None

IV. Action Item

a) Prioritization of Economic Development Strategy and Work Plan FY14/15 and 15/16

The EDAC developed the following priorities for the Economic Development Strategy (in order of importance):

1. Emery-Go-Round/EBOTS
2. Fiber optics (“last mile” connection for residents and businesses)
3. Marketing (market existing benefits/amenities, awards)
4. One-Stop Shop for development projects
5. Placemaking (banners, development of neighborhood clusters)
6. Parking (charging for parking, enforcement of short-term zones)

V. Staff Comments

The City Manager described how the City is working with the Emeryville Transportation Management Agency (“TMA”) (which oversees Emery-Go-Round) to restructure the PBID to provide additional funding to that service. Additionally, the City is working with the TMA to assess their needs, and additional funding sources for those needs that exceed the funding that can be generated by the PBID.

VI. Committee Member Comments

Ken Bukowski asked that the City look into assessing fiber needs of the Emeryville community.

VII. Next Meeting Date – February 4, 2015

VIII. Adjournment – The meeting was adjourned at 1:01 p.m.

Prepared by:

Approved by Committee:

Michelle De Guzman, Acting Manager
Economic Development and Housing Division
Community Development Department

MEMORANDUM

DATE: March 4, 2015

TO: Economic Development Advisory Committee

FROM: Michelle De Guzman, Acting Manager, Economic Development and Housing Division, Community Development Department

SUBJECT: City of Emeryville Minimum Wage Ordinance

The Emeryville City Council is in the process of considering adopting a citywide minimum wage that is higher than the minimum wage required by the State of California and is seeking public input before finalizing the proposed local minimum wage law. A draft Minimum Wage Ordinance (including recent direction from Council) is attached to this staff report, as well as the most recent staff report on this item which was presented to the City Council on February 17. The following are the key components of the proposed ordinance as discussed by the City Council to date:

- Primarily based upon the recent voter approved Oakland “Lift Up” minimum wage ballot measure which included a minimum wage as well as mandatory paid sick leave.
- Eligible employees include private for-profit, private non-profit, and City employees that work at least 2 hours per week in the City of Emeryville
- One-year phase-in period for small businesses (10 or fewer employees) and non-profits
- Exemption only for workers under collective bargaining agreements which expressly waive the provisions of the proposed citywide ordinance.
- Initial minimum hourly wage that mirrors the City’s Living Wage (which currently applies only to City contractors), estimated to be \$14.42 per hour on the effective date of the ordinance (a proposed minimum wage rate higher than the Lift Up ballot initiative), and increased thereafter by the local consumer price index (i.e. inflation).
- Maximum of 48 paid sick leave hours accruable for employees of small businesses (10 or less employees within Emeryville) and 72 hours for employees of large businesses.
- An effective date of July 1, 2015.

Proposed Language from LiftUp

Since the item was considered by the Council on February 17, staff received language from Lift Up for consideration for inclusion at the end of section 5-37.04. Hospitality Service Charges of the draft ordinance provided:

- Each Hospitality Employer shall disclose in writing to each employee its

plan of distribution of service charges to employees and shall report to employees on each payroll date on the amount of service charges collected and amounts distributed to employees for the pay period in question.

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

The purpose of this language is to provide greater clarity with respect to the distribution of service charges to employees.

Proposed Implementation Schedule

March 4	Discussion of draft ordinance by the Economic Development Advisory Committee
April 7	City Council discusses business/community input and provides direction to staff
May 5	Public hearing for first reading of ordinance
May 19	Second reading of ordinance
May/June	Prepare for implementation <ul style="list-style-type: none">• Develop administrative instructions• Engage staffing for administration and enforcement• Develop support materials (notification posters, complaint forms, etc.)
July 1	Ordinance goes into effect

Discussion Topics

Based on the direction from the Council, staff suggests the following topics for discussion:

1. Should the proposed language from LiftUp be included in the final ordinance?
2. Potential impacts on various types of businesses and workers (such as those receiving tips)
3. Appropriate definition of small business
4. Proposed implementation timeline

Attachments:

1. Draft Emeryville Minimum Wage Ordinance (February 24, 2015)
2. Staff Report on Draft Minimum Wage to City Council of the City of Emeryville (February 17, 2015)

DRAFT EMERYVILLE MINIMUM WAGE ORDINANCE

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF EMERYVILLE ADDING CHAPTER 37 TO TITLE 5 OF THE EMERYVILLE MUNICIPAL CODE, “MINIMUM WAGE, PAID SICK LEAVE, AND OTHER EMPLOYMENT STANDARDS” AND AMENDING 5-32.1.1(a)(1), (2) AND 5-32.1.3(b) OF CHAPTER 32 OF TITLE 5 OF THE EMERYVILLE MUNICIPAL CODE, “WORKPLACE JUSTICE STANDARDS AT LARGE HOTELS”

WHEREAS, the current Federal minimum wage rate is \$7.25 per hour, and the California minimum wage is \$9.00 per hour; and

WHEREAS, in an effort to help working households achieve economic security and acknowledging the higher relative cost of living in San Francisco Bay Area, the City Council of the City of Emeryville wishes to enact a citywide minimum wage that is higher than the minimum wage required by the federal and state rates; and

WHEREAS, a higher minimum wage rate protects the public health, safety and welfare by requiring that employees are compensated in such a manner as to enable and facilitate their individual self-reliance within the City of Emeryville; and

WHEREAS, the City of Emeryville may adopt a higher minimum wage pursuant to the powers vested in the City under the laws and Constitution of the State of California including but not limited to the police powers vested in the City pursuant to Article XI, Section 7 of the California Constitution and section 1205(b) of the California Labor Code;

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF EMERYVILLE HEREBY ORDAINS AS FOLLOWS:

SECTION ONE. PURPOSE AND INTENT

The purpose and intent of this Ordinance is to adopt a new Chapter 37 of Title 5 of the Emeryville Municipal Code, “Minimum Wage, Sick Leave, and Other Employment Standards,” to provide standards for minimum wage paid to employees, paid sick leave, and equitable disbursement of hospitality service charges; and to amend sections 5-32.1.1(a)(1), (2) and 5-32.1.3(b) of Chapter 32 of Title 5 of the Emeryville Municipal Code, “Workplace Justice Standards at Large Hotels,” to provide consistency with the minimum wage standards of Chapter 37 of Title 5 of the Emeryville Municipal Code.

