

# Designing a Strong and Effective Local Minimum Wage Law: A Checklist

*In recent years, more than thirty cities and counties have enacted local minimum wage laws across the country. The movement for higher local wages continues to grow and reflects workers' worsening struggle to sustain themselves and their families despite long hours of hard work. 42 percent of workers in the U.S. earn less than \$15 an hour, and they are disproportionately women and people of color.<sup>1</sup> Local minimum wage laws represent an important and effective way for communities to increase low-wage workers' wages and reduce income inequality.*

*NELP has worked with numerous local minimum wage campaigns to develop model minimum wage laws that raise wages and reflect best practices for enforcement of these new wage rights. This checklist is intended to assist advocates and local governments drafting minimum wage laws by offering a list of the key components of an effective minimum wage law as well as basic guidance and suggestions. Advocates drafting local minimum wage legislation should be sure to consider the requirements of their state and local laws and adapt their legislation as necessary. NELP strongly encourages advocates to consult with an attorney to ensure that a minimum wage bill meets all local requirements.*

*Attached as Appendix A is a sample local minimum wage ordinance based on a ballot initiative introduced in Sacramento, California. It contains good sample language for a number of the provisions included in this checklist. However, it is intended to be used as a guide and not a universal model, given that advocates must tailor their minimum wage ordinances to comply with varying state and local legal requirements. You may also find model language for most of the recommended provisions listed in this checklist in *Winning Wage Justice: An Advocate's Guide to State and City Policies to Fight Wage Theft*.<sup>2</sup> NELP is available to work with advocates in developing specific language for their local minimum wage law.*

## #1. Definitions

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- Define an "employee" covered under the local minimum wage law expansively to cover as many workers as possible. This can be done by referencing a state's definition of "employee" where that definition is already broad and by not incorporating state provisions that expressly or implicitly exclude workers from coverage (e.g. a categorical exclusion of domestic workers, agricultural workers, or certain workers under the age of 18). Where possible, advocates should also consider creating automatic coverage under

the law for certain workers, regardless of the label attached to them (e.g. an explicit presumption that a worker is an employee and not an independent contractor), especially for workers low-wage jobs plagued by high rates of wage theft.<sup>3</sup>

- Provide that the local minimum wage will apply to all work performed in the city/county/town above a minimum threshold (e.g. require employers to pay the local minimum wage to all employees expected to work 2 hours or more a week within the geographic boundaries of the city). This provision is important to avoid creating a loophole for employers whose employees work within the city/county/town but whose place of business is located outside of that jurisdiction or those employers who might be incentivized to relocate their place of business outside of the city/county/town limits.
- Define “employer” broadly to ensure that workers can recover from their employer(s) in all different types of work arrangements found in low-wage industries. This can be done by using existing broad state or federal minimum wage standards, while also expressly naming subcontractors, staffing agencies, and other joint employers as employers under the minimum wage law.
- Designate or create a local department or agency to enforce the law.

## **#2. New Minimum Wage**

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- Specify the new minimum wage and phase-in dates (if applicable).
- Provide that the minimum wage will be “indexed” (i.e. increased each year to match inflation rates or to match half of the average hourly wage).
- Provide that if the state or federal minimum wage increases above the local minimum wage, the local minimum wage will automatically increase to match the higher state or federal wage.
- If tipped workers are currently subject to a lower subminimum wage (as under the federal and most state minimum wage laws), provide for the gradual elimination of this subminimum wage so that tipped workers will be entitled to a base wage from their employer equal to the full minimum wage.
- Include a provision ensuring that workers will be entitled to overtime pay calculated based on at least the local minimum wage rate, or one’s regular rate of pay, whichever is higher.

## **#3. Notice and Posting Requirements**

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- Require that employers post a notice in the workplace informing employees of their rights under the local minimum wage law.
- Require that employers provide employees with a notice of their rights under the law and information about the employer (e.g. name; address; phone number; etc.) in the form of an individual notice given to each employee.
- Require employers to attach, at a minimum, the following information to an employee’s paycheck or pay: the total number of hours worked; the hourly rate(s) of pay; any deductions; and the total amount paid to for that pay period.

## **#4. Recordkeeping Requirements**

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- Specify that employers must create and maintain wage and hour records, including records of hours worked and wages paid for a certain time period.

- Specify that employers must give enforcement agencies access to required employee records and also give employees a reasonable opportunity to review their records.
- Provide that an employer's failure to create and maintain the required records, or to give enforcement agencies reasonable access, gives rise to a rebuttable presumption that the employee's testimony and/or evidence concerning her hours worked and wages paid is correct.

## **#5. Prohibit Retaliation**

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- Make it unlawful for an employer to retaliate against a worker or any other person who raises a complaint or makes an inquiry about working conditions. Define what constitutes retaliatory behavior broadly (include protection from retaliation based on immigration status and protection from retaliation targeting an employee's family).

