



OFFICE OF THE CITY ATTORNEY
Long Beach, California

ORD-12

CHARLES PARKIN
City Attorney

MICHAEL J. MAIS
Assistant City Attorney

MONTE H. MACHIT
Assistant City Attorney

PRINCIPAL DEPUTIES

Gary J. Anderson
Dominic Holzhaus
Anne C. Lattime

DEPUTIES

C. Geoffrey Alfred
Richard F. Anthony
William R. Baerg
Kendra L. Carney
LaTasha N. Corry
Charles M. Gale
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Howard D. Russell
Arturo D. Sanchez
Linda T. Vu
Amy R. Webber
Theodore B. Zinger

July 12, 2016

HONORABLE MAYOR AND CITY COUNCIL
City of Long Beach
California

RECOMMENDATION:

Recommendation to review draft ordinance amending the Long Beach Municipal Code by adding Part IV to Title 5; and by adding Section 5.06.020.A.7, all relating to a Long Beach Minimum Wage Ordinance, and provide further direction. (Citywide.)

DISCUSSION:

Pursuant to your request on January 19, 2016, this Office has prepared and now submits the above draft ordinance for further direction from the City Council.

On January 19, 2016, the City Council requested this Office to prepare a Long Beach Minimum Wage ordinance, and specifically identified certain provisions to be included. Subsequently, the state of California adopted SB 3, a statewide minimum wage ordinance, scheduled to take effect on January 1, 2017. In addition, the City and the International Association of Machinists ("IAM") have not completed the meet-and-confer process on the decision and impacts of this proposed ordinance. It is therefore necessary to request from the City Council further direction to resolve conflicts in certain specific provisions in the draft ordinance.

The particular provisions are as follows:

1. Currently, the ordinance includes the City of Long Beach, making this ordinance applicable to City employees. This provision is the subject of the IAM's meet-and-confer process. Options include removing City of Long Beach employees and allowing the City to be governed by negotiated MOUs with City employee unions, as other cities have done; or deferring action on the ordinance until the IAM meet-and-confer process is completed.

2. Sec. 5.200.020.D: Requires a study to be commissioned analyzing the impacts and effects of the Long Beach Minimum Wage ordinance prior to instituting wage increases in 2019 if increases are not implemented. This provision will cause the City to be in conflict with the state minimum wage in 2019. Options

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for resolution include changing the City wage increase to align with the state's, or removing the reference to the anticipated increase until after the study is completed in 2019.

3. Sec. 5.200.020.F.: Definition of Consumer Price Index increases will result in a variance with the requirements of the state minimum wage. Options include removal of the provision or revisions to insure there is no conflict with the state's wage rates, as adjusted.

4. Sec. 5.200.020.G.: Definition of "Learners" is inconsistent with the state minimum wage law, in that it permits payment of 85% of the applicable minimum wage during the first 480 hours of a Learner's employment. California Labor Code section 1192 permits Learners to be paid a similarly reduced wage for 160 hours. Options include removal of this provision, or reducing the required hours to be consistent with state law (160 hours or fewer).

We look forward to receiving the City Council's comments and directions regarding these issues at the City Council July 12, 2016 meeting.

SUGGESTED ACTION:

Approve recommendation.

Very truly yours,

CHARLES PARKIN, City Attorney

By



AMY R. WEBBER
Deputy City Attorney

ORDINANCE NO.

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF LONG BEACH AMENDING THE LONG BEACH MUNICIPAL CODE BY ADDING PART IV TO TITLE 5; AND BY ADDING SECTION 5.06.020.A.7, ALL RELATING TO MINIMUM WAGE

WHEREAS, the City has recognized that income inequality is one of the most pressing economic and social issues facing the City of Long Beach (the "City"); and

WHEREAS, workers, who must live paycheck to paycheck, are frequently forced to work two or three jobs to provide food and shelter for their families; and

WHEREAS, studies show that minimum wage increases reduce worker turnover, which creates financial costs for employers; and

WHEREAS, reduced worker turnover means that workers will have more tenure with the same employer, which creates incentives for both employers and workers to increase training and worker productivity; and

WHEREAS, these workers often rely on the public sector as a provider of social support services and, therefore, the City has an interest in promoting an employment environment that protects government resources; and

