EXHIBIT 1

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Official City of Los Angeles Charter (TM) and Administrative Code (TM)[1]

ADMINISTRATIVE CODE

DIVISION 10 CONTRACTS

CHAPTER 1 CONTRACTS GENERAL

ARTICLE 11
LIVING WAGE

Section

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Sec. 10.37. Legislative Findings.

The City awards many contracts to private firms to provide services to the public and to City government. Many lessees or licensees of City property perform services that affect the

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proprietary interests of City government in that their performance impacts the success of City operations. The City also provides financial assistance and funding to others for the purpose of economic development or job growth. The City expends grant funds under programs created by the federal and state governments. Such expenditures serve to promote the goals established for those programs by such governments and similar goals of the City. The City intends that the policies underlying this article serve to guide the expenditure of such funds to the extent allowed by the laws under which such grant programs are established.

Experience indicates that procurement by contract of services has all too often resulted in the payment by service contractors to their employees of wages at or slightly above the minimum required by federal and state minimum wage laws. Such minimal compensation tends to inhibit the quantity and quality of services rendered by such employees to the City and to the public. Underpaying employees in this way fosters high turnover, absenteeism, and lackluster performance. Conversely, adequate compensation promotes amelioration of these undesirable conditions. Through this article the City intends to require service contractors to provide a minimum level of compensation that will improve the level of services rendered to and for the City.

The inadequate compensation typically paid today also fails to provide service employees with resources sufficient to afford life in Los Angeles. It is unacceptable that contracting decisions involving the expenditure of City funds should foster conditions placing a burden on limited social services. The City, as a principal provider of social support services, has an interest in promoting an employment environment that protects such limited resources. In requiring the payment of a higher minimum level of compensation, this article benefits that interest.

Nothing less than the living wage should be paid by the recipients of City financial assistance themselves. Whether they be engaged in manufacturing or some other line of business, the City does not wish to foster an economic climate where a lesser wage is all that is offered to the working poor. The same adverse social consequences from such inadequate compensation emanate just as readily from manufacturing, for example, as service industries. This article is meant to protect these employees as well.

The City holds a proprietary interest in the work performed by many employees employed by lessees and licensees of City property and by their service contractors and subcontractors. In a very real sense, the success or failure of City operations may turn on the success or failure of these enterprises, for the City has a genuine stake in how the public perceives the services rendered for them by such businesses. Inadequate compensation of these employees adversely impacts the performance by the City's lessee or licensee and thereby does the same for the success of City operations. By the 1998 amendment to this article, recognition is given to the prominence of this interest at those facilities visited by the public on a frequent basis, including but not limited to, terminals at Los Angeles International Airport, Ports O'Call Village in San Pedro, and golf courses and recreation centers operated by the Department of Recreation and Parks. This article is meant to cover all such employees not expressly exempted.

Requiring payment of the living wage serves both proprietary and humanitarian concerns of the City. Primarily because of the latter concern and experience to date regarding the failure of some

employers to honor their obligation to pay the living wage, the 1998 amendments introduce additional enforcement mechanisms to ensure compliance with this important obligation. Non-complying employers must now face the prospect of paying civil penalties, but only if they fail to cure non-compliance after having been given formal notice thereof. Where non-payment is the issue, employers who dispute determinations of non-compliance may avoid civil penalties as well by paying into a City holding account the monies in dispute. Employees should not fear retaliation, such as by losing their jobs, simply because they claim their right to the living wage, irrespective of the accuracy of the claim. The 1998 amendments strengthen the prohibition against retaliation to serve as a critical shield against such employer misconduct.

SECTION HISTORY

Article and Section Added by Ord. No. 171,547, Eff. 5-5-97.
Amended by: In Entirety, Ord. No. 172,336, Eff. 1-14-99.

Sec. 10.37.1. Definitions.

The following definitions shall apply throughout this article:

(a) "**Airport**" means the Department of Airports and each of the airports which it operates.

(b) "**Airport Employer**" means an Employer, as the term is defined in this section, at the Airport.

(c) "**Airport Employee**" means an Employee, as the term is defined in this section, of an Airport Employer.

(d) "**Awarding authority**" means that subordinate or component entity or person of the City (such as a department) or of the financial assistance recipient that awards or is otherwise responsible for the administration of a service contract or public lease or license, or, where there is no such subordinate or component entity or person, then the City or the City financial assistance recipient.