## **#6. Lengthen the Statute of Limitations and Allow for "Tolling"**

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- Set a longer statute of limitations than that set by local or state law. A statute of limitations is a deadline within which to bring a legal action. After the deadline has expired, workers lose the right to make a complaint or file a lawsuit. This has become a major obstacle for workers seeking to hold employers accountable for wage theft. Many workers, especially in low-wage industries, often do not know their legal rights or when those rights have been violated. A typical statute of limitations for minimum wage and wage payment laws is 3 years, but advocates should consider extending it to 4 to 6 years, as some states and localities have done. Some state and local laws do not permit localities to extend the statute of limitations, so it is best to consult with an attorney.
- Specify that the statute of limitations shall be suspended or "tolled" when a worker files a wage claim with an enforcement agency so that the time spent investigating the case does not count against the statute of limitations deadline. This helps avoid workers' losing their unpaid wages while their claim sits at the agency.

## **#7. Specify Powers and Duties of the Designated Enforcement Agency**

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- Specify the type of powers and duties that will be granted to the local enforcement agency.
- Include an administrative process for receiving, timely investigating, and resolving suspected violations of the law.
- When the agency initiates an investigation based on an individual complaint, require the agency to investigate whether there exist other violations by the employer(s) involved.
- Require the agency to keep complainants and their representatives informed of the status of their investigation.
- Require the agency to take steps to collaborate with other city agencies and state or federal enforcement agencies.
- Require the agency to establish an education and outreach program in collaboration with community organizations, with funding to community organizations.
- Require the enforcement agency to maintain employee information confidential to the extent possible.
- If required by local or state law, include specific provisions about the administrative process (e.g. how will the agency respond to complaints; how will the agency conduct hearings and issue decisions; how will agency decisions be appealed; etc.)

- Give the agency or state/city/county/town the power to enact regulations and rules to carry out enforcement.

## #8. Set Administratively Available Remedies

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- As allowed by state law, set administrative damages (payable to the employee), penalties (payable to the employee and/or the enforcement agency), and other appropriate remedies and relief for failing to pay an employee the required minimum wage.

Table 1. Unpaid Wages	
Administrative Remedies for Employee(s)	Administrative Remedies for Enforcement Agency
Amount of Unpaid wages + Liquidated Damages + Penalty + Additional Appropriate Relief	Penalty + Ability to Recover Enforcement Costs (e.g. attorneys' fees and costs/litigation expenses)

- As allowed by state law, set administrative damages (payable to the employee), penalties (payable to the employee and/or the enforcement agency), and other appropriate remedies and relief for retaliation.

Table 2. Retaliation	
Administrative Remedies for Employee(s)	Administrative Remedies for Enforcement Agency
Damages + Additional Appropriate Relief (e.g. reinstatement; lost wages; punitive damages; etc.)	Penalty + Ability to Recover Enforcement Costs (e.g. attorneys' fees and costs/litigation expenses)

- Set administrative penalties for other violations (e.g. \$500 for each recordkeeping violation) and specify whether the penalty should be payable to the employee(s) affected and/or the enforcement agency.
- Ensure that you define when a violation for unpaid wages begins and ends. It is generally advisable that a violation for unlawfully withholding wages owed should continue from the date immediately following the date that the wages were due to the day before wages are paid in full. For other types of violations (e.g. recordkeeping), specify that every day that a violation exists is a separate and distinct violation.
- Liquidated damages should at least match the federal Fair Labor Standards Act amount (where liquidated damages are equal to the amount of unpaid compensation) or set a

certain dollar amount as damages for each day that a violation of unpaid wages continued (e.g. \$100 per day).

- Consider making violations of the local minimum wage law a criminal offense.
- Check your local and state law to determine if it sets a maximum penalty amount that a local law can impose.
- Specify that administrative penalties shall increase with inflation.
- Decide if any of the administrative penalties will be designated to fund future enforcement operations or a community-based outreach program
- Check your local and state law to determine whether the law must include a provision to give the courts authority to enforce any final administrative orders.
- Require the enforcement agency and courts to award interest to employees on all due and unpaid wages. The interest rate can often be set by referring to state law.

### #9. Create a Private Right of Action and Set Civil Remedies

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- Give workers and the state attorney/city/county/town the power to bring a lawsuit in court to enforce the law.
- As allowed by state law, set damages (payable to the employee), penalties (payable to the employee), and other appropriate remedies and relief for failing to pay an employee the required minimum wage. Attorneys' fees and reimbursement of costs/litigation expenses should be mandatory for the prevailing plaintiff/worker.

Table 3. Unpaid Wages	
Civil Remedies for Employee(s)	
Amount of Unpaid Wages	
+	
Liquidated Damages	
+	
Penalty	
+	
Additional Appropriate Relief	
+	
Attorneys' Fees	
+	
Costs/Litigation Expenses	

- As allowed by state law, set damages (payable to the employee), penalties (payable to the employee), and other appropriate remedies and relief for retaliation.