WHEREAS, therefore, by paying a higher than state- or federal-mandated minimum wage, the City seeks to promote the health, safety and welfare of thousands of workers by ensuring they receive a decent wage for the work they perform;

NOW, THEREFORE, the City Council of the City of Long Beach ordains as follows:

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OFFICE OF THE CITY ATTORNEY
CHARLES PARKIN, City Attorney
333 West Ocean Boulevard, 11th Floor
Long Beach, CA 90802-4664

DRAFT DATED 7-1-16

1 Section 1. Part IV is added to Title 5 of the Long Beach Municipal Code
2 to read as follows:

3 PART IV

4 LONG BEACH MINIMUM WAGE LAW

5
6 5.200.010 Definitions.

7 The following definitions shall apply to this Title:

8 A. "Bureau" means the City of Long Beach Financial Management
9 Department, Business Services Bureau or such other City bureau or
10 department as the City Manager shall designate.

11 B. "Business License Tax" means the amount that an Employer
12 paid or should pay to the City of Long Beach for the required licensing of its
13 operations pursuant to Long Beach Municipal Code Chapter 3.80 within the
14 City of Long Beach.

15 C. "City" means the City of Long Beach.

16 D. "Employee" means any individual who:

17 1. Is paid compensation and is issued a W-2 reporting that
18 indicates compensation is being paid under federal or state law or regulation
19 for work within the geographic boundaries of the City for an Employer; and

20 2. Qualifies as an Employee entitled to payment of a
21 minimum wage from any Employer under the California minimum wage law,
22 as provided under Section 1197 of the California Labor Code and wage
23 orders published by the California Industrial Welfare Commission.

24 E. "Employer" means any person or entity who is issuing a W-2
25 for compensation for work performed.

26 F. "Non-Profit Corporation" means a non-profit corporation, duly
27 organized, validly existing and in good standing under the laws of the
28 jurisdiction of its incorporation and, if a foreign corporation, in good standing

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CHARLES PARKIN, City Attorney
333 West Ocean Boulevard, 11th Floor
Long Beach, CA 90802-4664

1 under the laws of the State of California, which corporation has established
2 and maintains valid non-profit status under Section 501(c)(3) of the United
3 States Internal Revenue Code, as amended, and all rules and regulations
4 promulgated thereunder.

5 G. "Permit" means any permit or license identified in Long Beach
6 Municipal Code Chapter 5.02.

7 H. "Person" means any person, association, organization,
8 partnership, business trust, limited liability company or corporation.

9 5.200.020 Payment of minimum wage to Employees.

10 A. An Employer shall pay an Employee a wage of no less than
11 the hourly rates set under the authority of this ordinance for work performed
12 within the geographic boundaries of the City of Long Beach, not including
13 time passing through Long Beach on the way to or from a specific work site.
14 Prima facie evidence of work in Long Beach is two (2) hours or more a week
15 of work that is in Long Beach.

16 B. Employers, including the City of Long Beach, with twenty-six
17 (26) or more Employees as reported on the City's Business License
18 application, and any updates, shall pay a wage of no less than the hourly
19 rates set forth:

20 1. On January 1, 2017, the hourly wage shall be ten
21 dollars and fifty cents (\$10.50).

22 2. On January 1, 2018, the hourly wage shall be twelve
23 dollars (\$12.00).

24 3. On January 1, 2019, the hourly wage shall be thirteen
25 dollars (\$13.00).

26 C. Employers with twenty-five (25) or fewer Employees as
27 reported on the City's Business License application, and any updates, and
28 all Non-Profit Corporations shall pay a wage of no less than the hourly rates

1 set forth:

2 1. On January 1, 2018, the hourly wage shall be ten
3 dollars and fifty cents (\$10.50).

4 2. On January 1, 2019, the hourly wage shall be twelve
5 dollars (\$12.00).

6 3. On January 1, 2020, the hourly wage shall be thirteen
7 dollars (\$13.00).