(e) "**City**" means the City of Los Angeles and all awarding authorities thereof, including those City departments which exercise independent control over their expenditure of funds, but excludes the Community Redevelopment Agency of the City of Los Angeles ("**CRA**"). The CRA is urged, however, to adopt a policy similar to that set forth in this article.

(f) "**City financial assistance recipient**" means any person who receives from the City discrete financial assistance for economic development or job growth expressly articulated and identified by the City, as contrasted with generalized financial assistance such as through tax legislation, in accordance with the following monetary limitations. Assistance given in the amount of one million dollars ($1,000,000) or more in any twelve-month period shall require compliance with this article for five years from the date such assistance reaches the one million dollar ($1,000,000) threshold. For assistance in any twelve-month period totaling less than one million dollars ($1,000,000) but at least one hundred thousand dollars ($100,000), there shall be

compliance for one year if at least one hundred thousand dollars ($100,000) of such assistance is given in what is reasonably contemplated at the time to be on a continuing basis, with the period of compliance beginning when the accrual during such twelve-month period of such continuing assistance reaches the one-hundred thousand dollar ($100,000) threshold.

Categories of such assistance include, but are not limited to, bond financing, planning assistance, tax increment financing exclusively by the City, and tax credits, and shall not include assistance provided by the Community Development Bank. City staff assistance shall not be regarded as financial assistance for purposes of this article. A loan shall not be regarded as financial assistance. The forgiveness of a loan shall be regarded as financial assistance. A loan shall be regarded as financial assistance to the extent of any differential between the amount of the loan and the present value of the payments thereunder, discounted over the life of the loan by the applicable federal rate as used in 26 U.S.C. Sections 1274(d), 7872(f). A recipient shall not be deemed to include lessees and sublessees.

A recipient shall be exempted from application of this article if:

(1) it is in its first year of existence, in which case the exemption shall last for one (1) year,

(2) it employs fewer than five (5) employees for each working day in each of twenty (20) or more calendar weeks in the current or preceding calendar year, or

(3) it obtains a waiver as provided herein.

A recipient - who employs the long-term unemployed or provides trainee positions intended to prepare employees for permanent positions, and who claims that compliance with this article would cause an economic hardship - may apply in writing to the City department or office administering such assistance, which department or office which shall forward such application and its recommended action on it to the City Council. Waivers shall be effected by Council resolution.

(g) "**Contractor**" means any person that enters into:

(1) a service contract with the City,

(2) a service contract with a proprietary lessee or licensee or sublessee or sublicensee, or

(3) a contract with a City financial assistance recipient to assist the recipient in performing the work for which the assistance is being given. Vendors, such as service contractors, of City financial assistance recipients shall not be regarded as contractors except to the extent provided in Subsection (i).*

*Technical correction due to re-lettering of subsections: "Subsection (f)" corrected to "Subsection (i)".

(h) "**Designated Administrative Agency (DAA)**" means the Department of Public Works, Bureau of Contract Administration, who shall bear administrative responsibilities under this article.

(i) "**Employee**" means any person - who is not a managerial, supervisory, or confidential employee and who is not required to possess an occupational license - who is employed

(1) as a service employee of a contractor or subcontractor on or under the authority of one or more service contracts and who expends any of his or her time thereon, including but not limited to: hotel employees, restaurant, food service or banquet employees; janitorial employees; security guards; parking attendants; nonprofessional health care employees; gardeners; waste management employees; and clerical employees;

(2) as a service employee - of a public lessee or licensee, of a sublessee or sublicensee, or of a service contractor or subcontractor of a public lessee or licensee, or sublessee or sublicensee - who works on the leased or licensed premises;

(3) by a City financial assistance recipient who expends at least half of his or her time on the funded project; or

(4) by a service contractor or subcontractor of a City financial assistance recipient and who expends at least half of his or her time on the premises of the City financial assistance recipient directly involved with the activities funded by the City.

(j) "**Employer**" means any person who is a City financial assistance recipient, contractor, subcontractor, public lessee, public sublessee, public licensee, or public sublicensee and who is required to have a business tax registration certificate by Los Angeles Municipal Code §§ 21.00 - 21.198 or successor ordinance or, if expressly exempted by the Code from such tax, would otherwise be subject to the tax but for such exemption; provided, however, that corporations organized under §501(c)(3) of the United States Internal Revenue Code of 1954, 26 U.S.C. §501(c)(3), whose chief executive officer earns a salary which, when calculated on an hourly basis, is less than eight (8) times the lowest wage paid by the corporation, shall be exempted as to all employees other than child care workers.