**Table 4. Retaliation**

Civil Remedies for Employee(s)
Damages + Additional Appropriate Relief (e.g. reinstatement; lost wages; punitive damages; etc.) + Attorneys' Fees + Costs/Litigation Expenses

- Set civil penalties for other violations (e.g. \$500 for each recordkeeping violation).
- Ensure that you define when a violation for unpaid wages begins and ends (see suggestions under #8, above).
- Specify that civil penalties shall increase with inflation.
- Require courts to award interest to employees on all due and unpaid wages. The interest rate can often be set by referring to state law.

## **#10. Require an Annual Enforcement Report**

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- Require the enforcement agency to issue an annual report on its enforcement work.

## **#11. Funding for Enforcement**

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- Consider including a provision that creates a designated funding stream for enforcement operations (e.g. a business fee).

## **#12. Other**

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- Specify that the law will not preempt or limit other laws that give employees greater protections and should not be read to discourage or prohibit greater protections.
- Include a severability clause to ensure that if any part of the law is found to be invalid by the courts, the rest of the law is still valid and enforceable.

## **Conclusion and recommendations**

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The checklist above provides a general guide for drafting strong and effective minimum wage legislation. Additional or different provisions may be appropriate in a particular city, town, or county based on local needs, state and local law, and other considerations. Additional guidance on drafting effective minimum wage legislation may be found in the following NELP publications:

- [NELP's Winning Wage Justice: An Advocate's Guide to State and City Policies to Fight Wage Theft \(2011\)](#)<sup>4</sup>
- [The Top 5 Enforcement Tools for Local Minimum Wage Laws \(Dec. 2015\)](#)<sup>5</sup>

NELP is available to work with advocates in developing specific language for their local minimum wage law. Please contact us at [nelp@nelp.org](mailto:nelp@nelp.org).

## Endnotes

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1. Irene Tung et al., National Employment Law Project, *The Growing Movement for \$15* (Nov. 2015) at 1–2, available at <http://www.nelp.org/content/uploads/Growing-Movement-for-15-Dollars.pdf>.
2. National Employment Law Project, *Winning Wage Justice: An Advocate’s Guide to State and City Policies to Fight Wage Theft* (2009), available at <http://www.nelp.org/content/uploads/2015/03/WinningWageJustice2011.pdf>.
3. *Id.* at 73–82.
4. *See supra* note 2.
5. National Employment Law Project, *The Top 5 Enforcement Tools for Local Minimum Wage Laws* (Dec. 2015), available at <http://www.nelp.org/content/uploads/Policy-Brief-Top-Five-Enforcement-Tools-Local-Minimum-Wage.pdf>.

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## APPENDIX A

*Below is a sample local minimum wage ordinance based on a ballot initiative introduced in Sacramento, California. It contains good sample language for a number of the provisions NELP recommends in “Designing a Strong and Effective Local Minimum Wage Law: A Checklist”. However, the sample ordinance is intended to be used as a guide, and not a universal model, because advocates must tailor their minimum wage ordinances to comply with varying state and local legal requirements. Advocates should be sure to consider the requirements of their state and local laws and adapt their legislation as necessary. NELP strongly encourages advocates to consult with a local attorney to ensure that a minimum wage bill meets all local requirements.*

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NOW THEREFORE, BE IT ORDAINED, BY THE COUNCIL OF THE CITY OF SACRAMENTO:

**SECTION 1.** This Chapter 5.158, in Title 5 of the Sacramento City Code, is hereby amended to read as follows:

### **Minimum Wage Ordinance**

#### **§1 Authority**

This chapter is adopted pursuant to the powers vested in the City of Sacramento 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 Code.

#### **§2 Definitions**

For purposes of this chapter, the following terms have the following meanings:

- (a) “City” shall mean the City of Sacramento.
- (b) “Employee” shall mean any person who:
  - (1) Works or is expected to work twenty-five (25) hours or more in a calendar year 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, or is a participant in a Welfare-to-Work Program.

Employee shall not include the following persons: any person who is authorized to be employed at less than the minimum wage under a special license issued under California Labor Code Sections 1191 or 1191.5; any person employed under a publicly subsidized summer or short-term youth employment program; or any student employee, camp counselor, or program counselor of an organized camp as defined in Section 1182.4 of the California Labor Code.

- (c) “Employer” shall mean any person or persons, including corporate officers or executives, as defined in Section 18 of the California Labor Code, who directly or indirectly through an agent or any other person, including through the services of a temporary employment agency, staffing agency, or similar entity, employs or has the power to control the wages, hours, or working conditions of any Employee.
- (d) “Minimum Wage” shall have the meaning set forth in Section 3 of this chapter.
- (e) “Nonprofit Organization” 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.
- (f) “Department” shall mean the department or office that the mayor shall create and/or designate to enforce this chapter.
- (g) “Retaliation” shall mean any threat, intimidation, blacklisting, discipline, discharge, demotion, suspension, reduction in Employee hours, or any other adverse action against any Employee or any other person for exercising or attempting to exercise any right guaranteed under this chapter. Reporting or threatening to report an Employee’s or former Employee’s suspected citizenship or immigration status, or the suspected immigration status of a family member of the Employee, or former Employee, to a federal, state, or local agency because the Employee or former Employee exercises or attempts to exercise a right under the provisions of this chapter constitutes retaliation. As used in this subdivision, “family member” means a spouse, parent, sibling, child, uncle, aunt, niece, nephew, cousin, grandparent, or grandchild related by blood, adoption, marriage, or domestic partnership.
- (h) “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.