SECTION TWO. ADDING CHAPTER 37 TO TITLE 5 OF THE EMERYVILLE MUNICIPAL CODE

Chapter 37 is hereby added to Title 5 of the Emeryville Municipal Code to read as follows:

Chapter 37 - Minimum Wage, Paid Sick Leave, and Other Employment Standards

5-37.01 Definitions

As used in this Chapter, the following terms shall have the following meanings:

- a) "Calendar week" shall mean a period of seven consecutive days starting on Sunday.
- b) "City" shall mean the City of Emeryville.
- c) "Employee" shall mean any person who:
 - 1) In a calendar week performs at least two (2) hours of work within the geographic boundaries of the City for an Employer; and
 - 2) Qualifies as an employee entitled to payment of a minimum wage from any employer under the California minimum wage law, as provided under Section 1197 of the California Labor Code and wage orders published by the California Industrial Welfare Commission.
- d) "Employer" shall mean any person (including a natural person, corporation, nonprofit corporation, general partnership, limited partnership, limited liability partnership, limited liability company, business trust, estate, trust, association, joint venture, agency, instrumentality, or any other legal or commercial entity, whether domestic or foreign), who directly or indirectly (including through the services of a temporary services or staffing agency or similar entity) employs or exercises control over the wages, hours or working conditions of any Employee.
- e) "Paid Sick Leave" shall mean paid "sick leave" as defined in California Labor Code section 233(b)(4), except that the definition here extends beyond the Employee's own illness,

injury, medical condition, need for medical diagnosis or treatment, or medical reason, to also encompass time taken off work by an Employee for the purpose of providing care or assistance to other persons specified below with an illness, injury, medical condition, or need for medical diagnosis or treatment.

- f) "Minimum Wage" shall have the meaning set forth in Section 5-37.02 of this Chapter.
- 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, or any non-profit educational organization qualified under Section [23701](#) (d) of the Revenue and Taxation code.
- h) "Small Business" shall mean an Employer for which normally ten (10) or fewer persons 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 the same business enterprise 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.

5-37.02. Minimum Wage

- a) Employers shall pay Employees no less than the Minimum Wage for each hour worked within the geographic boundaries of the City.

- b) Beginning on July 1, 2015, the Minimum Wage paid by Employers which are not Nonprofit Corporations or Small Businesses shall be an hourly rate of \$14.42. To prevent inflation from eroding its value, beginning on the 1st of July 2016, and then each year thereafter on the 1st of July, the Minimum Wage shall increase by an amount corresponding to the prior calendar year's increase, if any, in the Consumer Price Index for all urban consumers for the San Francisco-Oakland-San Jose, CA metropolitan statistical area (or if such index is discontinued, then in the most similar successor index).
- c) For Employers which are Nonprofit Corporations or Small Businesses, the Minimum Wage rate shall be as follows:
 - a. Beginning July 1, 2015, the Minimum Wage shall be an hourly rate of \$12.25 per hour.
 - b. Beginning January 1, 2016, the Minimum Wage shall be an hourly rate of \$13.50 per hour.
 - c. Beginning July 1, 2017, the Minimum Wage shall be the then-current Minimum Wage rate for Employers which are not Nonprofit Corporations or Small Businesses. To prevent inflation from eroding its value, beginning on the 1st of July 2018, and then each year thereafter on the 1st of July, the Minimum Wage shall increase by an amount corresponding to the prior calendar year's increase, if any, in the Consumer Price Index for all urban consumers for the San Francisco-Oakland-San Jose, CA metropolitan statistical area (or if such index is discontinued, then in the most similar successor index).

5-37.03. Paid Sick Leave

- a) Accrual of Paid Sick Leave

For Employees of Small Businesses, there shall be a cap of 48 hours of accrued Paid Sick Leave. For Employees of all other Employers, 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. Nothing herein precludes an Employer from establishing a higher cap or no cap on the number of accrued hours.

- b) Use of Paid Sick Leave

- 1) An Employee may use Paid Sick Leave not only when he or she is ill or injured or for the purpose of the Employee's receiving medical care, treatment, or diagnosis, as specified more fully in California Labor Code section 233(b)(4), but also to aid or care for a family member of Employee when the family member or members is or are ill or injured or receiving medical care, treatment, or diagnosis. For purposes of this subsection, "family member" shall have the meaning provided in Labor Code section 245.5. If the Employee has no spouse or registered domestic partner, the Employee may designate one person as to whom the Employee may use paid sick leave to aid or care for that person in lieu of a spouse or registered domestic partner. The Employee may use all or any percentage of his or her Paid Sick Leave to aid or care for the aforementioned persons. The opportunity to make such a designation shall be extended by the Employer to the Employee no later than 30 calendar days after the date on which the Employee begins to accrue Paid Sick Leave pursuant to this Chapter. There shall be a window of 14 calendar days for the Employee to make this designation after notice from the Employer. Thereafter, the opportunity to make such a designation, including the opportunity to change such a designation previously made, shall be extended by the Employer to the Employee on an annual basis by January 31st of each year, with a window of 14 calendar days for the Employee to make the designation after notice from the Employer.
- 2) An Employer may require Employees to give reasonable notification of an absence from work for which Paid Sick Leave is or will be used.

5-37.04. Hospitality Service Charges

- a) Definitions: The following definitions shall apply to this section:
 - 1) "Service Charge" means all separately-designated amounts collected by a Hospitality Employer from customers that are for service provided by Hospitality Workers, or are described in such a way that customers might reasonably believe that the amounts are for those services, including but not limited to those charges designated on receipts under the term "service charge," "delivery charge," or "portage charge."