(k) "**Person**" means any individual, proprietorship, partnership, joint venture, corporation, limited liability company, trust, association, or other entity that may employ individuals or enter into contracts.

(l) "**Public lease or license**".

(a) Except as provided in (l)(b)*, "**Public lease or license**" means a lease or license of City property on which services are rendered by employees of the public lessee or licensee or sublessee or sublicensee, or of a contractor or subcontractor, but only where any of the following applies:

*Technical correction due to re-lettering of subsections: "(i)(b)" corrected to "(l)(b)".

(1) The services are rendered on premises at least a portion of which is visited by substantial numbers of the public on a frequent basis (including, but not limited to, airport passenger terminals, parking lots, golf courses, recreational facilities); or

(2) Any of the services could feasibly be performed by City employees if the awarding authority had the requisite financial and staffing resources; or

(3) The DAA has determined in writing that coverage would further the proprietary interests of the City.

(b) A public lessee or licensee will be exempt from the requirements of this article subject to the following limitations:

(1) The lessee or licensee has annual gross revenues of less than the annual gross revenue threshold, three hundred fifty thousand dollars ($350,000), from business conducted on City property;

(2) The lessee or licensee employs no more than seven (7) people total in the company on and off City property;

(3) To qualify for this exemption, the lessee or licensee must provide proof of its gross revenues and number of people it employs in the company's entire workforce to the awarding authority as required by regulation;

(4) Whether annual gross revenues are less than three hundred fifty thousand dollars ($350,000) shall be determined based on the gross revenues for the last tax year prior to application or such other period as may be established by regulation;

(5) The annual gross revenue threshold shall be adjusted annually at the same rate and at the same time as the living wage is adjusted under section 10.37.2 (a);

(6) A lessee or licensee shall be deemed to employ no more than seven (7) people if the company's entire workforce worked an average of no more than one thousand two-hundred fourteen (1,214) hours per month for at least three-fourths (3/4) of the time period that the revenue limitation is measured;

(7) Public leases and licenses shall be deemed to include public subleases and sublicenses;

(8) If a public lease or license has a term of more than two (2) years, the exemption granted pursuant to this section shall expire after two (2) years but shall be renewable in two-year increments upon meeting the requirements therefor at the time of the renewal application or such period established by regulation.

(m) "**Service contract**" means a contract let to a contractor by the City primarily for the furnishing of services to or for the City (as opposed to the purchase of goods or other property or the leasing or renting of property) and that involves an expenditure in excess of twenty-five thousand dollars ($25,000) and a contract term of at least three (3) months; but only where any of the following applies:

(1) at least some of the services rendered are rendered by employees whose work site is on property owned by the City,

(2) the services could feasibly be performed by City employees if the awarding authority had the requisite financial and staffing resources, or

(3) the DAA has determined in writing that coverage would further the proprietary interests of the City.

(n) "**Subcontractor**" means any person not an employee that enters into a contract (and that employs employees for such purpose) with

(1) a contractor or subcontractor to assist the contractor in performing a service contract or

(2) a contractor or subcontractor of a proprietary lessee or licensee or sublessee or sublicensee to perform or assist in performing services on the leased or licensed premises. Vendors, such as service contractors or subcontractors, of City financial assistance recipients shall not be regarded as subcontractors except to the extent provided in Subsection (i).*

*Technical correction due to re-lettering of subsections: "Subsection (f)" corrected to "Subsection (i)".

(o) "**Willful violation**" means that the employer knew of his, her, or its obligations under this article and deliberately failed or refused to comply with its provisions.

SECTION HISTORY

Added by Ord. No. 171,547, Eff. 5-5-97.
Amended by: In Entirety, Ord. No. 172,336, Eff. 1-14-99; Subsec. (e), Ord. No. 176,155, Eff. 9-22-04; Subsec. (e), Ord. No. 176,283, Eff. 12-25-04, Oper. 9-22-04; Subsecs. (a) through (l) re-lettered (d) through (o), respectively and new Subsecs. (a), (b), and (c) added, Ord. No. 180,877, Eff. 10-19-09.

Sec. 10.37.2. Payment of Minimum Compensation to Employees.