- (i) “Year” shall mean a regular and consecutive twelve month period, as determined by an Employer and communicated to the Employer’s Employees.

### **§3 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) Employees are entitled to overtime pay in accordance with the California laws and regulations concerning overtime compensation under Part 2 of Division 2 of the California Labor Code, Cal. Lab. Code, § 500 et seq. Such overtime pay shall be calculated based on the Employee’s regular rate of pay or the Minimum Wage rate set forth in this Section, whichever is higher.
- (c) The Minimum Wage shall be an hourly rate defined as follows:
  - (1) Starting January 1, 2017, \$13.50
  - (2) Starting January 1, 2018, \$14.00
  - (3) Starting January 1, 2019, \$14.50
  - (4) Starting January 1, 2020, \$15.00
  - (5) To prevent inflation from eroding its value, beginning on January 1, 2021, and on January 1<sup>st</sup> of 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, as of August of the immediately preceding year over the level as of August of the previous year of the Consumer Price Index (Urban Wage Earners and Clerical Workers, U.S. City Average for All Items) or its successor index as published by the U.S. Department of Labor or its successor agency, with the amount of the Minimum Wage increase rounded to the nearest multiple of five cents. The adjusted Minimum Wage shall be announced by October 1 of each year, and shall become effective as the new Minimum Wage on January 1.
  - (6) In the event that the California or federal minimum wage is increased above the level of the Minimum Wage that is in force under this Section, the Minimum Wage under this Section shall be increased to match the higher California or federal wage, effective on the same

date as the increase in the California or federal minimum wage, and shall become the new Minimum Wage in effect under this Section.

- (d) An Employer that meets the requirements to claim a credit against the California minimum wage under California Labor Code Section 1197 and wage orders published by the California Industrial Welfare Commission for meals or lodging provided to Employees may claim a credit in the same amount against the Minimum Wage required under this Section.

**§5 Notice and Posting**

- (a) By December 1, 2016, and by November 1 of each year beginning in 2017, the Department shall publish and make available to Employers, in all languages spoken by more than five percent (5%) of the workforce in the City:
  - (1) A bulletin announcing the adjusted Minimum Wage rate for the upcoming year and its effective date;
  - (2) A notice for Employers to post in the workplace informing Employees of the current Minimum Wage rate, their rights to the Minimum Wage, including information about the right to be free from retaliation and the right to file a complaint with the Department or a court of competent jurisdiction; and
  - (3) A template notice suitable for use by Employers in complying with subsection (c).
- (b) Every Employer shall post in a conspicuous place at any workplace or job site where any Employee works the notice published each year by the Department informing Employees of the current Minimum Wage rate and of their rights to the Minimum Wage under this chapter. Every Employer shall post such notices in any language spoken by at least five percent (5%) of the Employees at the workplace or job site.
- (c) Every Employer shall also provide each Employee at the time of hire, or by January 1, 2017, whichever is later, written notice of: the Employer's name, address, and telephone number; the Employee's right to earn the Minimum Wage and the Minimum Wage rate; the Employee's right to be free from retaliation; and the Employee's right to file a complaint with the Department or a court of competent jurisdiction. If the Employee's primary language is one spoken by at least five percent (5%) of the Employees at the workplace or job site, the notice required by this subdivision shall be provided in English and in the Employee's primary language.

## **§6 Employer Records**

Employers shall create and retain contemporaneous written or electronic records documenting their Employees' wages earned for a period of four (4) years and shall allow the Department to access such records to monitor compliance with the requirements of this chapter. Where an Employer fails to create and retain contemporaneous written or electronic records documenting its Employees' wages earned or does not allow the Department reasonable access to such records, it shall be presumed that the Employer has violated this chapter, and the Employee's reasonable estimate regarding hours worked and wages paid shall be relied on, absent clear and convincing evidence otherwise. An Employer shall allow an Employee to inspect the records kept under this chapter pertaining to that Employee at a reasonable time and place.

## **§7 Retaliation Prohibited**

- (a) It shall be unlawful for an Employer or any other party to discriminate in any manner or take adverse action or threaten such adverse action against any person in retaliation for exercising or attempting to exercise any right provided pursuant to this chapter and no person shall interfere with any investigation, proceeding, or hearing pursuant to this chapter. The protections of this chapter shall apply to any person who mistakenly but in good faith alleges a violation of this chapter. Rights under this chapter include, but are not limited to, the right to request payment of the Minimum Wage, file a complaint for alleged violations of this chapter with the Department or in court, communicate with any person about any violation or alleged violation of this chapter, participate in any administrative or judicial action regarding an alleged violation of this chapter, or inform any person of their potential rights under this chapter. Taking adverse action against a person within ninety (90) calendar 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.
- (b) No Employer may fund increases in compensation or benefits 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. If an Employer makes such adverse changes after the filing of the notice to circulate the petition giving rise to this chapter but before this chapter has become effective, then upon this chapter's effective date, such Employer shall restore the compensation and/or non-wage benefits reduced in violation of this subsection to the level and/or conditions that existed prior to the reduction. Where the Employer increased charges to Employees in violation of this subsection, the Employer shall reimburse each Employee for the additional charges paid by the Employee and eliminate the increased charges.