- 2) "Hospitality Employer" means an Employer who owns, controls, or operates any part of a hotel or restaurant or banquet facilities within the City, including as a subcontractor thereto, but does not include any governmental agency.
- 3) "Hospitality Worker" means an Employee who works for a Hospitality Employer and who performs a service for which a Hospitality Employer imposes a Service Charge. "Hospitality Worker" does not include a managerial employee.

b) Hospitality Employers' Responsibilities

- 1) Service Charges shall not be retained by the Hospitality Employer but shall be paid over in their entirety to the Hospitality Worker(s) performing services for the customers from whom Service Charges are to be collected. No part of these charges may be paid to supervisors except for any portion of their work time spent on nonsupervisory work serving these customers, and then at no higher rate of compensation than the average of what is paid other Hospitality Workers performing similar customer service. The Service Charges shall be distributed to the Hospitality Workers not later than the next payroll following the work or collection of the charge from the customer, whichever is later. Without limitation of the foregoing:
 - a) Service charges collected for banquets or catered meetings shall be paid to the Hospitality Workers who actually work the banquet or catered meeting;
 - b) Service charges collected for room service shall be paid to the Hospitality Workers who actually deliver food and beverage associated with the charge; and
 - c) Service charges collected for portage service shall be paid to the Hospitality Workers who actually carry the baggage associated with the charge.
- 2) This section does not apply to any tip, gratuity, money, or part of any tip, gratuity, or money that has been paid or given to or left for a Hospitality Worker by customers over and above the actual amount due for services rendered or for goods, food, drink, or articles sold or served to the customer.

5-37.05. Notice and Posting

- a) By April 1 of each year, the City shall publish and make available to Employers a bulletin announcing the adjusted Minimum Wage rate, which shall take effect on July 1 of that year. In conjunction with this bulletin, the City shall by May 1 of each year publish and make available to Employers, in English and other languages as provided in any implementing regulations, 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) Each Employer shall give written notification to each current Employee and to each new Employee at time of hire, of his or her rights under this Chapter. The notification shall be in English and other languages as provided in any implementing regulations, and shall also be posted prominently in areas at the work site where it will be seen by all Employees. 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 the provisions of this Chapter. The City is authorized to prepare sample notices and Employer use of such notices shall constitute compliance with this subsection.

5-37.06. Implementation

- a) Regulations

City shall be authorized to coordinate implementation and enforcement of this Chapter and may promulgate appropriate guidelines or rules for such purposes. Any guidelines or rules promulgated by City 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 has violated the requirements of this Chapter.

- b) Reporting Violations

An aggrieved Employee may report to City in writing any suspected violation of this Chapter. City shall keep confidential, to the maximum extent permitted by applicable laws, the name and other

identifying information of the Employee reporting the violation. Provided, however, that with the authorization of such Employee, City may disclose his or her name and identifying information as necessary to enforce this Chapter or other employee protection laws.

c) Investigation

City may investigate any possible violations of this Chapter by an Employer. City shall have the authority to inspect workplaces, interview persons and subpoena records or other items relevant to the enforcement of this Chapter.

d) Informal Resolution

If the City elects to investigate a complaint, City shall make every effort to resolve complaints informally and in a timely manner. The City's investigation and pursuit of informal resolution does not limit or act as a prerequisite for an Employee's right to bring a private action against an Employer as provided in this Chapter.

5-37.07. Enforcement

a) Enforcement by City

Where compliance with the provisions of this Chapter is not forthcoming, City may take any appropriate enforcement action to ensure compliance, including but not limited to the following:

1) City may issue an Administrative Citation pursuant to Chapter 8 of Title 1 of the Emeryville Municipal Code. The amount of this fine shall vary based on the provision of this Chapter being violated, as specified below:

A. A fine may be assessed for retaliation by an Employer against an Employee for exercising rights protected under this Chapter. The fine shall be one thousand dollars (\$1,000.00) 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 right to designate person in-lieu of spouse or registered domestic partner to use paid sick leave to aid or care for that person.
- iii. Failure to maintain payroll records for the minimum period of time as provided in this Chapter.
- iv. Failure to allow the City access to payroll records.

C. A fine equal to the total amount of appropriate remedies, pursuant to subsection c) 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, City may pursue administrative remedies in accordance with the following procedures:

- A. Whenever City determines that a violation of any provision of this Chapter is occurring or has occurred, 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. 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;
 - v. A warning that the compliance order shall become final unless a written request for hearing before the City is received within

fourteen (14) days 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 before a Hearing Officer designated by City and, if necessary, a subsequent appeal to the City Manager 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. The decision of the Hearing Officer shall be final with no further right of administrative review.

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

b) Private Rights of Action

An Employee claiming harm from a violation of this Chapter may bring an action against the Employer in court to enforce the provisions of this Chapter and shall be entitled to all remedies available to remedy any violation of this Chapter, including but not limited to back pay, reinstatement, injunctive relief, and or civil penalties as provided herein. The prevailing party in an action to enforce this Chapter is entitled to an award of reasonable attorney's fees, witness fees and costs.

c) Remedies

- 1) The remedies for violation of this Chapter include but are not limited to:
 - A. 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 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 Chapter or state law.

- B. 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.
 - C. Reimbursement of the City's administrative costs of enforcement and reasonable attorney's fees.
 - D. If a repeated violation of this Chapter has been finally determined in a period from July 1 to June 30 of the following year, 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.
- 2) 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, administrative or judicial, that may be brought to abate a violation or to seek compensation for damages suffered.
 - 3) No criminal penalties shall attach for any violation of this Chapter, nor shall this Chapter give rise to any cause of action for damages against the City.
- d) Retaliation Barred
- 1) An Employer shall not discharge, reduce the compensation of nor otherwise discriminate against any Employee for making a complaint to the City, participating in any of City's proceedings, using any civil remedies to enforce his or her rights, or otherwise asserting his or her rights under this Chapter. Within 120 days of an Employer being notified of

such activity, it shall be unlawful for the Employer to discharge any Employee who engaged in such activity unless the Employer has clear and convincing evidence of just cause for such discharge.

- 2) No Employer may fund increases in compensation required by this Chapter, nor otherwise respond to the requirements of this Chapter, by reducing the compensation of any non-management Employees, nor by reducing the pension, vacation, or other non-wage benefits of any such Employees, nor by increasing charges to them for parking, meals, uniforms or other items.

e) Waiver

- 1) Existing Collective Bargaining Agreements

Employees who have entered into a bona fide collective bargaining agreement in effect at the time of the Effective Date of this Chapter shall not be subject to the provisions of this Chapter. Once the bargaining agreement has expired, the provisions of this Chapter shall apply.