(a) **Wages.** Employers shall pay Employees a wage of no less than the hourly rates set under the authority of this article. The initial rates were seven dollars and twenty-five cents ($7.25) per hour with health benefits, as described in this article, or otherwise eight dollars and fifty cents ($8.50) per hour without health benefits. With the annual adjustment effective July 1, 2009, together with all previous annual adjustments as provided by this subsection, such rates are ten dollars and thirty cents ($10.30) per hour with health benefits or, if health benefits are not provided, then fourteen dollars and eighty cents ($14.80) per hour for Airport Employees and eleven dollars and fifty-five cents ($11.55) per hour for all other Employees. The hourly rate with health benefits to be paid to all Employees and the hourly rate without health benefits to be paid to Airport Employees shall be adjusted annually to correspond with adjustments, if any, to retirement benefits paid to members of the Los Angeles City Employees Retirement System (LACERS), made by the CERS Board of Administration under § 4.1040. The Office of Administrative and Research Services shall so advise the DAA of any such change by June 1 of each year and of the required

new hourly rates, if any. On the basis of such report, the DAA shall publish a bulletin announcing the adjusted rates, which shall take effect upon such publication.

(b) **Compensated Days Off.** Employers shall provide at least twelve (12) compensated days off per year for sick leave, vacation, or personal necessity at the employee's request. Employers shall also permit employees to take at least an additional ten (10) days a year of uncompensated time to be used for sick leave for the illness of the employee or a member of his or her immediate family where the employee has exhausted his or her compensated days off for that year.

SECTION HISTORY

Added by Ord. No. 171,547, Eff. 5-5-97.
Amended by: In Entirety, Ord. No. 172,336, Eff. 1-14-99; Subsec. (a), Ord. No. 173,285, Eff. 6-26-00, Oper. 7-1-00; Subsec. (a), Ord. No. 180,877, Eff. 10-19-09.

Sec. 10.37.3. Health Benefits.

(a) **Health Benefits.** The health benefits required by this article shall consist of the payment of at least four dollars and fifty cents ($4.50) per hour by Airport Employers and at least one dollar and twenty-five cents ($1.25) per hour by all other Employers towards the provision of health care benefits for Employees and their dependents. Proof of the provision of such benefits must be submitted to the awarding authority to qualify for the wage rate in Section 10.37(a) for Employees with health benefits. Airport Employees cannot waive the health benefits offered by an Airport Employer when the Airport Employer does not require an out-of-pocket contribution by the Airport Employee. Consistent with and as shall be reflected in the hourly rates payable to Airport Employees as provided in 10.37.2(a) above, the amount of payment for health benefits by Airport Employers shall be adjusted annually to correspond with adjustments, if any, to retirement benefits paid to members of the Los Angeles City Employees Retirement System (LACERS), made by the CERS Board of Administration under § 4.1040. The Office of Administrative and Research Services shall so advise the DAA of any such change by June 1 of each year and of the required new hourly payments, if any. On the basis of such report, the DAA shall publish a bulletin announcing the adjusted payment, which shall take effect upon such publication.

(b) **Periodic Review.** At least once every three years, the Office of Administrative and Research Services shall review the health benefit payment by Airport Employers set forth in 10.37.3(a) to determine whether the payment accurately reflects the cost of health care and to assess the impacts of the health benefit payment on Airport Employers and Airport Employees and shall transmit a report with its findings to the Council.

SECTION HISTORY

Added by Ord. No. 171,547, Eff. 5-5-97.
Amended by: In Entirety, Ord. No. 172,336, Eff. 1-14-99; In Entirety, Ord. No. 180,877, Eff. 10-19-09.

Sec. 10.37.4. Notifying Employees of their Potential Right to the Federal Earned Income Credit.

Employers shall inform employees making less than twelve dollars ($12) per hour of their possible right to the federal Earned Income Credit ("**EIC**") under Section 32 of the Internal Revenue Code of 1954, 26 U.S.C. Section 32, and shall make available to employees forms informing them about the EIC and forms required to secure advance EIC payments from the employer.

SECTION HISTORY

Added by Ord. No. 171,547, Eff. 5-5-97.
Amended by: In Entirety, Ord. No. 172,336, Eff. 1-14-99.

Sec. 10.37.5. Retaliation Prohibited.