8 D. In the first quarter of 2019, the City Council shall commission a
9 study by a consultant to review the impacts of the Long Beach Minimum
10 Wage Law, including jobs, earnings, sales tax and overall economic effects,
11 and shall consider the results of the study at a special hearing. If after
12 hearing and considering the results of the study, the City Council determines
13 that no major negative impacts to jobs and the local economy have been
14 observed, the City Council shall consider requiring Employers with twenty-
15 six (26) or more Employees as reported on the City's Business License
16 application, and any updates, to pay a wage of no less than the hourly rates
17 set forth:

18 1. On January 1, 2020, the hourly wage shall be fourteen
19 dollars (\$14.00).

20 2. On January 1, 2021, the hourly wage shall be fifteen
21 dollars (\$15.00).

22 E. Pursuant to Section 5.200.020.D, the City Council shall
23 consider requiring Employers with twenty-five (25) or fewer Employees as
24 reported on the City's Business License application, and any updates, and
25 Non-Profit Corporations to pay a wage of no less than the hourly rates set
26 forth:

27 1. On January 1, 2021, the hourly wage shall be fourteen
28 dollars (\$14.00).

1 2. On January 1, 2022, the hourly wage shall be fifteen
2 dollars (\$15.00).

3 F. On January 1, 2023, and annually thereafter, the Long Beach
4 minimum hourly wage will increase by the change in the cumulative index on
5 December 31 in any year over the level as of the December 31 of the
6 previous year. The City shall announce the adjusted rates on or before July
7 1st of the subsequent year and publish a bulletin announcing the adjusted
8 rates, which shall take effect the following January 1. In the event that the
9 cumulative increase in the annual index represents a decrease from the year
10 before, the minimum wage will remain flat from the previous year until the
11 cumulative increase again results in an increase in the minimum wage. The
12 index used shall be the Consumer Price Index for Urban Wage Earners and
13 Clerical Workers (CPI-W) for the Los Angeles metropolitan area (Los
14 Angeles-Riverside-Orange County, CA), which is published by the Bureau of
15 Labor Statistics.

16 G. Employees, who are "Learners" as defined in Labor Code
17 Section 1192 and consistent with wage orders published by the California
18 Industrial Welfare Commission, shall be paid not less than eighty-five
19 percent (85%) of the applicable state, federal or local minimum wage,
20 whichever is higher, minimum wage rounded up to the nearest \$0.05 (five
21 cents) during their first four hundred eighty (480) hours of work or six (6)
22 months of employment, whichever is sooner, after which Learners shall be
23 paid the applicable minimum wage pursuant to this Section.

24 H. For purposes of this Title, the size of an Employer's business
25 shall be determined by the number of Employees as reported and
26 periodically updated for the Employer's Business License.

27 5.200.030 Other government entities.

28 The requirements of this Title shall not apply to Employers that are

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1 government agencies, including federal agencies, state agencies, cities,
2 counties, school districts and all other public entities or agencies.

3 5.200.040 Implementation.

4 The City may promulgate guidelines and rules consistent with this
5 Title for the implementation of the provisions of this Title. Any guidelines or
6 rules shall have the force and effect of law, and may be relied upon by
7 Employers, Employees and other parties to determine their rights and
8 responsibilities under this Title.

9 5.200.050 No waiver of rights.

10 Any waiver by an Employee of any or all of the provisions of this Title
11 shall be deemed contrary to public policy and shall be void and
12 unenforceable.

13 5.200.060 Coexistence with other available relief for specific deprivations
14 of protected rights.

15 The provisions of this Title shall not be construed as limiting any
16 Employee's right to obtain relief to which he or she may be entitled at law or
17 in equity.

18 5.200.070 Higher minimum wage under state or federal law; Conflicts;
19 relief.

20 A. If at any time the state or federal minimum wage is scheduled
21 to exceed the minimum wage required under this Title, Employers shall pay
22 the higher minimum wage.

23 B. Nothing in this Title shall be interpreted or applied so as to
24 create any power or duty in conflict with any state or federal law.

25 C. Nothing in this Title shall be construed to limit any Employee's
26 right to obtain relief to which the Employee may be entitled at law or in
27 equity.

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1 5.200.080 Postings and payroll records.

2 A. Every Employer shall post in a conspicuous place at any
3 workplace or job site where any Employee works, the notice published each
4 year by the Bureau informing Employees of the current minimum wage rate
5 and of their rights under this Title. Every Employer shall post notices in
6 English, Spanish, Khmer, and Tagalog.