- 2) Waiver Through Collective Bargaining

Except to the extent required by 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 that the parties thereto intend to and do thereby waive all of or a specific portion(s) of this Chapter.

f) Retention of Records

Each Employer shall maintain for at least three years for each Employee a record of his or her name, hours worked, pay rate, Paid Sick Leave accrual and usage, and Service Charge collection and distribution. Each Employer shall provide each Employee a copy of the records relating to such Employee upon the Employee's reasonable request.

g) City Access

Each Employer shall permit access to work sites and relevant records for authorized City representatives for the purpose of monitoring compliance with this Chapter and investigating employee complaints of noncompliance, including production for inspection and copying of its employment records, but without allowing social security numbers to become a matter of public record.

5-37.08. No Preemption of Higher Standards

The purpose of this Chapter is to ensure minimum labor standards. This Chapter does not preempt or prevent the establishment of superior employment standards (including higher wages) or the expansion of coverage by ordinance, resolution, contract, or any other action of the City. This Chapter shall not be construed to limit a discharged Employee's right to bring a common law cause of action for wrongful termination.

5-37.09. Severability

If any provision or application of this Chapter is declared illegal, invalid or inoperative, in whole or in part, by any court of competent jurisdiction, the remaining provisions and portions thereof and applications not declared illegal, invalid or inoperative shall remain in full force or effect. Nothing herein may be construed to impair any contractual obligations of City. This Chapter shall not be applied to the extent it will cause the loss of any federal or state funding of City activities.

SECTION THREE. AMENDING SECTIONS 5-32.1.1(a)(1), (2) AND 5-32.1.3(b) OF CHAPTER 32 OF TITLE 5 OF THE EMERYVILLE MUNICIPAL CODE

- A. Sections 5-32.1.1(a)(1), (2) and 5-32.1.3 of Chapter 32 of Title 5 of the Emeryville Municipal Code are hereby amended as follows. Additions are indicated in **bold underline** text, and deletions in ~~strikethrough~~ text.

5-32.1.1 Minimum Requirements

No corporation, entity or person may operate a large hotel (as defined in Section 5-32.1.3) without annually obtaining a permit from the City, which shall be granted upon a showing that the following conditions will be followed:

- (a) Minimum Wages. Large hotels shall ensure that employees receive compensation of at least the following:

- 1) Minimum Compensation. The minimum compensation for each employee shall be at least ~~nine dollars (\$9.00)~~ **fourteen dollars and forty two cents (\$14.42)** per hour.
- 2) Minimum Average Compensation. The average compensation for all employees in the hotel during a calendar year shall be at least ~~eleven dollars (\$11.00)~~ **seventeen dollars and sixty-five cents (\$17.65)** per hour.

- B. Section 5-32.1.3 of Chapter 32 of Title 5 of the Emeryville Municipal Code is hereby amended as follows. Additions are indicated in **bold underline** text, and deletions in ~~strikethrough~~ text.

5-32.1.3 Definitions

- b) "Employee" includes not only common law employees of the operator, but also persons regularly engaged on the premises in providing services to hotel guests as a contractor, subcontractor, tenant, subtenant, licensee or sublicense, or as an employee thereof. Workers who are not common law employees of the operator shall not be deemed regularly engaged on the premises unless they spend more than five hours per week there for more than four weeks. The permittee shall remain ultimately liable for compliance with this article regardless of whether or not it is the common law employer of the employees. "Employee" does not include any managerial or administrative employees receiving more than **eighty thousand two hundred nineteen and 45/100 dollars (\$80,219.45)** ~~fifty thousand dollars (\$50,000)~~ per year in wages, salary, bonus, commission or other compensation from the hotel.

SECTION FOUR. CEQA DETERMINATION

The City Council finds, pursuant to Title 14 of the California Administrative Code, section 15061(b)(3) and section 15378(a), that this Ordinance is exempt from the requirements of the California Environmental Quality Act (CEQA) in that it is not a Project that has the potential for causing a significant effect on the environment. This action is further exempt from the definition of a Project in section 15378(b)(3) in that it concerns general policy and procedure making.

SECTION FIVE. SEVERABILITY

Every section, paragraph, clause, and phrase of this Ordinance is hereby declared severable. If, for any reason, any section, paragraph, clause, or phrase is held to be invalid or unconstitutional, such invalidity or unconstitutionality shall not affect the validity or constitutionality of the remaining section, paragraphs, clauses, or phrases.

SECTION SIX. EFFECTIVE DATE

This Ordinance shall take effect July 1, 2015. The City Clerk is directed to cause copies of this Ordinance to be posted or published as required by Government Code section 33693.

SECTION SEVEN. CODIFICATION

Sections Two and Three of this Ordinance shall be codified in the Emeryville Municipal Code. Sections One, Four, Five, Six and Seven shall not be so codified.

This Ordinance was introduced and first read by the City Council of the City of Emeryville at a regular meeting held on Tuesday, May 5, 2015, and **PASSED AND ADOPTED** by the City Council at a regular meeting held on Tuesday, May 19, 2015.

MAYOR

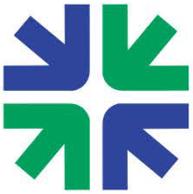
ATTEST:

APPROVED AS TO FORM:

CITY CLERK

CITY ATTORNEY

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Wage\Minimum Wage Ordinance.Ver 021915.Docx



CITY OF EMERYVILLE

MEMORANDUM

DATE: February 17, 2015

TO: Sabrina Landreth, City Manager

FROM: Charles S. Bryant, Community Development Director

SUBJECT: Citywide Minimum Wage Draft Ordinance

RECOMMENDATION

Staff recommends that the City Council review the attached draft ordinance establishing a citywide minimum wage, plus additional workplace standards, and approve for distribution an ordinance that reflects Council's direction on several issues highlighted in the following discussion.

BACKGROUND

The purpose of this report is to obtain comment and approval of a draft ordinance to establish a citywide minimum wage, sick leave benefits, and other employment standards which will be made available to the public in order to provide notice to affected parties of the impending legislation.

In an effort to help working households achieve economic security, and acknowledging the higher relative cost of living in San Francisco Bay Area, the City of Emeryville has been considering a citywide minimum wage that is higher than the minimum wage required by the State of California.