Neither an employer, as defined in this article, nor any other person employing individuals shall discharge, reduce in compensation, or otherwise discriminate against any employee for complaining to the City with regard to the employer's compliance or anticipated compliance with this article, for opposing any practice proscribed by this article, for participating in proceedings related to this article, for seeking to enforce his or her rights under this article by any lawful means, or for otherwise asserting rights under this article.

SECTION HISTORY

Added by Ord. No. 171,547, Eff. 5-5-97.
Amended by: In Entirety, Ord. No. 172,336, Eff. 1-14-99.

Sec. 10.37.6. Enforcement.

(a) An employee claiming violation of this article may bring an action in the Municipal Court or Superior Court of the State of California, as appropriate, against an employer and may be awarded:

(1) For failure to pay wages required by this article - back pay for each day during which the violation continued.

(2) For failure to pay medical benefits - the differential between the wage required by this article without benefits and such wage with benefits, less amounts paid, if any, toward medical benefits.

(3) For retaliation - reinstatement, back pay, or other equitable relief the court may deem appropriate.

(4) For willful violations, the amount of monies to be paid under (1) - (3) shall be trebled.

(b) The court shall award reasonable attorney's fees and costs to an employee who prevails in any such enforcement action and to an employer who so prevails if the employee's suit was frivolous.

(c) Compliance with this article shall be required in all City contracts to which it applies, and such contracts shall provide that violation of this article shall constitute a material breach thereof and entitle the City to terminate the contract and otherwise pursue legal remedies that may be available. Such contracts shall also include a pledge that there shall be compliance with federal law proscribing retaliation for union organizing.

(d) An employee claiming violation of this article may report such claimed violation to the DAA which shall investigate such complaint. Whether based upon such a complaint or otherwise, where the DAA has determined that an employer has violated this article, the DAA shall issue a written notice to the employer that the violation is to be corrected within ten (10) days. In the event that the employer has not demonstrated to the DAA within such period that it has cured such violation, the DAA may then:

(1) Request the awarding authority to declare a material breach of the service contract, public lease or license, or financial assistance agreement and exercise its contractual remedies thereunder, which are to include, but not be limited to, termination of the service contract, public lease or license, or financial assistance agreement and the return of monies paid by the City for services not yet rendered.

(2) Request the City Council to debar the employer from future City contracts, leases, and licenses for three (3) years or until all penalties and restitution have been fully paid, whichever occurs last. Such debarment shall be to the extent permitted by, and under whatever procedures may be required by, law.

(3) Request the City Attorney to bring a civil action against the employer seeking:

(i) Where applicable, payment of all unpaid wages or health premiums prescribed by this article; and/or

(ii) A fine payable to the City in the amount of up to one hundred dollars ($100) for each violation for each day the violation remains uncured.

Where the alleged violation concerns non-payment of wages or health premiums, the employer will not be subject to debarment or civil penalties if it pays the monies in dispute into a holding account maintained by the City for such purpose. Such disputed monies shall be presented to a neutral arbitrator for binding arbitration. The arbitrator shall determine whether such monies shall be disbursed, in whole or in part, to the employer or to the employees in question. Regulations promulgated by the DAA shall establish the framework and procedures of such arbitration process. The cost of arbitration shall be borne by the City, unless the arbitrator determines that the employer's position in the matter is frivolous, in which event the arbitrator shall assess the employer for the full cost of the arbitration. Interest earned by the City on monies held in the holding account shall be added to the principal sum deposited, and the monies shall be disbursed

in accordance with the arbitration award. A service charge for the cost of account maintenance and service may be deducted therefrom.

(e) Notwithstanding any provision of this Code or any other ordinance to the contrary, no criminal penalties shall attach for violation of this article.

SECTION HISTORY

Added by Ord. No. 171,547, Eff. 5-5-97.
Amended by: In Entirety, Ord. No. 172,336, Eff. 1-14-99; Subsec. (d), Para. (1), Ord. No. 173,747, Eff. 2-24-01.

Sec. 10.37.7. Administration.

The City Council shall by resolution designate a department or office, which shall promulgate rules for implementation of this article and otherwise coordinate administration of the requirements of this article ("**designated administrative agency**" - DAA). The DAA shall monitor compliance, including the investigation of claimed violations, and shall promulgate implementing regulations consistent with this article. The DAA shall also issue determinations that persons are City financial assistance recipients, that particular contracts shall be regarded as "**service contracts**" for purposes of Section 10.37.1(j), and that particular leases and licenses shall be regarded as "**public leases**" or "**public licenses**" for purposes of Section 10.37.1(i), when it receives an application for a determination of non-coverage or exemption as provided for in Section 10.37.13. The DAA shall also establish employer reporting requirements on employee compensation and on notification about and usage of the federal Earned Income Credit referred to in Section 10.37.4. The DAA shall report on compliance to the City Council no less frequently than annually.

