

CITY OF OAKLAND MEASURE Z

<p style="font-size: 2em; margin: 0;">Z Shall the measure amending Oakland’s Municipal Code to: (1) establish workplace protections and minimum hourly wage of \$15 with benefits or \$20 without benefits, increasing annually with inflation, for employees of Oakland hotels with 50 or more guest rooms; (2) authorize administrative enforcement of Oakland’s employment standards for hotel and non-hotel workers; and (3) create City department to administratively enforce Oakland’s employment standards for hotel and non-hotel workers, be adopted?</p>	YES
	NO

CITY ATTORNEY’S BALLOT TITLE AND SUMMARY OF MEASURE Z

Ballot Title

A Proposed Ordinance and Amendments to the Oakland Municipal Code Creating Workplace Protections and a Minimum Wage for Hotel Employees, Modifying How Oakland’s Local Employment Standards Are Enforced, and Creating a Department of Workplace and Employment Standards.

Ballot Summary

Minimum Wage for Hotel Employees

This measure would require that Oakland hotels with 50 or more guest rooms or suites of rooms provide hotel employees the following:

- minimum wage of \$15.00 per hour with healthcare benefits or \$20.00 per hour without healthcare benefits, which would increase annually with inflation (effective July 1, 2019);
- emergency contact device (“panic button”) to report an ongoing crime, threats or other emergency;
- support in reporting violence or threatening behavior, including reassignment and paid time to contact the police and consult with a counselor or advisor;
- workload restrictions, including maximum floor space to be cleaned and limitations on mandatory overtime; and
- employee access to records regarding the employee’s pay rate, daily workload, and overtime.

This measure would modify local minimum wage and sick leave enforcement provisions for hotel workers.

Discrimination and Retaliation Prohibited

This measure would make it unlawful for employers to discriminate or retaliate against employees for exercising their rights. It would be unlawful for an employer to discharge an employee within 120 days after the employee exercises his/her rights under the measure, unless the employer has clear and convincing evidence of just cause for the discharge. Employers could not reduce employees’

compensation or benefits to offset the cost of implementing the measure.

Enforcement

The City would have the authority to administratively enforce City employment standards by investigating possible violations, conducting due process hearings and ordering relief, including reinstatement, back pay and penalties. The City could order an employer to pay an administrative penalty to each employee/person whose rights have been violated of \$50.00 for each violation per day of violation; and to pay up to \$50.00 for each day and for each employee to compensate the City for the costs of enforcing the measure.

The City, City Attorney, employee, or other aggrieved person could sue the employer to address violations. The prevailing party would be entitled to attorney’s fees and costs and remedies including back pay, reinstatement, injunctive relief and payment to each employee as a penalty of \$50 per day per violation, up to a maximum of \$1,000 per employee or aggrieved person. In any administrative or civil proceeding, the City or court would award interest on any due and unpaid wages or service charges.

Department of Workplace and Employment Standards

Effective July 1, 2020, this measure would create a Department of Workplace and Employment Standards (“Department”) to enforce this measure and perform any other functions authorized by the City. The Department would enforce City minimum wage, sick leave, and other employment standards to the extent permitted by state law; and could promulgate rules and regulations to implement the measure.

s/BARBARA J. PARKER
City Attorney

CITY ATTORNEY'S IMPARTIAL ANALYSIS OF MEASURE Z

This measure would establish a minimum hourly wage for Hotel Employees of \$15.00 with healthcare benefits or \$20.00 without healthcare benefits, effective July 1, 2019. Existing law requires a minimum hourly wage of \$13.23, which increases yearly on January 1 with inflation, for employees who work at least two hours in a workweek in Oakland. The Hotel Employees minimum wage would adjust annually in the same manner.

This measure would establish workplace protections for Hotel Employees, including employer-provided emergency contact devices, rights for employees who report violence or threatening behavior, restrictions on maximum floor space to be cleaned, limitations on mandatory overtime, and employee access to pay, workload, and overtime records.

A "Hotel Employee" is any individual: (1) employed to provide services in an Oakland hotel with 50 or more guest rooms or suites of rooms, whether employed directly by the hotel or by the hotel's contractor; and (2) who was hired to or did work an average 5 hours per week for 4 weeks.

This measure would require clear and convincing evidence of just cause for an employer to discharge an employee within 120 days after the employee exercises a right under this measure. Employers could not reduce employees' compensation or benefits to offset the cost of implementing the measure.