Staff first explored this issue in 2006 in light of the passage of Measure C, a voter-approved ballot initiative that passed in November 2005, increasing wages for hotel workers and establishing some labor standards in that industry. As part of a comprehensive analysis of wage rates, in October 2006 the City Council approved a Living Wage Ordinance that applies to all permanent City employees and vendors with City contracts. The Council at that time directed staff to defer consideration of a citywide minimum wage in order to analyze the impacts of Measure C and the Living Wage Ordinance. Additionally, the State was making efforts to increase the statewide minimum wage as then-Governor Schwarzenegger signed a bill in 2006 raising the minimum wage to \$8.00 per hour by 2008. Subsequent to that action, Governor Jerry Brown signed another bill in 2013 increasing the statewide minimum wage to \$9.00 per hour in 2014 (the current statewide minimum wage) and again to \$10.00 per hour in 2016.

In August 2014, staff again reported to the Council on evaluating the feasibility of establishing a minimum wage for the City of Emeryville, including a summary of previous consideration by the City and recent activity in other cities.

At the time of the August 2014 report, several citywide minimum wage measures had recently passed in Berkeley, Richmond, and Seattle, and two measures had qualified for the November 2014 ballot (Oakland and San Francisco). In addition, several more research studies have been conducted in the past six months analyzing the potential impacts of some of these measures. For example, UC Berkeley's Center on Wage and Employment Dynamics analyzed the potential impacts to the cities of Los Angeles, San Jose, Oakland, San Francisco, and San Diego (<http://irle.berkeley.edu/research/minimumwage/>), and other consultants and staff in those cities have also performed analyses. The studies conducted by UC Berkeley generally found that effects of an increased minimum wage on employment, business operating costs, and consumer prices were modest to negligible.

An update item was again brought to the Council for its consideration on January 20, 2015. Since the prior report in August 2014, the citywide minimum wage ballot measures in San Francisco and Oakland passed by significant majorities, and the City Councils of Sunnyvale and Mountain View also adopted ordinances increasing the minimum wages to match the ordinance that has been in place in San Jose.

At the January 20, 2015 Council meeting, staff recommended consideration of a citywide minimum wage ordinance for Emeryville that closely mirrored that of the Oakland initiative, with a schedule for outreach and implementation, with a proposed effective date of January 1, 2016. The Council directed staff to develop an ordinance for Emeryville as follows:

- The ordinance should be based on the parameters of the Oakland initiative.
- The initial minimum hourly wage should mirror the City's Living Wage, currently \$14.03 per hour but will be increased July 1 by the local consumer price index (CPI), with increases annually thereafter by the CPI.
- The ordinance would be effective as of July 1, 2015.

Given the accelerated effective date, and in light of the regional research already conducted for other cities, Council directed staff that additional economic impact analyses and separate community meetings were not necessary to take place before the next discussion of the proposed ordinance on February 17, 2015.

DISCUSSION/ANALYSIS

Proposed Elements of Draft Emeryville Minimum Wage Ordinance

Per the direction of the City Council, a draft citywide minimum wage ordinance is attached, and is largely based on the Oakland initiative developed by Lift Up, with exceptions as noted.

- The Emeryville ordinance would be added as Chapter 37 to Title 5 of the Emeryville Municipal Code, “Minimum Wage, Sick Leave, and Other Employment Standards”
- Effective date of July 1, 2015
- Minimum wage rate and schedule for increases
 - Match City of Emeryville Living Wage as of the July 1, 2015 effective date as opposed to Lift Up rate of \$12.25 per hour. The current Emeryville living wage rate is \$14.03 per hour. The Lift Up initiative provides for increases to the rate based on increases to the consumer price index (“CPI”) in the prior calendar year. Emeryville ordinance maintains this schedule for wage rate increases. In calendar year 2014 the CPI increased 2.8% and thus the proposed Emeryville minimum wage rate will be \$14.42 per hour as of July 1, 2015.
- Exemptions
 - Lift Up initiative provides that employees subject to a ratified collective bargaining agreement may agree to waive application of law. Emeryville draft ordinance clarifies that employees subject to a current collective bargaining agreement in effect as of the effective date of the ordinance are exempt from the application of the ordinance until the agreement expires. Thereafter, the ordinance would apply unless there is a clear and unambiguous waiver of all or portions of the ordinance in a collective bargaining agreement.
- Considerations for sick leave
 - Employees would accrue one hour of paid sick leave for every 30 hours they work.
 - Employers may cap paid sick leave accrued by an employee at 72 hours. (Note: please see discussion below re AB 1522 and cap on accrued sick leave)
- Elements that differ from Oakland ordinance
 - Elements related to Measure C

Living Wage Ordinance as Proxy for Initial Minimum Wage Rate

Per the direction of Council, the proposed ordinance uses the City's current Living Wage rate as the initial minimum wage rate. The City's Living Wage is inclusive of wages and health benefits, such that the monetary wages paid to the employees may be reduced by the monetary value of the employer's contribution for health benefits. Likewise the wage rates established pursuant to Measure C for hotel workers also provide a credit for health benefits provided by an employer. The citywide minimum wage, as based on the Oakland initiative, does not have a consideration for a health benefit credit. As such, the current City of Emeryville Living Wage is not directly comparable to the minimum wage rate currently under consideration. Accordingly, while the minimum wage rate will obviously increase overall wages, it is possible that any health benefits provided at the expense of an employers, such as hotels, may be withdrawn since the employer would not be allowed a credit against the wage rate.

Additionally, the minimum wage rate put forth by Council of \$14.42 per hour to be in place by July 1, 2015 is higher than the minimum wages set by any other jurisdiction for 2015. The minimum wage of \$12.25 per hour in the Oakland initiative, effective as of March 2, 2015, is approximately 36% higher than the current State minimum wage rate of \$9.00 per hour while the draft Emeryville rate represents a 59% increase over the current State minimum wage.

The previously referenced studies completed by UC Berkeley concluded that the costs of minimum wage increases are offset through increased worker retention, improved worker productivity, and minor increases in prices. However, none of the cities recently studied by UC Berkeley specifically analyzed an increase of this magnitude in the first year of implementation. As a result, the extrapolation of the findings of those studies to the legislation currently under consideration may be less applicable than if Emeryville pursued a similar wage increase schedule to that of Oakland or Berkeley (the two cities in Alameda County that have been studied).