During the first, third, and seventh years of this article's operation since May 5, 1997, and every third year thereafter, the Office of Administrative and Research Services and the Chief Legislative Analyst shall conduct or commission an evaluation of this article's operation and effects. The evaluation shall specifically address at least the following matters:

(a) how extensively affected employers are complying with the article;

(b) how the article is affecting the workforce composition of affected employers;

(c) how the article is affecting productivity and service quality of affected employers;

(d) how the additional costs of the article have been distributed among workers, their employers, and the City. Within ninety days of the adoption of this article, these offices shall develop detailed plans for evaluation, including a determination of what current and future data will be needed for effective evaluation.

SECTION HISTORY

Added by Ord. No. 171,547, Eff. 5-5-97.

Amended by: In Entirety, Ord. No. 172,336, Eff. 1-14-99; Ord. No. 173,285, Eff. 6-26-00, Oper. 7-1-00; Ord. No. 173,747, Eff. 2-24-01.

Sec. 10.37.8. Exclusion of Service Contracts from Competitive Bidding Requirement.

Service contracts otherwise subject to competitive bid shall be let by competitive bid if they involve the expenditure of at least two-million dollars ($2,000,000). Charter Section 372 shall not be applicable to service contracts.

SECTION HISTORY

Added by Ord. No. 171,547, Eff. 5-5-97.
Amended by: In Entirety, Ord. No. 172,336, Eff. 1-14-99; Ord. No. 173,285, Eff. 6-26-00, Oper. 7-1-00.

Sec. 10.37.9. Coexistence with Other Available Relief for Specific Deprivations of Protected Rights.

This article shall not be construed to limit an employee's right to bring legal action for violation of other minimum compensation laws.

SECTION HISTORY

Added by Ord. No. 171,547, Eff. 5-5-97.
Amended by: In Entirety, Ord. No. 172,336, Eff. 1-14-99.

Sec. 10.37.10. Expenditures Covered.

This article shall apply to the expenditure - whether through aid to City financial assistance recipients, service contracts let by the City, or service contracts let by its financial assistance recipients - of funds entirely within the City's control and to other funds, such as federal or state grant funds, where the application of this article is consonant with the laws authorizing the City to expend such other funds.

SECTION HISTORY

Added by Ord. No. 171,547, Eff. 5-5-97.
Amended by: In Entirety, Ord. No. 172,336, Eff. 1-14-99.

Sec. 10.37.11. Timing of Application.

(a) **Original 1997 Ordinance.** The provisions of this article as enacted by City Ordinance No.171,547, effective May 5, 1997, shall apply to

(1) contracts consummated and financial assistance provided after such date,

(2) contract amendments consummated after such date and before the effective date of the 1998 ordinance which themselves met the requirements of former Section 10.37.1(h) (definition of "**service contract**") or which extended contract duration, and

(3) supplemental financial assistance provided after May 5, 1997 and before the effective date of the 1998 ordinance which itself met the requirements of Section 10.37.1(c).

(b) **1998 Amendment.** The provisions of this article as amended by the 1998 ordinance shall apply to

(1) service contracts, public leases or licenses, and financial assistance agreements consummated after the effective date of such ordinance and

(2) amendments, consummated after the effective date of such ordinance, to service contracts, public leases or licenses, and financial assistance agreements that provide additional monies or which extend term.

(c) **2000 amendment.** The provisions of this article as amended by the 2000 ordinance shall apply to

(1) service contracts, public leases or public licenses and City financial assistance recipient agreements consummated after the effective date of such ordinance and

(2) amendments to service contracts, public leases or licenses and City financial assistance recipient agreements which are consummated after the effective date of such ordinance and which provide additional monies or which extend the term.

(d) **2009 Amendment.** The provisions of this article as amended by the 2009 ordinance shall become operative ninety (90) days following the effective date of the 2009 ordinance.