## §9 Implementation, Enforcement, and Remedies

- (a) **Implementation.** The Department and its staff shall have broad local authority to implement and enforce this chapter, including, but not limited to, authority to issue rules and regulations; to issue subpoenas; to examine employment records and workplaces; to interview Employees and former Employees in private and off the Employer's premises; to perform outreach to inform the residents of the City of their rights under this chapter; and to publicize online and in other media the names of employers that violate this chapter.
- (1) The Department shall take appropriate action to enforce this chapter, including but not limited to: establishing a system to receive complaints in writing, online, and by telephone (in English, Spanish, and any other language spoken by more than five percent (5%) of the City's workforce) regarding non-compliance with this chapter; investigating and attempting to resolve complaints received by the Department in a timely manner; and keeping complainants reasonably notified regarding the status of any pending or ongoing investigation.
  - (2) Within ten (10) calendar days of receipt of a complaint, the Department shall send a demand letter to the Employer notifying the Employer that the Department is in receipt of a complaint of non-compliance with this chapter and demanding written confirmation of compliance or corrective action. The letter shall inform the Employer that the Employer has the right to respond to the demand letter within ten (10) calendar days in cases in which retaliation is alleged in the complaint or within twenty (20) calendar days if retaliation is not alleged in the complaint.
  - (3) The Department shall make every effort to conclude its investigation within one hundred and twenty (120) calendar days of receipt and to settle or initiate a civil action within one (1) year of receipt as permitted under this Section.
  - (4) Where the Department receives or initiates a complaint, it shall have a policy that it investigate any other violations or suspected violations by that Employer.
  - (5) The Department shall take steps to ensure optimal collaboration among all City agencies; City departments; and state and federal labor standards agencies in the enforcement of this chapter.
  - (6) The Department shall establish an education and outreach program in partnership with community-based organizations to conduct education and outreach to Employees and Employers of their rights and obligations under this chapter.

(7) An Employee or other person may report to the Department 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 for other appropriate purposes.

(b) **Administrative Enforcement.**

(1) Where the Department has reason to believe that a violation has occurred, it may order any appropriate temporary or interim relief to mitigate the violation or prevent an Employer from retaliating against an Employee in violation of this chapter pending completion of a full investigation.

(2) Where the Department determines that an Employer has violated Section 3 of this chapter, the Employer shall be liable to each Employee affected in the amount of the Employee's unpaid compensation and one hundred percent (100%) of the total amount of the Employee's unpaid compensation as liquidated damages. In addition, the Department may impose an administrative penalty payable to each Employee of up to one hundred dollars (\$100.00) for each day that the violation occurred or continued. The Department may order any additional appropriate legal or equitable relief.

(3) Where the Department determines that an Employer has violated Section 7 of this chapter, the Employer shall be liable to each affected Employee for one thousand dollars (\$1,000.00) per Employee per each instance and form of retaliation as an administrative penalty, in addition to such legal or equitable relief as may be appropriate to effectuate the purposes of Section 7 of this chapter, including without limitation, reinstatement, promotion, and the payment of wages lost. Each instance and form of retaliation shall constitute a separate violation.

(4) A violation for unlawfully withholding wages owed pursuant to Section 3 of this chapter 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.

(5) In any action commenced to recover unpaid wages or liquidated damages owed pursuant to Section 3 of this chapter, if the Employer

shows to the satisfaction of the Department that the act or omission giving rise to such action was in good faith and that the Employer had reasonable grounds for believing that the Employer’s act or omission was not in violation of this chapter, the Department may, in its sound discretion, award no liquidated damages or award any amount thereof not to exceed the amount specified in this Section.

- (6) For other violations, the following schedule of administrative penalties paid to the City shall apply. These administrative penalties may be assessed for willful violations by means of a Notice of Determination issued to the Employer by the Department:

Failure to maintain payroll records or to retain payroll records for four (4) years – Section 6 of this chapter.	\$500.00
Failure to allow the Department to inspect payroll records – Section 6 of this chapter.	\$500.00
Failure to post notice of Minimum Wage rate– Section 5 of this chapter.	\$500.00
Failure to allow access for inspection of books and records or to interview Employees – Sections 6 and 9 of this chapter.	\$500.00
Failure to provide Employee with Employer’s name, address, and telephone number in writing – Section 5 of this chapter.	\$500.00
Failure to provide individual notice of Minimum Wage Rights – Section 5 of this chapter.	\$500.00
Failure to post a Notice of Determination to Employees – Section 9 of this chapter.	\$500.00

Each and every day that a violation exists constitutes a separate and distinct violation for purposes of this subsection. Any administrative penalty shall be increased cumulatively by fifty percent (50%) for each subsequent violation of the same provision by the same Employer or person within a three (3) year period.