This measure would modify employment standards enforcement provisions for hotel and non-hotel employees. Existing law allows the City to monitor compliance with local employment standards and investigate complaints. This measure would establish additional enforcement procedures, including authorizing the City to conduct due process hearings and order relief. The City could impose an administrative penalty of \$50.00 per day per violation to be paid to each employee and compensation to the City for enforcement costs of up to \$50.00 per day per employee.

Existing law provides a private right of action for aggrieved persons, entitling them to all available remedies; it allows maximum civil penalties of \$1,000 per violation. This measure would authorize the City Attorney to bring a civil action to address violations and allow a penalty payment to each employee of \$50 per day per violation, up to a maximum of \$1,000 per employee. The City or court would award interest on amounts due and unpaid.

Effective July 1, 2020, this measure would create a Department of Workplace and Employment Standards ("Department") to enforce employment standards for hotel and non-hotel employees. The Department would perform any other functions authorized by the City and could promulgate rules and regulations to implement the measure.

This measure was placed on the ballot by a petition signed by the requisite number of voters. A majority vote (50% plus one) in favor of the measure is required for passage.

s/BARBARA J. PARKER
City Attorney

CITY AUDITOR'S IMPARTIAL ANALYSIS OF MEASURE Z

Summary

This Measure, if adopted by a majority (more than 50%) of voters, would amend and add sections to the City of Oakland's Municipal Code requiring Oakland hotels, with 50 or more guest rooms or suites to provide hotel employees the following:

1. **Measures to protect hotel employees from threatening behavior** including, but not limited to, a "panic button", re-assignment/removal from threatening situations, management support in reporting and investigation, protections from disciplinary actions and posting notice of hotel worker protections in guestrooms;
2. **Measures to provide a humane workload** including fair compensation for workload assignment and employee consent to overtime and work assignment capacity beyond stated limits;
3. **Minimum wages** initially of \$15.00 per hour with health benefits or \$20.00 per hour without health benefits, which would increase annually with inflation (effective July 1, 2019). Comparable City of Oakland and State of California minimum hourly wages are currently \$13.23 and \$11.00 respectively;
4. **Employee access to records** regarding the employee's pay rate, daily workload, and overtime for a minimum of 3 years; and
5. **No retaliation** for exercising their rights under this Measure.

Financial Impact

The City of Oakland's Finance Department estimates the creation of a new department, as proposed by the Measure, would cost the city \$2.8 million annually for staffing and operations.

Other potential, but currently unquantifiable, impacts may include:

- Future staff salary and benefit cost of living increases;
- Initial and on-going community outreach and education costs around rights and responsibilities.

Disclaimer

The Office of the City Auditor has not audited and, as such, has not validated the City of Oakland Finance Department's financial and statistical analysis that supports this measure. References to this data in our independent analysis represent the best data available at this time.

ARGUMENT IN FAVOR OF MEASURE Z

“I’m just one of the many women who work in Oakland’s hotels. We live in fear and shame of hotel guests exposing themselves to us—or worse—when we enter to clean their room or bring their food. It’s embarrassing and humiliating. These hotel guests take away our dignity and threaten our safety, but our managers just tell us to keep quiet; that the guest comes first. This should stop. Hotels should protect the women who work so hard to support our families. And the City of Oakland should protect all workers, and make sure our rights are enforced.”

Blanca Smith, Oakland hotel worker

Should hotel housekeepers be provided security panic buttons we can use to call for help if we are sexually assaulted or threatened by a hotel guest?

If your answer is “Yes”, please vote “Yes” on Measure Z.

Should hotel housekeepers be protected from the terrible impacts of inhumane workloads?

If your answer is “Yes”, please vote “Yes” on Measure Z.

Should hotel workers receive a living wage so we can keep our homes and take care of our families?

If your answer is “Yes”, please vote “Yes” on Measure Z.

Should there be a Department of Workplace and Employment Standards to enforce these policies, as well as Oakland’s minimum wage, sick leave policy, and other local standards for all workers in our City?

If your answer is “Yes”, please vote “Yes” on Measure Z.

We wish to thank the more than 26,000 Oakland voters who signed our petitions to put Measure Z on the ballot.