SECTION HISTORY

Added by Ord. No. 171,547, Eff. 5-5-97.
Amended by: In Entirety, Ord. No. 172,336, Eff. 1-14-99; Subsec. (b), Subsec. (c) Added, Ord. No. 173,747, Eff. 2-24-01; Subsec. (d) Added, Ord. No. 180,877, Eff. 10-19-09.

Sec. 10.37.12. Supersession by Collective Bargaining Agreement.

Parties subject to this article may by collective bargaining agreement provide that such agreement shall supersede the requirements of this article.

SECTION HISTORY

Added by Ord. No. 171,547, Eff. 5-5-97.
Amended by: In Entirety, Ord. No. 172,336, Eff. 1-14-99.

Sec. 10.37.13. Liberal Interpretation of Coverage; Rebuttable Presumption of Coverage.

The definitions of "**City financial assistance recipient**" in Section 10.37.1(c), of "**public lease or license**" in Section 10.37.1(i), and of "**service contract**" in Section 10.37.1(j) shall be liberally interpreted so as to further the policy objectives of this article. All recipients of City financial assistance meeting the monetary thresholds of Section 10.37.1(c), all City leases and licenses (including subleases and sublicenses) where the City is the lessor or licensor, and all City contracts providing for services that are more than incidental, shall be presumed to meet the corresponding definition just mentioned, subject, however, to a determination by the DAA of non-coverage or exemption on any basis allowed by this article, including, but not limited to, non-coverage for failure to satisfy such definition. The DAA shall by regulation establish procedures for informing persons engaging in such transactions with the City of their opportunity to apply for a determination of non-coverage or exemption and procedures for making determinations on such applications.

SECTION HISTORY

Added by Ord. No. 172,336, Eff. 1-14-99.
Amended by: Ord. No. 173,747, Eff. 2-24-01.

Sec. 10.37.14. Severability.

If any provision of this article is declared legally invalid by any court of competent jurisdiction, the remaining provisions shall remain in full force and effect.

SECTION HISTORY

Added by Ord. No. 172,336, Eff. 1-14-99.

Sec. 10.37.15. Coexistence with Other Ordinances.

This article is not superseded by any requirement in Article 7 of Chapter XVIII of the Los Angeles Municipal Code.

SECTION HISTORY

Added by Ord. No. 183,805, Eff. 9-19-15.

Official City of Los Angeles Municipal Code (TM)[2]

CHAPTER XVIII
EMPLOYEE WAGES AND PROTECTIONS

ARTICLE 6
CITYWIDE HOTEL WORKER MINIMUM WAGE ORDINANCE

(Added by Ord. No. 183,241, Eff. 11/10/14.)

Section

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SEC. 186.00. PURPOSE.

The City has made significant financial investments to create a climate that has allowed the hospitality industry to thrive in Los Angeles. For example, the City assists in providing and maintaining free public tourist attractions and in helping to build and maintain the public transportation system that carries visitors around the City, including to and from hotels. The City's

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[2] Published by Americana Legal Publishing Corporation, One West Fourth St., Suite 300, Cincinnati, OH 45202 and available on line at http://library.amlegal.com/nxt/gateway.dll?f=templates&fn=default.htm&vid=amlegal:la_all_mc . Last viewed March 22, 2016

investments have helped the hospitality industry, which has enjoyed three consecutive years of growth, achieve an occupancy rate of 78 percent (far better than the national average of 62 percent) and a "revenue per room available" rate of $111 – a 14 year high for Los Angeles. Because hotels receive benefits from City assets and investments and because the City and its tourist industry benefit from hotels with experienced and content workers with low turnover, it is fair and reasonable that hotels pay their employees a fair wage. It will benefit the local economy and benefit City visitors, residents and businesses.

According to the Economic Development Department, 43 percent of the people who work in hotels in Los Angeles earn wages that put them below the federal poverty line. Wages paid to hotel employees are economically restrictive and prevent many hospitality employees from exercising purchasing power at local businesses, which takes a toll on the local economy. According to research based on modeling by the Economic Policy Roundtable, increasing wages for hotel workers could generate more than $70 million in economic activity for Los Angeles. These employees, who live paycheck to paycheck, are frequently forced to work two or three jobs to provide food and shelter for their families. In many instances, they cannot take time to spend with their children or care for themselves or family when sick. They also 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. In requiring the payment of a higher minimum wage, this article benefits that interest.