AB 1522 – Paid Sick Leave

At the time the Oakland initiative was adopted, there were no state regulations regarding paid sick leave. Since the enactment of the Oakland initiative, the Governor approved AB 1522, the "Healthy Workplaces, Healthy Families Act of 2014," attached to this report. The bill amends the state Labor Code to provide for paid sick leave to employees beginning July 1, 2015. Covered employees who work in California for 30 or more days within a year are entitled to paid sick days for prescribed purposes, to be accrued at a rate of no less than one hour for every 30 hours worked. An employee would be entitled to use accrued sick days beginning on the 90th day of employment after the effective date of the statute.

The bill authorizes an employer to limit an employee's use of paid sick days to 24 hours or 3 days in each year of employment. AB 1522 prohibits an employer from discriminating or retaliating against an employee who requests paid sick days. The bill also requires employers to satisfy specified posting, notice, and recordkeeping requirements.

The provisions of the Oakland initiative regarding accrual of paid sick leave were modeled on AB 1522. Specifically, the Oakland initiative mirrors the following provisions of AB 1522:

- A. the starting date for use of paid sick leave (90 days from effective date of the statute)
- B. the accrual rate of paid sick leave (1 hour of paid sick leave for every 30 hours worked);
- C. exemption from providing paid sick leave in the event the employer already offers a paid sick leave policy; and
- D. employer is not obligated to provide reimbursement to employee for unused paid sick leave at the time of separation. Because the state statute regulates these areas of paid sick leave accrual, the draft ordinance presented to the City Council does not include those provisions.

While the Oakland ordinance largely mirrors AB 1522, there are differences between the two statutes which staff highlights for the City Council's consideration:

1. Employees Subject to the Minimum Wage Statute

The Oakland initiative defines employees subject to that statute as persons who: 1) work at least 2 hours per week within the city of Oakland; and 2) qualifies as an employee entitled to payment of minimum wage under California minimum wage law. The Oakland statute also exempts employees covered by a valid collective bargaining agreement which waives the provisions of the statute in clear and unambiguous terms.

AB 1522 has a narrower definition of employee. An employee under the state statute does not include: 1) an employee covered by a valid collective bargaining agreement which includes, among other provisions, for paid sick leave; 2) an employee in the construction industry covered by a valid collective bargaining agreement in which includes provisions for paid sick leave and which either was entered into before January 1, 2015, and expressly waives the provisions of the state statute in clear and unambiguous terms; 3) a provider of in-home

supportive services; and 4) an individual employed by an air carrier as a flight deck or cabin crew member.¹

- The draft presented to the City Council is modeled on the Oakland initiative. Staff seeks direction on whether to specify a narrower definition of employee as provided by the AB 1522 model, or to maintain a more expansive definition as seen in the Oakland ordinance.

2. Maximum Paid Sick Leave Hours Accrued

The Oakland initiative provides that Small Business employers (defined as employing ten or fewer persons per week) may cap an employee's accrued paid sick leave at 40 hours per year. All other employers may cap accrued paid sick leave at 72 hours. However, AB 1522 provides that all employers, regardless of size, may cap accrued paid sick leave at 48 hours, or 6 days.² Accordingly, Small Businesses in Oakland will only be allowed to cap accrual of paid sick leave at 48 hours in accordance with AB 1522, not 40 hours as provided by the Lift Up initiative. Both the Oakland ordinance and the Labor Code allow an employer to provide for caps higher than the maximum hours specified.

To avoid conflict with the provisions of AB 1522, staff is not recommending a Small Business cap of 40 hours accrued paid sick leave. Instead staff recommends a cap of 72 hours of accrued paid sick leave for all employers similar to the Oakland initiative as that measure applies to non-Small Businesses.

- Staff is seeking direction from the City Council regarding: 1) the maximum number of sick leave hours an employee may accrue (keeping in mind the state requirement is a minimum of 48 hours or 6 days); and 2) whether the City Council wishes to distinguish between maximum accrued hours for Small Business employers and all other employers.

3. Maximum Hours of Usable Paid Sick Leave In A Year

AB 1522 provides that an employer may limit an employee's use of paid sick days to 24 hours or three days in each year of employment³ notwithstanding the fact that under the same statute, an employee may accrue up to 48 hours or 6 days of paid sick leave annually. Thus an employee may use at most only half of the maximum accrued paid sick leave in a year. The Oakland initiative does not

¹ Labor Code section 245.5(a)

² Labor Code section 246(i)

³ Labor Code section 246(d)

provide any limits on the amount of paid sick leave useable in a year, and thus an employee may use up to the maximum accrued amount.

- Like the Oakland initiative, the draft Emeryville ordinance presented for City Council consideration does not address limits on the amount of paid sick leave usable each year by an employee. Accordingly, without addressing this issue, the limits established by AB 1522 likely apply. Thus staff requests the City Council provide direction on the number of allowable sick leave hours an employee may use each year recognizing no such limit may be established that is less than that provided by AB 1522 (i.e. 24 hours/year) .

4. Use of Paid Sick Leave

AB 1522 allows an employee to use paid sick leave for the care or treatment of the employee or an employee's family member. "Family member" includes a child⁴, parent, stepparent, legal guardian, spouse, or registered domestic partner⁵. In addition to the family members covered by AB 1522, the Oakland initiative also allows an employee to use paid sick leave for the care or treatment of one designated person, if the employee does not have a spouse or registered domestic partner. The employee is allowed to make the designation no later than the date on which the employee has worked 30 hours after paid sick leave begins to accrue. The employee may change the designation on an annual basis.

- Staff has included the provision relating to the right of an employee to designate an individual for whom they may use paid sick leave to care for in the event they do not have a spouse or domestic partner in the draft ordinance. Staff seeks City Council direction on whether to keep this designation in future versions of the ordinance.

5. Start of Use of Paid Sick Leave

AB 1522 provides that employees may use paid sick leave beginning on the 90th day of employment⁶. Likewise, the Oakland initiative allows an employee to begin using paid sick leave 90 days after commencement of employment.

⁴ Including a biological, adopted, or foster child, or a stepchild or legal ord. The definition of child is applicable regardless of age or dependency status.