As hotel housekeepers and immigrants and women of color, we are blessed to live in a community where people care about us. Please vote Yes on Measure Z.

s/IRMA PEREZ

Oakland Hotel Housekeeper

s/BLANCA SMITH

Oakland Hotel Server

s/MELODY MIO YUN LI-HUEY

Oakland Hotel Housekeeper

REBUTTAL TO ARGUMENT IN FAVOR OF MEASURE Z

Questions pulling our hearts often sound simple and appealing; unfortunately they do not always work or create good policy. That is the case with Measure Z and the arguments made by its proponents. Although they sound good initially, upon examination, they won’t work, and create bad public policy at great expense to the City of Oakland.

Look at the details and impact, and you will see the serious problems it creates for our City.

Why should hotel workers be paid a higher minimum wage than any other worker in Oakland?

Why should we spend more than One Million Dollars for a new wage enforcement department when we already have a Compliance Department and State Agency enforcing wage and labor laws?

Why aren’t the most vulnerable housekeepers at smaller hotels in Oakland part of the new wage minimum or panic buttons?

Why should the voters set detailed worker rules for housekeepers instead of the employers and state laws?

We all agree that hotel workers – in fact, all workers – should be treated fairly. Measure Z fails to do that. Rather, it provides specific, preferential rules that do not apply to workers in other employment, or even to many hotel workers, at great cost to the City of Oakland.

Vote NO on Measure Z – it costs too much and is not fair.

s/R. ZACHARY WASSERMAN

Oakland Citizen

s/LARRY REID

Oakland City Councilmember

ARGUMENT AGAINST MEASURE Z

This Measure is misleading and fails to protect the most vulnerable hotel workers and provides a loop hole for the biggest unionized hotels. The Measure will not apply to hotels with less than 50 rooms. Many hotels that are in more dangerous neighborhoods have less than 50 rooms. So workers at some hotels along MacArthur Blvd will not have the protections of panic buttons, work rules or better wages. The Measure also exempts hotels that have bargaining agreements with a union if the hotel and the union agree. Workers at union hotels may be paid less than the minimum wage set forth by this measure and workers may not get the protection of the work rule limitations – which is the case with some workers today at Union hotels under the existing City wide minimum wage ordinance.

The work rules that would apply are unreasonable and almost impossible to administer.

The Measure also creates a new City Agency – the Department of Workplace and Employment Standards – that could cost an additional million dollars or more and duplicates federal, state and City agencies that already provide protections for workers. This unnecessary department would regulate ALL businesses in Oakland at the expense of tax payers.

Worker protections and fair wages are important. This measure achieves neither and at a great cost. We all want to protect workers but this overblown Measure filled with loopholes is the wrong way to do it. Vote No.

s/LARRY REID

Oakland Council Member

s/ZACK WASSERMAN

Oakland Citizen

REBUTTAL TO ARGUMENT AGAINST MEASURE Z

Measure Z is critical for ensuring housekeepers in the growing hospitality industry are protected from sexual assault, have humane workloads, and earn fair wages.

Hotel housekeepers, predominantly women of color, work by themselves in intimate spaces and face sexual assault at alarming rates. Measure Z creates commonsense protections to keep these women secure in their workplaces.

Measure Z will provide panic buttons to hotel housekeepers, set humane workload limits and a living wage for hotel workers, and strengthen enforcement of protections for all Oakland workers.

To oppose Measure Z is to put hotel owners' profits over the people of Oakland and the security and dignity of women.

The two men who argue against Measure Z don't seem to understand the hardships and dangers that many women experience in the workplace, and they certainly haven't proposed anything to address what they claim are their concerns.

More than half of hotel housekeepers surveyed have reported inappropriate sexual behavior perpetrated by a male guest. 1 in 4 housekeepers have been made to feel unsafe by a male guest's behavior.

Measure Z includes practical solutions that have already proven effective in cities in California and beyond, including Chicago, Seattle, and right next door in Emeryville.

As women who have lived in Oakland for decades, we know our community stands with women and believes in protecting workers. Measure Z embodies these Oakland values.

Please join with us in voting YES on Z.

s/DAMITA DAVIS-HOWARD

Asst. Pastor; East Oakland Resident

s/DANIELLE MAHONES

Non-Profit Leader and Oakland Resident

s/BEATRIZ FRANCO MENDOZA

Hotel Housekeeper and Oakland Resident

s/MIYA SAIKA CHEN

Attorney and Oakland Resident

s/REBECCA KAPLAN

Oakland City Councilmember At-large

FULL TEXT OF MEASURE Z

“SECTION 1. HOTEL MINIMUM WAGE AND WORKING CONDITIONS.