7 B. Every Employer shall retain payroll records pertaining to
8 Employees for a period of four (4) years, and shall allow the Bureau access
9 to such records, with appropriate notice and during business hours, to
10 monitor compliance with the requirements of this Title.

11 5.200.090 Retaliation prohibited.

12 No Employer shall discharge, reduce in compensation or otherwise
13 discriminate against any Employee for opposing any practice proscribed by
14 this Title, for participating in proceedings related to this Title, for seeking to
15 enforce his or her rights under this Title by any lawful means, or for
16 otherwise asserting rights under this Title. It shall be unlawful for an
17 Employer or any other party to discriminate in any manner or take adverse
18 action against any Employee in retaliation for exercising rights protected
19 under this Title. Rights protected under this Title include, but are not limited
20 to: the right to file a complaint or inform any person about any party's alleged
21 noncompliance with this Title; and the right to inform any person of his or her
22 potential rights under this Title and to assist him or her in asserting such
23 rights. Protections of this Title shall apply to any Employee who mistakenly,
24 but in good faith, alleges noncompliance with this Title. Taking adverse
25 action against an Employee within ninety (90) days of the Employee's
26 exercise of rights protected under this Title shall raise a rebuttable
27 presumption of having done so in retaliation for the exercise of such rights.

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1 5.200.100 Enforcement.

2 A. Reporting violations. An Employee or any other person may
3 report to the Bureau in writing any suspected violation of this Title. The
4 Bureau shall encourage reporting pursuant to this Title by keeping
5 confidential, to the maximum extent permitted by applicable laws, the name
6 and other identifying information of the Employee or person reporting the
7 violation. With the authorization of the Employee or person reporting a
8 violation, the Bureau may disclose his or her name and identifying
9 information as necessary to enforce this Title or for other appropriate
10 purposes.

11 B. Investigation. The head of the Bureau or his or her designee,
12 inclusive of contractors authorized by the City to perform enforcement, shall
13 have access to all places of labor subject to this ordinance during business
14 hours to inspect books and records, interview Employees, request the
15 issuance of subpoenas and investigate such matters necessary or
16 appropriate to determine whether an Employer has violated any provisions
17 of this Title. The Employer shall cooperate fully in any investigation by the
18 Bureau. The Bureau shall have the authority to inspect workplaces, interview
19 persons and request the issuance of a subpoena for books, papers, records,
20 or other items relevant to the enforcement of this Title. The Employer is
21 required to provide to the Bureau its legal name, address, and telephone
22 number in writing.

23 5.200.110 Notice of determination.

24 A. Issuance of Notice of Determination. After an investigation, if
25 the Bureau makes a determination that an Employer has violated this Title,
26 the Bureau shall issue a written Notice of Determination (“Notice of
27 Determination”) to the Employer.

28 B. The Notice of Determination shall set forth a reasonable time

1 limit not to exceed fifteen (15) business days for correcting or curing the
2 violation and may also set forth:

- 3 1. Suggested methods of correction or cure; and
- 4 2. That administrative penalties and/or administrative costs
5 will be assessed against the Employer in the event the violation is not
6 corrected or cured within the time frame established by the Notice of
7 Determination.

8 C. The Bureau may grant an extension of time to correct or cure a
9 violation if, in the Bureau's opinion, good cause for an extension exists.

10 D. Service of Notice of Determination. Service of a Notice of
11 Determination shall be accomplished as follows:

12 1. The Bureau or its designee may obtain the signature of
13 the Employer to establish personal service of the Notice of Determination; or

14 2. The Bureau or its designee may accomplish substitute
15 service by either:

16 a. Mailing the Notice of Determination by first class
17 mail as follows:

18 (i) The Notice of Determination shall be
19 mailed to the Employer by first class mail, postage prepaid, with a
20 declaration of service under penalty of perjury;

21 (ii) A declaration of service shall be made by
22 the person mailing the Notice of Determination showing the date and
23 manner of service by mail and reciting the name and address of the person
24 to whom the Notice of Determination is issued;

25 (iii) Service of the Notice of Determination by
26 mail in the manner described above shall be effective on the date of mailing;

27 or

28 b. Affixing the Notice of Determination to a surface

1 on the property in a conspicuous place as specified in Section 5.200.110.D.