⁵ Labor Code section 245.5(c)

⁶ Labor Code section 246(c)

Regarding the proposed ordinance, in the absence of a different starting period for the use of paid sick leave, the provisions of AB 1522 will control, and an employee may begin using accrued sick leave after the 90th day of employment.

- Staff seeks direction on whether an employee may begin using paid sick leave sooner than the 90th day of employment.

Hospitality Service Charge

Like the Oakland initiative, the proposed ordinance includes regulations covering the disbursement of hospitality service charges. Service charges are amounts collected by a Hospitality Employer from customers for service provided a Hospitality Worker. Hospitality Employers are defined as an employer who owns, controls or operates a hotel, restaurant, or banquet facility within the City, including subcontractors. Hospitality Workers are individuals who work for a Hospitality Employer and who perform service for which a Hospitality Employer imposes a service charge. Hospitality Workers do not include managerial employees.

The proposed ordinance requires service charges collected by the Hospitality Employer to be paid in their entirety to the Hospitality Worker(s) actually performing the services for which the service charges are collected. No part of the service charge may be paid to supervisors except for the portion of time spent on nonsupervisory work for the customers, and then at no higher rate than the compensation of the average paid to Hospitality Workers performing similar customer service duties. The service charges shall be distributed to Hospitality Workers no later than the next payroll following the work or collection of charge from the customer.

Service charges collected for banquets or catered meetings shall be paid to the Hospitality Workers who actually work the banquet or catered meeting. Service charges collected for room service shall be paid to the Hospitality Workers who actually deliver food and beverage associated with the charge. Service charges paid for portage services shall be paid to the Hospitality Workers who actually carried the baggage associated with the charge.

The above provisions regarding service charges do not apply to any tip or gratuity paid, given, or left for a Hospitality Worker by a customer.

Note that staff has been advised that based on discussions being held in Oakland in relation to the implementation of this provision there may be further suggested revisions forthcoming in order to provide greater clarity. As of the preparation of this report no such suggestions have been provided to the City by representatives of Lift Up.

Posting and Noticing

The minimum wage increases July 1 of every year with an adjustment based on CPI. The proposed ordinance requires the City to publish and make available the adjusted wage rates by April 1 of each year, with an effective date of July 1. The ordinance also requires Employers to publish by May 1 a bulletin available to all employees advising of the current minimum wage rates and the employees' rights under the ordinance. Notice of employee rights under the ordinance shall also be provided to each current employee and each new employee at the time of hire.

Implementation and Enforcement⁷

The proposed ordinance allows the City to adopt regulations to implement and enforce the statutory requirements. The ordinance allows an aggrieved employee to report suspected violations to the City, and the City may investigate possible violations. While the City shall make efforts to resolve complaints informally, the City's investigation and attempts at resolution do not bar an employee from pursuing a private right of action against an employer.

The City may undertake enforcement for non-compliance with the ordinance. Possible actions include:

1. Issuance of an Administrative Citation with fines for specific violations of the ordinance:
 - a. A fine against an employer who retaliates against an employee exercising his or her rights provided by the ordinance, with a penalty of \$1,000 per employee retaliated against.
 - b. A fine of \$500 for failure to post notices or maintain payroll records as provided in the ordinance.
 - c. A fine equal to the total amount of appropriate remedies described below.
2. Alternatively, the City may issue a compliance order requiring the employer to correct specified violations. The employee has the right to request an administrative appeal before a Hearing Officer designated by the City Manager. The decision of the Hearing Officer shall be final with no further administrative review.

⁷ AB 1522 charges the state Labor Commissioner with enforcement of the Labor Code. The bill provides for an administrative hearing and a separate penalty schedule. The Labor Commissioner or the Attorney General may also bring a civil action against an employer for violations of the state statute (Labor Code Section 248.5).

3. The City may also institute a civil action for injunctive relief, damages, and penalties.

In addition to enforcement by the City, the proposed ordinance allows an employee claiming harm from an employer to bring a private right of action to enforce the provisions of the ordinance.

The proposed ordinance provides for remedies available for violations of the statute including:

1. Reinstatement, the payment of back wages and payment of \$50 to each employee who rights were violated for each day the violation continued.
2. Interest on all unpaid wages, with accrual from the date the wages were due and payable.
3. Reimbursement of the City's administrative cost of enforcement.
4. Repeated violations within the period of July 1 to June 30 of the following year require an employer to pay the City a civil penalty of \$50 for each employee whose rights were violated.

As discussed in prior reports, there are several options for administration and enforcement. Given that Emeryville's proposed minimum wage differs from that of adjoining jurisdictions, an enforcement agreement with a neighboring jurisdiction is not an efficient option. Staff is recommending that enforcement be done directly by the City, either through the hiring of a new staff person or engagement of a contract employee, and that enforcement be complaint-driven.

Administrative Citations

The proposed ordinance refers to administrative citations which the City may issue as an enforcement tool. Staff will present a separate ordinance for the adoption of an administrative citation process. That ordinance will be presented at the May 5, 2015 City Council meeting to coincide with the first reading of the proposed minimum wage ordinance.

Measure C

The Emeryville electorate adopted Measure C in November 2005 to set minimum compensation rates and labor standards for employees of large hotels (50 or more hotel rooms). The Minimum Compensation rate for affected employees was initially set at \$9.00 per hour and the Minimum Average Compensation (as

those terms are defined in Measure C) for all employees in a hotel was set at \$11.00 per hour (EMC 5-32.1.1). Both rates are subject to adjustment for annual CPI. For the period beginning March 1, 2015, the adjusted Minimum Compensation is \$11.39, and the adjusted Minimum Average Compensation is \$13.94.

In order to reconcile the compensation rates for Measure C and the proposed minimum wage ordinance, staff recommends amending section 5-32.1.1 of the Emeryville Municipal Code regarding Measure C effective July 1, 2015 to increase the Minimum Compensation rate to \$14.42 per hour (the same rate as the proposed starting minimum wage); and thus the Minimum Average Compensation for all hotel employees would adjust to \$17.65 per hour. Like the minimum wage rate, both Measure C rates will continue to be adjusted for annual CPI and will therefore match the minimum wage rates.