A new Chapter 5.93 is added to the City of Oakland Municipal Code, entitled “Hotel Minimum Wage and Working Conditions,” as follows:

5.93.010 - Definitions.

“*Additional-bed rooms*” means a room with additional beds such as cots or rollaways.

“*Checkout*” means a room occupied by guests who are ending their stay at the hotel.

“*Guest*” means registered guests, others occupying guest rooms with registered guests, and visitors invited to guest rooms by a registered guest or other occupant of a guest room.

“*Guest room*” means a room made available by a hotel for transient occupancy, within the meaning of Oakland Municipal Code section 4.24.020.

“*Hotel*” means structures as defined by Oakland Municipal Code section 4.24.020, and containing 50 or more guest rooms, or suites of rooms. “Hotel” also includes any contracted, leased, or sublet premises connected to or operated in conjunction with the building’s purpose, or providing services at the building.

“*Hotel Employer*” means a person who owns, controls, and/or operates a hotel in the City of Oakland, or a person who owns, controls, and/or operates any contracted, leased, or sublet premises connected to or operated in conjunction with the hotel’s purpose, or a person, other than a hotel employee, who provides services at the hotel.

“*Hotel Employee*” means any individual (1) who is employed directly by the hotel employer or by a person who has contracted with the hotel employer to provide services at a hotel in the City of Oakland; and (2) who was hired to or did work an average 5 hours/week for 4 weeks at one or more hotels.

“*Panic button*” means an emergency contact device carried by the hotel employee which allows him or her in the event of an ongoing crime, threat, or other emergency to alert another employee or security guard responsible for providing immediate on-scene assistance.

“*Person*” means an individual, corporation, partnership, limited partnership, limited liability partnership, limited liability company, business trust, estate, trust, association, joint venture, agency, instrumentality, or any other legal or commercial entity, whether domestic or foreign.

“*Room cleaner*” means a hotel employee whose principal duties are to clean and put in order residential guest rooms in a hotel, regardless of who employs the person.

“*Workday*” means a 24-hour period beginning at 12:00 a.m. and ending at 11:59 p.m.

Sec. 5.93.020 - Measures to protect hotel employees from threatening behavior.

A. Purpose. Hotel employees who work by themselves are vulnerable to crimes and other threatening behavior, including sexual assault. This Chapter enables hotel workers to protect their safety by, among other measures, requiring that hotel employers provide workers who clean guest rooms with panic buttons which they may use to report threatening conduct by a hotel guest and other emergencies. Many instances of sexual assault go unreported to the police. This Chapter also includes provisions that support hotel employees’ ability to report criminal and threatening guest behavior to the proper authorities.

B. Each hotel employee assigned to work in a guest room or bathroom without other employees present shall be provided by the hotel employer, at no cost to the hotel employee, a panic button.

1. If a hotel employee encounters a situation necessitating his or her use of the panic button as described above, the hotel employee may cease working and remove him/herself from the situation to await the arrival of the employee or security guard responsible for providing immediate assistance. No hotel employee may be disciplined for ceasing work under these circumstances.

2. No hotel employee may be disciplined for use of a panic button absent clear and convincing evidence the hotel employee knowingly and intentionally made a false claim of emergency.

C. A hotel employee who brings to the attention of a hotel employer the occurrence of violence or threatening behavior, including but not limited to indecent exposure, solicitation, assault, or coercive sexual conduct by a guest, shall be afforded the following rights.

1. If the hotel employee reasonably believes that his or her safety is at risk and so requests, the hotel employee shall be reassigned to a different floor, or, if none is available for his or her job classification, a different work area, away from the person who is alleged to have engaged in the violence or threatening behavior, for the entire duration of the person’s stay at the hotel;

2. The hotel employer shall immediately allow the affected hotel employee sufficient paid time to contact the police and provide a police statement and to consult with a counselor or advisor of the hotel employee’s choosing; the hotel employer will permit, but may never require, the complaining hotel employee to report an incident involving alleged criminal conduct by a guest to the law enforcement agency with jurisdiction; and

3. The hotel employer shall cooperate with any investigation into the incident undertaken by the law enforcement agency and/or any attorney for the complaining hotel employee.