2 E. Contents of Notice of Determination. The Notice of
3 Determination shall require the Employer to take corrective action no later
4 than fifteen (15) business days, and shall include all the following:

- 5 1. A description of the violation(s);
- 6 2. The date and location of the violation(s);
- 7 3. A citation to the provisions of law violated;
- 8 4. A description of corrective action required;
- 9 5. A statement explaining that each day of a continuing
10 violation may constitute a new and separate violation;
- 11 6. The amount of wages due and the amount of penalties
12 and administrative fines imposed for the violation(s);
- 13 7. A statement informing the Employer that the
14 administrative fines shall be paid to the City of Long Beach within thirty (30)
15 business days from the date on the Notice of Determination, the procedure
16 for payment, and the consequences of failure to pay;
- 17 8. A description of the process for appealing the Notice of
18 Determination, including the deadline for filing such an appeal; and
- 19 9. The name and signature of the head of the Bureau or
20 his or her designee.

21 F. Posting of Notice of Determination. Employer must, within
22 twenty-four (24) hours after receipt of a Notice of Determination, post the
23 Notice of Determination by affixing the notice to a surface in a conspicuous
24 place on property that is: (1) the Employer's principal place of business in
25 the City; (2) if the Employer's principal place of business is outside the City,
26 the fixed location within the City from or at which the Employer conducts
27 business in the City; or (3) if the Employer does not regularly conduct
28 business from a fixed location in the City, one of the following: (i) the location

1 where the Employer maintains payroll records if the Notice of Determination
2 is for violation of Section 5.200.090.B; or (ii) the jobsite or other primary
3 location where the Employees perform services in the City.

4 5.200.120 Employee remedies for violations.

5 A. Restitution and penalties. Every Employer who violates this
6 Title, or any portion thereof, shall be liable to the Employee whose rights
7 were violated for any and all relief including but not limited to the payment to
8 each Employee of back wages unlawfully withheld and an additional penalty
9 of fifty dollars (\$50) for each day that the violation occurred or continued. A
10 violation for unlawfully withholding wages shall be deemed to continue from
11 the date immediately following the date that the wages were due and
12 payable as provided in Part 1 (commencing with Section 200) of Division 2
13 of the California Labor Code, to the date immediately preceding the date the
14 wages are paid in full. For retaliatory action by the Employer, the Employee
15 shall be entitled to reinstatement and a trebling of all back wages and
16 penalties.

17 B. Interest. In any administrative or civil action brought for the
18 nonpayment of wages under this Title, the Bureau or court, as the case may
19 be, shall award interest on all due and unpaid wages and penalties at a six
20 percent (6%) rate of interest which shall accrue from the date the wages
21 were due and payable as provided in Part 1 (commencing with Section 200)
22 of Division 2 of the California Labor Code, to the date immediately preceding
23 the date the wages are paid in full.

24 C. Civil enforcement. Any Employee aggrieved by a violation of
25 this Title or any other person or entity acting on behalf of the public as
26 provided for under applicable state law, may bring a civil action in a court of
27 competent jurisdiction against the Employer violating this Title and, upon
28 prevailing, shall be entitled to such legal or equitable relief as may be

1 appropriate to remedy the violation including, without limitation, the payment
2 of any back wages unlawfully withheld, the payment of penalties in the
3 amount of fifty dollars (\$50) to each Employee whose rights under this Title
4 were violated for each day that the violation occurred or continued,
5 reinstatement in employment and/or injunctive relief, and shall be awarded
6 reasonable attorneys' fees and costs. Any person or entity enforcing this
7 Title on behalf of the public as provided for under applicable state law, upon
8 prevailing, shall be entitled only to equitable, injunctive or restitutionary relief,
9 and reasonable attorneys' fees and costs. Nothing in this Title shall be
10 interpreted as restricting, precluding, or otherwise limiting a separate or
11 concurrent criminal prosecution under the Municipal Code or state law.
12 Jeopardy shall not attach as a result of any administrative or civil
13 enforcement action taken pursuant to this Title.

14 5.200.130 Administrative fines for violations.