- (7) The maximum administrative penalty that may be imposed by the Department is one thousand dollars (\$1,000.00) per violation. The maximum administrative penalty that may be imposed by a Notice of Determination in a calendar year for each type of violation shall be

five thousand dollars (\$5,000.00) per Employee per year, with the exception of retaliation violations, in which case the maximum penalty shall be ten thousand dollars (\$10,000.00) per Employee per year. In addition to the penalty amounts listed above, the Department may assess enforcement costs to cover the reasonable costs incurred in enforcing this chapter, including reasonable attorneys' fees and litigation expenses. Enforcement costs shall not count toward the annual maximums.

- (8) Administrative penalties shall be payable to the City and due within thirty (30) calendar days from the date of the Notice of Determination. The failure of any Employer to pay an administrative penalty within thirty (30) calendar days shall result in the assessment of an additional late fee. The amount of the additional late fee shall be ten percent (10%) of the total amount of the administrative penalty assessed for each month the amounts are unpaid, compounded to include already accrued late administrative penalties that remain unpaid.
- (9) The failure of any Employer to pay amounts due to the City under this chapter when due shall constitute a debt to the City. The City may file a civil action or, to the extent feasible under state law, create and impose a lien against any property owned or operated by an Employer or other person who fails to pay an administrative penalty assessed by the Department, or pursue any other legal remedy to collect such money.
- (10) Where prompt compliance is not forthcoming, the Department may take any appropriate enforcement action to secure compliance, including initiating a civil action pursuant to this Section and/or, except where prohibited by state or federal law and notwithstanding other provisions in the Sacramento City Code, requesting that City agencies or departments revoke or suspend any registration certificates, permits, or licenses held or requested by the Employer or person until such time as the violation is remedied and/or the Employer has complied with the Notice of Determination. All City agencies and departments shall cooperate with revocation or suspension requests from the Department.
- (11) In order to compensate the City for the costs of investigating and remedying violations under this chapter, the Department may also order a violating Employer or person to pay to the City a sum of not more than fifty dollars (\$50.00) for each day and for each Employee or person as to whom a violation of this chapter occurred or continued. Such funds shall be allocated to the Department and shall be used to offset the costs of implementing and enforcing this chapter.



Not less than fifty percent (50%) of such funds, and of any other administrative penalties assessed and retained by the City pursuant to this chapter, shall be earmarked for the funding of the community-based outreach program provided for in this Section. The amounts of all sums and payments authorized or required under this chapter shall be updated annually for inflation, beginning January 1, 2018, using the inflation rate and procedures set forth in Section 3 of this chapter.

- (12) Any sums recovered by the Department and not paid to the Employee because of inability to locate said Employee within a period of one (1) year shall be paid into the City Treasury to the credit of the Department and shall be used to offset the costs of implementing and enforcing this chapter. Not less than fifty percent (50%) of such funds, and of administrative penalties assessed and retained by the City, shall be earmarked for the funding of the community-based outreach program provided for in this Section.
- (13) The City shall annually report on its website the number and nature of the complaints received pursuant to this chapter and the results of investigations undertaken pursuant to this chapter, including the number of complaints not substantiated; the number of notices of violations issued; the number and nature of adjudications pursuant to this chapter; the number of persons found by the Department or a court of law to have violated this chapter; the total dollar amount assessed and collected in administrative penalties by the Department pursuant to this chapter; the total dollar amount found by the Department to be owed to Employees pursuant to this chapter; the total dollar amount recovered by Employees through the Department's actions pursuant to this chapter; and the average time for a complaint to be resolved pursuant to this chapter.

(c) **Notice of Determination.**

- (1) **Issuance of Notice of Determination.** After an investigation, if the Department makes a determination that an Employer has violated this chapter, the Department shall issue a written Notice of Determination to the Employer.
- (2) **Notice of Determination Where Complaint Alleges Retaliation.** In cases where retaliation is alleged in the complaint to the Department, the Department shall investigate the complaint and determine whether to issue a Notice of Determination within thirty (30) calendar days of the filing of the complaint.