D. Each hotel shall place a sign on the back of each guestroom door, written in a font size of no less than 18 points, that includes the heading “The Law Protects Hotel Housekeepers and Employees From Threatening Behavior,” a citation to this Chapter of the Oakland Municipal Code, and notice of the fact that the hotel is providing panic buttons to its housekeepers, room servers, and other hotel

employees assigned to work in guest rooms without other employees present, in compliance with this Chapter.

Sec. 5.93.030 - Humane workload.

A. Purpose. Hotel employees who clean guest rooms are frequently assigned overly burdensome room cleaning quotas and unexpected overtime, which undermines the public interest in ensuring that hotel room cleaners can perform their work in a manner that adequately protects public health and interferes with their ability to meet family and personal obligations. This provision assures that workers receive fair compensation when their workload assignments exceed proscribed limits and prohibits hotel employers from assigning hotel employees overtime work when their shifts exceed 10 hours in a day, except in emergency situations, without obtaining workers' informed consent.

B. A hotel employer shall not require a room cleaner to clean rooms amounting to more than 4,000 square feet of floorspace, or more than the maximum floor space otherwise specified in this Section, in any one, eight-hour workday unless the hotel employer pays the room cleaner twice his or her regular rate of pay for all hours worked by the room cleaner during the workday. If a room cleaner works fewer than eight hours in a workday, the maximum floor space shall be reduced on a prorated basis. When a room cleaner during a workday is assigned to clean any combination of seven or more checkout rooms or additional-bed rooms, the maximum floorspace to be cleaned shall be reduced by 500 square feet for each such checkout or additional-bed room over six. The limitations contained herein apply to any combination of spaces, including guest rooms and suites, meeting rooms or hospitality rooms, and apply regardless of the furniture, equipment or amenities in any rooms.

C. A hotel employer shall not suffer or permit a hotel employee to work more than 10 hours in any workday unless the hotel employee consents. Consents must be written and signed by the hotel employee or communicated electronically through an account or number particular to the hotel employee. No consent is valid unless the hotel employer has advised the hotel employee in writing not more than 30 days preceding the consent that the hotel employee may decline to work more than 10 hours in any workday and that the hotel employer will not subject the hotel employee to any adverse action for declining. Such notice shall be provided in each language spoken by more than ten percent (10%) or ten (10) hotel employees at the hotel, whichever is less. An assignment in excess of 10 hours in a workday due to an emergency situation shall not violate this section. For purposes of this Section, an "emergency situation" shall mean an immediate threat to public safety or of substantial risk of property loss or destruction.

Sec. 5.93.040 - Hotel employee minimum wage.

A. Effective July 1, 2019, hotel employers shall pay hotel employees a wage of no less than \$15.00 per hour with health benefits, not including gratuities, service charge distributions, or bonuses, or \$20.00 per hour without health benefits, not including gratuities, service charge

distributions, or bonuses.

B. Health benefits under this Section shall consist of the payment of the difference between the higher wage and lower wage under Section 5.93.040(A) towards the provision of health care benefits for hotel employees and their dependents. Proof of the provision of these benefits must be kept on file by the hotel employer, if applicable.

C. The wage rates set forth in this Section shall be adjusted for inflation annually in the manner set forth in Section 5.92.020(B).

Sec. 5.93.050 - Preservation of records.

A. Each hotel employer shall preserve for at least three (3) years:

1. for each room cleaner, a record of his or her name, pay rates received, and the rooms (or at the hotel employer's option, total amount of square footage) each cleaned each workday;

2. a record of the written consents it received from hotel employees to work more than ten hours during a shift; and

3. for each hotel employee, a record of his or her name, hours worked, pay rate, and proof of health benefits consistent with Section 5.93.040(B) (if applicable).

D. The hotel employer shall make such records available to hotel employees or their representatives for inspection and copying, except that hotel employees' names (and any addresses and social security numbers) shall be redacted unless the requester is a hotel employee requesting his or her own records. Where a hotel employer does not maintain or retain adequate records consistent with this Section, or does not permit reasonable access to such records, it shall be presumed, in any administrative or judicial proceeding enforcing this Chapter, that:

1. the hotel employer required the room cleaner to clean total square footage in excess of 4,000 square feet on the day for which records are missing or inadequate, absent clear and convincing evidence otherwise;

2. no written consent to work more than ten hours during a shift exists for a hotel employee for days on which written consents are missing or inadequate, absent clear and convincing evidence otherwise; and

3. the hotel employer paid the hotel employee no more than the applicable federal or state minimum wage, absent clear and convincing evidence otherwise.