15 A. Administrative fines. An administrative fine payable to the City
16 may be assessed for a violation of any provision of this Title as specified
17 below. The administrative fine may be assessed by means of a Notice of
18 Determination issued to the Employer by the Bureau.

19 1. Violation and fine amount.

20 a. Failure to pay the Long Beach Minimum Hourly
21 Wages to Employees - Municipal Code Section 5.200.020: An amount equal
22 to the Business License Tax.

23 b. Failure to post notice of the Long Beach
24 Minimum Wage rate - Municipal Code Section 5.200.090.A: An amount
25 equal to one-fourth (1/4) the Business License Tax but not more than two
26 hundred dollars (\$200).

27 c. Failure to allow access to payroll records -
28 Municipal Code Section 5.200.090.B: five hundred dollars (\$500) for each

1 day of failure to provide access.

2 d. Failure to maintain payroll records or to retain
3 payroll records for four (4) years - Municipal Code Section 5.200.090.B: An
4 amount equal to the amount of Business License Tax times the number of
5 years of failure to maintain records, up to four (4) times.

6 e. Failure to allow access for inspection of books
7 and records or to interview Employees - Municipal Code Section
8 5.200.110.B: five hundred dollars (\$500) for each day of failure to provide
9 access.

10 f. Retaliation for exercising rights under this Title -
11 Municipal Code Section 5.200.100: one thousand dollars (\$1,000) per
12 Employee.

13 g. Failure to cooperate with the Bureau's
14 investigation - Municipal Code Section 5.200.110.B: five hundred dollars
15 (\$500) for each day of failure to cooperate.

16 h. Failure to post Notice of Determination to
17 Employees - Municipal Code Section 5.200.120.D: An amount equal to one-
18 half (1/2) of the Business License Tax, but not more than four hundred
19 dollars (\$400).

20 B. Calculation of administrative fines. Each and every day that a
21 violation exists constitute a separate and distinct violation. Any
22 administrative fine shall be increased cumulatively by fifty percent (50%) for
23 each subsequent violation of the same provision by the same Employer
24 within a three-year period. The maximum administrative fine that may be
25 imposed by a Notice of Determination in a calendar year for each type of
26 violation listed above shall be five thousand dollars (\$5,000) per Employee
27 per year, with the exception of a retaliation violation, in which case the
28 maximum penalty shall be ten thousand dollars (\$10,000) per Employee per

1 year.

2 C. Payments to City; due date; late payment penalty.

3 Administrative fines shall be payable to the City of Long Beach and due
4 within thirty (30) business days from the date of the Notice of Determination.

5 The failure of any Employer to pay an administrative fine within thirty (30)
6 business days shall result in the assessment of a late fee. The amount of the
7 late fee shall be consistent with the penalties in place for Business Licenses-
8 Municipal Code Section 3.80.422.

9 D. Collection of amounts due. The failure of any Employer to pay
10 amounts due to the City under this Title when due shall constitute a debt to
11 the City. The City may file a civil action or, to the extent feasible under state
12 law, create and impose a lien against any property owned or operated by an
13 Employer or other person who fails to pay an administrative fine assessed
14 by the Bureau, or pursue any other legal remedy to collect such money.

15 5.200.140 Additional remedies.

16 The remedies, penalties and procedures provided under this Title are
17 cumulative and are not intended to be exclusive of any other available
18 remedies, penalties and procedures. The City shall study and review the
19 feasibility of enacting additional measures consistent with state law to
20 enhance the Bureau's enforcement tools, including but not limited to,
21 pursuing a memorandum of understanding or referral process to the Chief of
22 the Division of Labor Standards Enforcement for the recordation of a
23 certificate of lien on behalf of an Employee, pursuant to California Labor
24 Code Section 98.2(g), for amounts due under this Title.

25 5.200.150 Administrative appeal.

26 A. Deadline for appeal. An Employer who receives a Notice of
27 Determination may file with the Bureau a notice of appeal within fifteen (15)
28 calendar days from the date the Notice of Determination is served. In order

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1 to be considered timely, the appeal must be postmarked on or actually
2 received by the Bureau by the 15th calendar day following the service of the
3 Notice of Determination. The appeal must be in writing and must indicate a
4 return address. The appeal must be filed with the Bureau and must specify
5 in detail the basis for the appeal.