- (3) Service of Notice. Service of Notice of Determination shall be accomplished as follows:
- i. The Department or its designee may obtain the signature of the Employer to establish personal service of the Notice of Determination; or
  - ii. The Department may accomplish substitute service by:
    - a. Mailing the Notice of Determination by first class mail as follows:
      - i. The Notice of Determination shall be mailed to the Employer by first class mail, postage prepaid, with a declaration of service under penalty of perjury; and
      - ii. A declaration of service shall be made by the person mailing the Notice of Determination showing the date and manner of service by mail and reciting the name and address of the person to whom the Notice of Determination is issued; and
      - iii. Service of the Notice of Determination by mail in the manner described above shall be effective on the date of mailing; and
    - b. Affixing the Notice of Determination to a surface on the property in a conspicuous place as specified in subsection (c)(5) of this Section.
- (4) Contents of Notice Determination. The Notice of Determination shall require the Employer to take corrective action within no later than ten (10) calendar days and shall include all the following:
- i. A description of the violation(s);
  - ii. The date and location of the violation(s);
  - iii. A citation to the provision(s) of law violated;
  - iv. A description of corrective action required;

- v. A statement explaining that each day of a continuing violation may constitute a new and separate violation;
- vi. The amount of wages due and the amount of penalties and administrative fines imposed for the violation(s);
- vii. A statement informing the Employer that the administrative penalties shall be paid to the City within thirty (30) calendar days from the date on the Notice of Determination, the procedure for payment, and the consequence of failure to pay;
- viii. A description of the process for appealing the Notice of Determination, including the deadline for filing such an appeal; and
- ix. The name and signature of the head of the Department or his or her designee.

(5) Posting of Notice of Determination. Employer must, within twenty-four (24) hours after receipt of a Notice of Determination, post the Notice of Determination by affixing the Notice to a surface in a conspicuous place on property that is:

- i. The Employer's principal place of business in the City;
- ii. If the Employer's principal place of business is outside the City, the fixed location within the City from or at which the Employer conducts business in the City; or
- iii. If the Employer does not regularly conduct business from a fixed location in the City, one of the following:
  - a. The location where the Employer maintains payroll records if the Notice of Determination is for violation of Section 6; or
  - b. The jobsite or other primary location where the Employer's Employees perform services in the City.

(d) **Administrative Appeal.**

(1) Deadline for Appeal. An Employer who receives a Notice of Determination may file with the Department a notice of appeal within fifteen (15) calendar days from the date the Notice of Determination is served. In order to be considered timely, the appeal must be postmarked on or actually received by the Department by the fifteenth

(15<sup>th</sup>) day following the service of the Notice of Determination. The appeal must be in writing and must indicate a return address. The appeal must be filed with the Department and must specify in detail the basis for the appeal.

- (2) **Hearing Date.** As soon as practicable after receiving the written notice of appeal, the head of the Department or his or her designee shall promptly select a hearing officer to hear and decide the administrative appeal. The hearing officer shall fix a date, time, and place for the hearing on the appeal. Written notice of the time and place for the hearing shall be served by first class mail, at the return address indicated on the written appeal. Service of the notice of hearing on the Employer must be made at least ten (10) calendar days prior to the date of the hearing. The hearing shall be held no later than thirty (30) calendar days after service of the notice of hearing, unless that time is extended by mutual agreement.
- (3) **Notice of Hearing.** Except as otherwise provided by law, the failure of the Employer or any other person affected by the Notice of Determination to receive a properly addressed notice of the hearing shall not affect the validity of any proceedings under this chapter. Service by first class mail, postage prepaid, shall be effective on the date of mailing.
- (4) **Stay of Enforcement.** If administrative penalties are the subject of administrative appeal or judicial review, then accrual of such administrative penalties shall be stayed until the determination of such appeal or review is final. The payment of the contested amount of wages and penalties owed to an Employee during the pendency of any appeal shall be stayed but shall continue to accrue until a determination of such appeal or review is final.
- (5) **Failure to Appear.** Failure of an Employer to file an appeal in accordance with the provisions of this Section or to appear at the hearing shall constitute a failure to exhaust administrative remedies.
- (6) **Submittals for the Hearing.** No later than five (5) calendar days prior to the hearing, the Employer and the Department shall submit to the hearing officer, with simultaneous service by First Class mail on the opposing party, written information including, but not limited to, the following: the statement of issues to be determined by the hearing officer and a statement of the evidence to be offered and the witnesses to be presented at the hearing.
- (7) **Conduct of Hearing.** The hearing officer shall conduct all appeal hearings under this chapter. The Department shall have the burden of

proof by a preponderance of the evidence in each hearing. The hearing officer may accept evidence on which persons would commonly rely in the conduct of their business affairs, including but not limited to the following:

- i. A Notice of Determination shall be prima facie evidence of the violation(s) specified therein, and those continuing through the date of the hearing;
- ii. The hearing officer may accept evidence and oral and written testimony under penalty of perjury relating to the violation(s) and the appropriate means of correcting the violation(s).

The hearing shall be open to the public and shall be tape-recorded. Any party to the hearing may, at his or her own expense, cause the hearing to be recorded and transcribed by a certified court reporter. The hearing officer may continue the hearing and request additional information from the Department, Employer, or Employee prior to issuing a written decision.