5.93.060 - No retaliation. A hotel employer shall not discharge, reduce the compensation of nor otherwise discriminate against any person for making a complaint to the City, participating in any of its proceedings, using any civil remedies to enforce his or her rights, or otherwise asserting his or her rights under this Chapter. Within one hundred twenty (120) days of a hotel employer being notified of such activity, it shall be unlawful for the hotel employer to discharge any person who engaged in such activity unless the hotel employer has clear and convincing evidence of just cause for such discharge.

5.93.070 - Waiver.

The provisions of this Chapter may not be waived by agreement between an individual hotel employee and a hotel employer. All of the provisions of Section 5.93.030 and 5.93.040, or any part thereof, may be waived in a *bona fide* collective bargaining agreement but only if the waiver is explicitly set forth in such agreement in clear and unambiguous terms.

5.93.080 - Enforcement and miscellaneous provisions.

A. This Chapter shall be enforced in accordance with the procedures set forth in Oakland Municipal Code Section 5.92.050, and the remedies set forth in that Section shall apply to violations of this Chapter, except that for a willful violation of Section 5.93.060, the amount damages attributable to lost income due to the violation shall be trebled.

C. No hotel employer may fund increases in compensation required by this Chapter, nor otherwise respond to the requirements of this Chapter, by reducing the compensation of any non-management hotel employees nor by reducing the pension, vacation, or other non-wage benefits of any such hotel employees, nor by increasing charges to them for parking, meals, uniforms or other items. If a hotel 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 hotel employer shall restore the conditions of the *status quo ante*.

D. Each hotel employer shall give written notification to each current hotel employee, and to each new Hotel Employee at time of hire, of his or her rights under this Chapter. The notification shall be in each language spoken by more than ten percent (10%) or ten (10) hotel employees at the hotel, whichever is less.

E. A hotel employer that contracts with another person, including, without limitation, another hotel employer, a temporary staffing agency, employee leasing agency or professional employer organization, to obtain the services of hotel employees shall share all civil legal responsibility and civil liability for violations of this Chapter by that person for hotel employees performing work pursuant to the contract. For the purposes of this subsection, the term "person" shall not include: (1) A bona fide nonprofit, community-based organization that provides services to workers; (2) A bona fide labor organization or apprenticeship program or hiring hall operated pursuant to a collective bargaining agreement.

5.93.090 - No preemption of higher standards.

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

SECTION 2. WORKER RETENTION AT LARGE-SCALE HOSPITALITY BUSINESSES.

Oakland Municipal Code Section 2.36.010(A) is amended to read as follows:

A. "Hospitality Business" means any for-profit hotel within the City with 50 or more guest rooms or food service operation within the City which has employed more than one hundred and fifty (150) persons at a single site during any payroll period during the prior year. For these purposes "hotel" also includes any related facilities such as pools, restaurants, or spas which hotel guests may use.

SECTION 3. DEPARTMENT OF WORKPLACE AND EMPLOYMENT STANDARDS.

A new Chapter 2.44 is added to the Oakland Municipal Code, entitled "Department of Workplace and Employment Standards," as follows:

2.44.010. Department of Workplace and Employment Standards. There is hereby created under the jurisdiction of the City Administrator a Department of Workplace and Employment Standards. Effective July 1, 2020, the Department of Workplace and Employment Standards shall enforce Chapter 2.28 ("Living Wage Ordinance"); Chapter 2.36 ("Worker Retention at Large-Scale Hospitality Business Ordinance"); Chapter 5.92 ("City Minimum Wage, Sick Leave, and Other Employment Standards"); Chapter 5.93 ("Hotel Minimum Wage and Working Conditions"); Prevailing Wage Resolution (Resolution No. 57103 C.M.S.), Local Employment Program (Part IV of the Local and Small Local Business Enterprise Program, Resolution No. 69687 C.M.S., as amended and codified by Ordinance No. 12389 C.M.S., and as subsequently amended), and 15% Apprenticeship Program (Resolution No. 74762 C.M.S.), and shall carry out such additional duties and functions as assigned by the City Administrator, or by Charter, ordinance, or City Council resolution. The Department of Workplace and Employment Standards may impose penalties and take any and all appropriate action to enforce the requirements of such provisions. The Department of Workplace and Employment Standards shall have authority to adopt rules and regulations consistent with and necessary for the implementation of the foregoing laws. Such rules and regulations shall have the force and effect of law, and may be relied upon by employers, employees and other persons to determine their rights and responsibilities. The Department of Workplace and Employment Standards may enforce the provisions of the California Labor Code to the extent permitted by State law.