6 B. Hearing date. As soon as practicable after receiving the
7 written notice of appeal, the head of the Bureau or his or her designee shall
8 promptly select a hearing officer to hear and decide the administrative
9 appeal. The hearing officer shall fix a date, time and place for the hearing on
10 the appeal. Written notice of the time and place for the hearing shall be
11 served by first class mail, at the return address indicated on the written
12 appeal. Service of the notice of hearing on the Employer must be made at
13 least ten (10) calendar days prior to the date of the hearing. The hearing
14 shall be held no later than thirty (30) calendar days after service of the notice
15 of hearing, unless that time is extended by mutual agreement.

16 C. Notice of hearing. Except as otherwise provided by law, the
17 failure of the Employer or any other person affected by the Notice of
18 Determination to receive a properly addressed notice of the hearing shall not
19 affect the validity of any proceedings under this Title. Service by first class
20 mail, postage prepaid, shall be effective on the date of mailing.

21 D. Stay of enforcement. If administrative fines are the subject of
22 administrative appeal or judicial review, then accrual of such administrative
23 fines shall be stayed until the determination of such appeal or review is final.
24 The payment of the contested amount of wages and penalties owed during
25 the pendency of any appeal shall be stayed but shall continue to accrue until
26 a determination of such appeal or review is final.

27 E. Failure to appeal. Failure of an Employer to file an appeal in
28 accordance with the provisions of this Section or to appear at the hearing

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1 shall constitute a failure to exhaust administrative remedies.

2 F. Submittals for the hearing. No later than five (5) calendar days
3 prior to the hearing, the Employer and the Bureau shall submit to the hearing
4 officer, with simultaneous service by First Class mail on the opposing party,
5 written information including, but not limited to, the following: the statement
6 of issues to be determined by the hearing officer and a statement of the
7 evidence to be offered and the witnesses to be presented by each party at
8 the hearing.

9 G. Conduct of hearing. The hearing officer shall conduct all
10 appeal hearings under this Title. The Bureau shall have the burden of proof
11 by a preponderance of the evidence in each hearing. The hearing officer
12 may accept evidence on which persons would commonly rely in the conduct
13 of their business affairs, including but not limited to the following:

14 1. A Notice of Determination shall be prima facie evidence
15 of the violation(s) specified therein, and those continuing through the date of
16 the hearing.

17 2. The hearing officer may accept evidence and oral and
18 written testimony under penalty of perjury relating to the violation(s) and the
19 appropriate means of correcting the violation(s); the hearing shall be open to
20 the public and shall be recorded. Any party to the hearing may, at his or her
21 own expense, cause the hearing to be recorded and transcribed by a
22 certified court reporter. The hearing officer may continue the hearing and
23 request additional information from the Bureau, Employer or Employee prior
24 to issuing a written decision.

25 H. Hearing officer's findings and determinations. Within twenty
26 (20) calendar days after the conclusion of the hearing, the hearing officer
27 shall make findings based on the record of the hearing. The hearing officer
28 may uphold or reject the violation(s) referenced in the Notice of

1 Determination, in whole or in part. The hearing officer also may uphold the
2 Notice of Determination but reduce, waive or conditionally reduce or waive
3 the administrative fines stated therein, if mitigating circumstances are shown
4 and the hearing officer finds specific grounds for reduction or waiver in the
5 evidence presented at the hearing. The hearing officer may impose
6 conditions and deadlines for the correction of violations or the payment of
7 outstanding wages, penalties and administrative fines.

8 I. Wage enforcement order. The hearing officer's findings
9 pursuant to Section 5.200.160.H, or in the absence of an appeal, the Notice
10 of Determination shall constitute the Wage Enforcement Order, which shall
11 be issued by the hearing officer concurrently with the issuance of findings
12 pursuant to Section 5.200.160.H. The Wage Enforcement Order shall
13 specify the amount of wages, penalties and administrative fines, if any, owed
14 by the Employer. The Wage Enforcement Order shall be final. The Wage
15 Enforcement Order shall be subject to judicial review pursuant to Section
16 5.200.170. The hearing officer's decision shall be served on the Employer,
17 Employee and Bureau by certified mail.

18 5.200.160 Judicial review.