Measure C defines an Employee as an employee of the hotel operator. For purposes of Measure C, an Employee does not include a managerial or administrative employee earning above a specified annual amount. (EMC 5-32.1.3) The original threshold for a managerial or administrative employee was \$50,000 per year, adjusted annually for CPI. The current threshold is \$63,363.35. In order to track the minimum wage rate of the proposed ordinance, as well as the adjusted Minimum Compensation and Minimum Average Compensation rates, staff also recommends amending section 5-32.1.3 of the Emeryville Municipal Code regarding Measure C to increase the threshold earning for managerial or administrative employees to \$80,219.45 per year, subject to annual CPI adjustment.

Possible Exemptions or Phased Implementation

Some minimum wage ordinances prescribe that certain businesses or types of employment be exempt, or that the increase be phased for those businesses. Three example categories for exemption and/or phasing include internships or training programs, small businesses, and nonprofits.

Should a phased implementation be considered, the increased wage could be effective over two six-month increments, to allow for additional time to absorb the additional labor costs. As an example:

- Increase to \$12.25 per hour on July 1, 2015
- Increase to \$13.50 per hour on January 1, 2016
- Increase to meet then current citywide minimum wage on July 1, 2016.

This phased approach would allow these businesses a longer period to amend their business plans to accommodate the new living wage, including but not limited to changing product/service pricing, accessing bridge funding, or amending grant provisions. Many nonprofits are reliant on foundation or grant funding for at least a portion of their labor costs, which may have funding cycles that do not coincide with the anticipated effective date of July 1, 2015 (October 1-September 30 for federal grants/January 1 – December 31 for most private business plans).

Implementation Timeline

In order to provide notice to businesses of the change in minimum wage and other employment standards presented by the ordinance discussed herein within the timeframe directed by Council, and assuming there are no significant changes required to the draft ordinance presented herein, staff recommends the following actions:

- February 17: City Council approves/provides direction on the ordinance
- By end of February: Notification to businesses of proposed ordinance by:
 - Mail draft ordinance to all businesses with current business licenses
 - Post draft ordinance on website
- March 4: Discussion of draft ordinance by the Economic Development Advisory Committee
- March 17 or April 1: City Council discusses business/community input and provides direction to staff
- May 5: Public hearing for first reading of ordinance
- May 19: Second reading of ordinance
- May – June: Prepare for implementation
 - Develop administrative instructions
 - Engage staffing for administration and enforcement
 - Develop support materials (notification posters, complaint forms, etc.)
- July 1: Ordinance goes into effect

FISCAL CONSIDERATIONS

Administration Costs

One full time employee is estimated to be needed to administer and enforce the minimum wage ordinance. The cost for a full-time employee, or the equivalent cost for a contract employee, is estimated at \$125,000 per fiscal year, including benefits. Additionally, approximately \$35,000 should be budgeted in the first

year for the production and distribution of education and outreach material. These estimates are based on similar cost estimates for the administration of Oakland's and Berkeley's minimum wage ordinances, with adjustments for Emeryville's smaller size.

Part-Time Staff Costs

In the event the minimum wage is increased, the anticipated fiscal impact will also affect the City's own personnel budget, as most of the unrepresented part-time employees that are assigned to the Community Services Department are currently making less than the current Living Wage rate of \$14.03 per hour (since they are exempt from application of that ordinance) as well as the proposed minimum wage of \$14.42.

If the minimum wage increased to \$14.42 per hour, staff estimates the annual increased payroll costs would be approximately \$80,000 per year.

In addition, in the event the minimum wage increases, it is anticipated that employees earning at the higher end of the range for some classifications would experience compaction, possibly resulting in additional payroll costs to the Community Services Department budget, if those salary schedules are adjusted.

Total Costs

Based on the above, it is anticipated that the one-time FY 2014-15 costs for implementation of a citywide minimum wage would be approximately \$35,000 and the FY 2015-16 costs (ongoing) would be as follows:

Ordinance Administration and Enforcement	\$125,000
<u>City Staff Additional Wages/Benefits</u>	<u>80,000</u>
Total	\$205,000

Of note, these anticipated costs totaling \$240,000 are currently unbudgeted and Council will need to amend the current operating budget in order to allocate \$35,000 of General Fund reserve balance for FY 2014-15 for educational and outreach materials, and also make a mid-cycle budget amendment for FY 2015-16 budget for the full implementation/enforcement costs of \$205,000 as detailed above.

CONCLUSION

Staff seeks direction from Council on the following questions related to the draft citywide minimum wage ordinance:

- 1) Does the Council wish to include exemptions and/or phased implementation for any of the following:
 - a) Nonprofits
 - b) Internships/training programs
 - c) Small businesses
 - d) Businesses in which employees receive tips
 - e) Businesses that provide health benefits
- 2) With respect to sick leave benefits, does Council wish to:
 - a) Utilize the narrower definition of “employee” under AB 1522 or the more expansive definition as seen in the Lift Up initiative?
 - b) Utilize the cap on annual accrual of paid sick leave of AB 1522 of 48 hours or 6 days, or the Lift Up initiative cap of 72 hours?
 - c) Distinguish between maximum annual accrual of paid sick leave by employees of small businesses versus other employers as provided in Lift Up initiative – staff is recommending cap on annual accrual of paid sick leave by all employees at 72 hours regardless of whom their employer is?
 - d) Remove limitation provided by AB 1522, which is unaddressed by Lift Up initiative, on number of paid sick leave hours (i.e. 24 hours) an employer may limit their employees to use in a calendar year?
 - e) Include provision provided by Lift Up initiative, but not provided by AB 1522, which allows an employee who does not have a spouse or domestic partner to designate a person for whom they may use paid sick leave to provide care for?
 - f) Allow an employee to begin using accrued paid sick leave sooner than the 90th day of employment?
- 3) Does the Council have any other changes or revisions to the draft ordinance?
- 4) Is the implementation timeline proposed by staff acceptable?

PREPARED BY: Michelle E. De Guzman, Acting Economic Development and Housing Manager

**APPROVED AND FORWARDED TO THE
EMERYVILLE CITY COUNCIL**



Sabrina Landreth, City Manager

Attachments:

1. Draft Citywide Minimum Wage Ordinance
2. AB 1522