- (8) Hearing Officer's Findings and Determinations. Within fifteen (15) calendar days after the conclusion of the hearing, the hearing officer shall make findings based on the record of the hearing. The hearing officer may uphold or reject the violation(s) referenced in the Notice of Determination in whole or in part. The hearing officer may uphold the Notice of Determination but reduce, waive, or conditionally reduce or waive the administrative penalties stated therein if mitigating circumstances are shown and the hearing officer finds specific grounds for reduction or waiver in the evidence presented at the hearing. The hearing officer may impose conditions and deadlines for the correction of violations or the payment of outstanding wages, penalties, and administrative penalties.
- (9) Wage Enforcement Order. The hearing officer's findings pursuant to subsection (d)(8) of this Section or, in the absence of an appeal, the Notice of Determination shall constitute the Wage Enforcement Order. Where an appeal was taken, the hearing officer shall issue the Wage Enforcement Order concurrently with the issuance of findings pursuant to subsection (d)(8). The Wage Enforcement Order shall specify the amount of wages, penalties, and administrative penalties, if any, owed by the Employer. The Wage Enforcement Order shall be final. The Wage Enforcement Order shall be subject to judicial review pursuant to subsection (e) of this Section. The hearing officer's decision shall be served on the Employer, Employee, and Department by certified mail.

(e) **Judicial Review.**

- (1) **Procedures.** After receipt of the Wage Enforcement Order from the hearing officer under subsection (d) of this Section, the Employer or Employee may file an appeal with the superior court pursuant to Section 53069.4 of the California Government Code or any successor statute. The appeal shall be filed within twenty (20) days of the date of mailing of the hearing officer's decision, with the applicable filing fee. The appeal shall state the reasons that the appellant objects to the findings or decision.
- (2) **Review.** The superior court shall conduct a de novo hearing, except that the contents of the Department's file (excluding attorney client communications and other privileged or confidential documents and materials that are not discoverable or may be excluded from evidence in judicial proceedings under the Evidence Code, Civil Code, Code of Civil Procedure, or other applicable law) shall be received into evidence.

(f) **Civil Enforcement.** The Department, the City Attorney, 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.

- (1) Where a court of competent jurisdiction determines that an Employer has violated Section 3 of this chapter, the Employer shall be liable to each Employee affected in the amount of the Employee's unpaid compensation and one hundred percent (100%) of the total amount of the Employee's unpaid compensation as liquidated damages. In addition, the court may impose a penalty payable to each Employee of one hundred dollars (\$100.00) for each day that the violation occurred or continued. The court may order any additional appropriate legal or equitable relief.
- (2) Where a court of competent jurisdiction determines that an Employer has violated Section 7 of this chapter, the Employer shall be liable to each affected Employee for one thousand dollars (\$1,000.00) per Employee per each instance and form of retaliation as a penalty, in addition to such legal or equitable relief as may be appropriate to effectuate the purposes of Section 7 of this chapter, including without limitation, reinstatement, promotion, and the payment of wages lost. Each instance and form of retaliation shall constitute a separate violation.

- (3) In any action commenced to recover unpaid wages or liquidated damages owed pursuant to Section 3 of this chapter, if the Employer shows to the satisfaction of the court that the act or omission giving rise to such action was in good faith and that the Employer had reasonable grounds for believing that the Employer's act or omission was not in violation of this chapter, the court may, in its sound discretion, award no liquidated damages or award any amount thereof not to exceed the amount specified in this Section.
- (4) A violation for unlawfully withholding wages owed pursuant to Section 3 of this chapter shall be deemed to continue from the date immediately following the date that the wages were due and payable as provided in Part I (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.
- (5) Any person aggrieved by a violation of this chapter shall be awarded reasonable attorneys' fees and litigation expenses. Notwithstanding other civil enforcement provisions, 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, and reasonable attorneys' fees and litigation expenses.
- (g) Violations of this chapter are declared to irreparably harm the public and covered employees generally. Nothing in this chapter shall be interpreted as restricting, precluding, or otherwise limiting a separate or concurrent criminal prosecution under the City Code or state law. Jeopardy shall not attach as a result of any administrative or civil enforcement action taken pursuant to this chapter. Submitting a complaint to the Department is neither a prerequisite for nor a bar to bringing a private action.
- (h) **Interest.** In any administrative or civil action brought for the nonpayment of wages under this chapter, the Department or court, as the case may be, shall award 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.

## §10 Other legal requirements

This chapter provides minimum requirements and shall not be construed to preempt, limit, or otherwise affect the applicability of any other law, regulation, rule, requirement, policy, or standard that provides for greater protections to Employees.

**§11 No effect on more generous policies**

- (a) Nothing in this chapter shall be construed to discourage or prohibit the adoption or retention of a wage policy more generous than that which is required herein.
- (b) Nothing in this chapter shall be construed as diminishing the obligation of an Employer to comply with any contract, collective bargaining agreement, employment benefit plan, or other agreement providing more generous wages to an Employee than required herein.

**§12 Effect of invalidity; severability**

If any section, subdivision, paragraph, sentence, clause, phrase, or other portion of this local law is, for any reason, declared unconstitutional or invalid, in whole or in part, by any court of competent jurisdiction, such portion shall be deemed severable, and such unconstitutionality or invalidity shall not affect the validity of the remaining portions of this local law, which remaining portions shall continue in full force and effect.

**§13 Effective Date**

This local law shall take effect on \_\_\_\_\_.