19 A. Procedures. After receipt of the Wage Enforcement Order from
20 the hearing officer under Section 5.200.160, the Employer or Employee may
21 file an appeal with the superior court pursuant to California Government
22 Code Section 53069.4 or any successor statute. The appeal shall be filed
23 within twenty (20) calendar days of the date of mailing of the hearing officer's
24 decision, with the applicable filing fee. The appeal shall state the reasons
25 that the appellant objects to the findings or decision.

26 B. Review. The superior court shall conduct a de novo hearing,
27 except that the contents of the Bureau's file (excluding attorney client
28 communications and other privileged or confidential documents and

1 materials that are not discoverable or may be excluded from evidence in
2 judicial proceedings under the Evidence Code, Civil Code, Code of Civil
3 Procedure or other applicable law) shall be received into evidence.

4 5.200.170 Other remedies not affected.

5 The administrative citation procedures established in this Title shall
6 be in addition to any other criminal, civil or other remedy established by law
7 which may be pursued to address violations of this Title. An administrative
8 citation issued pursuant to this Title shall not prejudice or adversely affect
9 any other action, civil or criminal, that may be brought to prosecute or abate
10 a violation or to seek compensation for damages suffered.

11 5.200.180 Outreach.

12 The Bureau shall establish an outreach program to conduct education
13 and outreach to Employers and Employees. A component of the outreach to
14 Employers and Employees should be to consult with both community based
15 organizations and also to those organizations supporting businesses. The
16 Bureau shall create outreach materials that are designed for Employers and
17 Employees in particular industries.

18 5.200.190 Reports.

19 The Bureau shall provide an annual report to the City Council on the
20 implementation of the Long Beach Minimum Wage Law.

21 5.200.200 Severability.

22 If any subsection, sentence, clause or phrase of this Title is for any
23 reason held to be invalid or unconstitutional by a court of competent
24 jurisdiction, such decision shall not affect the validity of the remaining
25 portions of this ordinance. The City Council hereby declares that it would
26 have adopted this ordinance, and each and every subsection, sentence,
27 clause and phrase thereof not declared invalid or unconstitutional, without
28 regard to whether any portion of the ordinance would be subsequently

1 declared invalid or unconstitutional.

2 5.200.210 Authority.

3 This Title is adopted pursuant to the powers vested in the City of Long
4 Beach under the laws and Constitution of the State of California and the City
5 Charter, including but not limited to, the police powers vested in the City
6 pursuant to Title XI, Section 7 of the California Constitution and Section
7 1205(b) of the California Labor Law to ensure compliance with the Long
8 Beach Minimum Wage law.

9
10 Section 2. Section 5.06.020.A.7 is added to the Long Beach Municipal
11 Code to read as follows:

12 7. Non-compliance with the Long Beach Minimum Wage
13 Law. Authority is granted to the City to deny, revoke or suspend a license or
14 permit issued or requested by an Employer found to be noncompliant with
15 the Long Beach Minimum Wage Law.

16 a. The applicant applying for a permit has failed to
17 comply with all City business tax laws; or

18 b. The applicant has within five (5) years
19 immediately preceding the date of filing of the application been found to
20 have violated any law involving wages or labor as a violation of the
21 California Labor Code or the Long Beach Minimum Wage Law.

22
23 Section 3. The City Clerk shall certify to the passage of this ordinance by
24 the City Council and cause it to be posted in three (3) conspicuous places in the City of
25 Long Beach, and it shall take effect on the thirty-first (31st) day after it is approved by the
26 Mayor.

27 ///

28 ///

DRAFT DATED 7-1-16

1 I hereby certify that the foregoing ordinance was adopted by the City
2 Council of the City of Long Beach at its meeting of _____, 2016,
3 by the following vote:

4 Ayes: Councilmembers: _____

5 _____

6 _____

7 _____

8 Noes: Councilmembers: _____

9 _____

10 Absent: Councilmembers: _____

11 _____

12 _____

13 City Clerk

14 Approved: _____

15 (Date)

16 Mayor

17 OFFICE OF THE CITY ATTORNEY
18 CHARLES PARKIN, City Attorney
19 333 West Ocean Boulevard, 11th Floor
20 Long Beach, CA 90802-4664

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