2.44.020. The Department of Workplace and Employment Standards shall be administered by a Chief Officer, who shall be appointed by, and shall serve at the pleasure of, the City Administrator. In appointing the Chief Officer, the City Administrator shall consider, among other relevant factors, the individual's experience enforcing employment standards, including prevailing wage requirements. The Chief Officer shall coordinate his or her activities with federal and state labor standards agencies.

2.44.030. All City departments and agencies shall

cooperate with the Chief Officer and his or her designees. The Chief shall have the authority to subpoena the production of books, papers, records or other items relevant to investigations under the jurisdiction of the Department of Workplace and Employment Standards.

SECTION 4. ENFORCEMENT OF CERTAIN CITY EMPLOYMENT STANDARDS.

Oakland Municipal Code Section 5.92.050 is amended as follows (deleted text is indicated by ~~strikethrough~~; added text is indicated with an underline; omitted text is indicated by (* * * * *)):

A. Retaliation. * * * *

C. Retention of Records. Each Employer shall maintain for at least (3) three years for each Employee a record of his or her name, hours worked, pay rate, Paid Sick Leave accrual and usage, and Service Charge collection and distribution. Each Employer shall provide each Employee or his or her representative a copy of the records relating to such Employee upon the Employee's or representative's reasonable request, except that the Employees' names (and any addresses and social security numbers) shall be redacted unless the requester is an Employee requesting his or her own records. Where an Employer does not maintain or retain adequate records documenting wages paid or does not allow reasonable access to such records, it shall be presumed in any administrative or judicial enforcement proceeding to enforce the provisions of this Chapter that the Employer paid the Employee no more than the applicable federal or state minimum wage, absent clear and convincing evidence otherwise. ****

G. Enforcement Procedures.

1. Enforcement Priority. It is the policy of the City of Oakland that all employees be compensated fairly according to the law and that Employers who engage in wage theft be held accountable.

2. Administrative Enforcement.

a. The City is authorized to take appropriate steps to enforce this Chapter. The City may investigate any possible violations of this Chapter by an Employer or other person and, where the City has reason to believe that a violation has occurred, it may order appropriate temporary or interim relief to mitigate the violation or maintain the *status quo* pending completion of a full investigation or hearing.

b. Where the City, after a hearing that affords a suspected violator due process, determines that a violation has occurred, it may order any appropriate relief, including, but not limited to, reinstatement, the payment of any back wages unlawfully withheld, and the payment of an additional sum as an administrative penalty in the amount of \$50 to each Employee or person whose rights under this Chapter were violated for each day that the violation occurred or continued. A violation for unlawfully withholding wages or service charges shall be deemed to continue from the date immediately following the date that the sums 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 sums are paid in full. Where prompt compliance is not forthcoming, the City may take any appropriate action to secure compliance, including initiating a civil action pursuant to Section 5.92.050(G)(3), and, except where prohibited by state or federal law, 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. All City agencies and departments shall cooperate with such revocation or suspension requests. In order to compensate the City for the costs of investigating and remedying the violation, the City may also order the violating Employer or person to pay to the City a sum of not more than \$50 for each day and for each Employee or person as to whom the violation occurred or continued. Such funds shall be allocated to the City and shall be used to offset the costs of implementing and enforcing this Chapter and, on and after July 1, 2020, other laws under the jurisdiction of the Department of Workplace and Employment Standards. The amounts of all sums and payments authorized or required under this Section shall be updated annually for inflation, beginning January 1, 2019, using the inflation rate and procedures set forth in Section 5.92.020(B).

c. An Employee, representative of Employees, or other person may report in writing any suspected violation of this Chapter to the City. The City 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 person reporting the violation and any Employee whose name is included in the report. Provided, however, that with the written authorization of such person, the City may disclose his or her name and identifying information as necessary to enforce this Chapter or for any other appropriate purpose. In order to further encourage reporting by Employees, if the City notifies an employer that the City is investigating a complaint, the City shall require the Employer to post or otherwise inform its Employees that the City is conducting an investigation, using a form provided by the City.

3. Civil Enforcement. The City, 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 and, upon prevailing, shall be entitled to **G. Private Rights of Action.** Any Person claiming harm from a violation of this Chapter may bring an action against the Employer in court to enforce the provisions of this Chapter and shall be entitled to all remedies available to remedy any violation of this Chapter, including but not limited to back pay, reinstatement and/or injunctive relief, and the payment of an additional sum as penalty in the amount of \$50 to each Employee or person whose rights under this Chapter were violated for each day that the violation occurred or continued, up to a maximum of \$1,000 per Employee or aggrieved person. Violations

of this Chapter are declared to irreparably harm the public and covered employees generally. The Court shall award reasonable attorney's fees, witness fees and expenses to any plaintiff who prevails in an action to enforce this Chapter. Provided that any person or entity enforcing this Chapter on behalf of the public shall, upon prevailing, be entitled only to equitable, injunctive or restitutionary relief, and reasonable attorneys' fees and costs. Any Person who negligently or intentionally violates this Chapter shall be liable for civil penalties for each violation with a maximum of one thousand dollars (\$1000.00) per violation, the amount to be determined by the court. No criminal penalties shall attach for any violation of this Chapter, nor shall this Chapter give rise to any cause of action for damages against the City.

H. Interest. In any administrative or civil action brought for the non-payment of wages or service charge distributions under this Chapter, the City or court, as the case may be, shall award interest on all due and unpaid sums at the rate of interest specified in subdivision (b) of Section 3289 of the California Civil Code, which shall accrue from the date the sums 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 sums are paid in full.

HI. No Preemption of Higher Standards. The purpose of this Chapter is to ensure minimum labor standards. This Chapter does not preempt or prevent the establishment of superior employment standards (including higher wages) or the expansion of coverage by ordinance, resolution, contract, or any other action of the City or Port of Oakland. This Chapter shall not be construed to limit a discharged Employee's right to bring a common law cause of action for wrongful termination.

IJ. Severability. If any provision or application of this Chapter is declared illegal, invalid or inoperative, in whole or in part, by any court of competent jurisdiction, the remaining provisions and portions thereof and applications not declared illegal, invalid or inoperative shall remain in full force or effect. The courts are hereby authorized to reform the provisions of this Chapter in order to preserve the maximum permissible effect of each subsection herein. Nothing herein may be construed to impair any contractual obligations of the Port or City of Oakland. This Chapter shall not be applied to the extent it will cause the loss of any federal or state funding of City or Port activities.

J. Department of Workplace and Employment Standards. On and after July 1, 2020, the Department of Workplace and Employment Standards shall enforce this Chapter, and shall have authority to take any action permitted of the City in this Section.

K. Regulations. The City and, on and after July 1, 2020, the Department of Workplace and Employment Standards, may promulgate and enforce rules and regulations, and issue determinations and interpretations, consistent with and necessary for the implementation of this Chapter. Such rules and regulations, determinations and interpretations shall have the force of law and may be relied upon by Employers, Employees, and other persons to determine their rights and responsibilities under this

Chapter.

SECTION 4. SEVERABILITY.

If any provision or application of this Ordinance is declared illegal, invalid or inoperative, in whole or in part, by any court of competent jurisdiction, the remaining provisions and portions thereof shall remain in full force or effect. The courts are hereby authorized to reform the provisions of this chapter in order to preserve its maximum permissible effect.

SECTION 5. CONFLICTING MEASURES.

In the event that another measure or measures on the same ballot seeks to affect the same subject matter as this Initiative, any provisions of the other measure or measures shall be deemed to be in conflict with this Initiative. In the event that this Initiative receives a greater number of affirmative votes, the provisions of this Initiative shall prevail in their entirety, and the provisions of the other measure or measures shall be null and void.

SECTION 6. AMENDMENTS.

The City Council may amend this Ordinance in order to further this Ordinance's purposes of providing workplace protections to hotel workers and effective enforcement of City employment standards."