In 2007, the Los Angeles City Council passed a living wage ordinance for workers employed in hotels near Los Angeles International Airport (LAX), and in 2009 passed an ordinance that raised the wages for airport employees. The living wage for LAX hotel workers and airport employees has resulted in higher pay and real benefits for low-income families, and the hotels around LAX have thrived. In recent years, LAX passenger traffic has steadily increased (a 4.7 percent increase in 2013, following a 3 percent increase in 2012) in part due to City investment in infrastructure that draws tourists to Los Angeles and encourages them to come back and visit the City repeatedly. Tourism is one of the largest industries in the City, hosting millions of people per year. Hotel workers frequently are the face of the industry, providing services directly to tourists.

Income equality is one of the most pressing economic, social and civil rights issues facing Los Angeles. By proceeding incrementally and applying a minimum wage to hotel workers at larger hotels, including a hardship waiver for certain affected hotels, and by including the Los Angeles Airport Enterprise Zone (AHEZ) hotels which are already paying a higher than state-mandated minimum wage, the City seeks to promote the health, safety and welfare of thousands of hotel workers by ensuring they receive decent compensation for the work they perform. The City also seeks to improve the welfare of hotel workers by mandating that a hotel employer pay service charges to their workers. When a service charge is listed on customer's bill, often times there is a reduction in the gratuity to the hotel worker on the assumption that the service charge is automatically paid to the hotel worker. This ordinance guarantees that a hotel worker gets paid for any service charge a customer reasonably would believe is intended for the worker who actually performed the service.

A large hotel, one containing more than 150 rooms, is in a better position to absorb the cost of paying living wages to its employees and also to absorb costs without layoffs. First, large hotels

more often are part of international, national or regional chains. A large hotel that is part of a chain of hotels may more easily relocate or transfer employees to other hotels in the chain rather than laying off employees. Second, a large hotel often has sources of income beyond mere room rental, including special event revenue, conference revenue and revenue from other hotel amenities such as gymnasiums, business centers and restaurants. A large hotel is better able than a small hotel to ensure high room occupancy through access to chain hotel "reward" points. A large hotel tends to have a larger advertising budget than a small hotel, which enables a large hotel to advertise more broadly and extensively, which in turns makes more likely the possibility that occupants in a large hotel are out of town tourists and business travelers drawn to the City due, in part, to the City's investment in tourism and business infrastructure and services. Lastly, a large hotel may more easily absorb the cost of paying employees a higher wage through the economies of scale in operating a large hotel compared to the costs of operating a small hotel.

SEC. 186.01. DEFINITIONS.

The following definitions shall apply to this article:

A. "**AHEZ Hotel**" means any Hotel within the Airport Hospitality Enhancement Zone, which encompasses the boundaries of the Gateway to LA Property Business Improvement District (Gateway to LA PBID), established by Ordinance Number 177,211, containing 50 or more guest rooms, or suites of rooms located within that area. "**AHEZ 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. If the Gateway to LA PBID ceases to exist, the boundaries at the time of dissolution shall remain in effect for purposes of this article.

B. "**City**" means the City of Los Angeles.

C. "**Designated Administrative Agency (DAA)**" means the Department of Public Works, Bureau of Contract Administration, which shall publish any annual wage rate adjustment pursuant to Section 186.02 A. of this article.

D. "**Hotel**" means a residential building that is designated or used for lodging and other related services for the public, and containing 150 or more guest rooms, or suites of rooms (adjoining rooms do not constitute a suite 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. The number of guest rooms, or suites of rooms, shall be calculated based on the room count on the opening of the Hotel or on December 31, 2012, whichever is greater. "**Hotel**" also includes all AHEZ Hotels.

E. "**Hotel Employer**" means a Person who owns, controls and/or operates a Hotel in the City, 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 who provides services at the Hotel.

F. "**Hotel Worker**" means any individual whose primary place of employment is at one or more Hotels and who is employed directly by the Hotel Employer, or by a Person who has contracted with the Hotel Employer to provide services at the Hotel. "**Hotel Worker**" does not include a managerial, supervisory or confidential employee.

G. "**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.

H. "**Service Charge**" means all separately-designated amounts, regardless of name or label, collected by a Hotel Employer from a customer for service by Hotel Workers, or described in such a way that customers might reasonably believe that the amounts are for the service including, but not limited to, those charges designated on receipts under the term "service charge," "delivery charge" or "porterage charge."

I. "**Willful Violation**" means that the Hotel Employer deliberately failed or refused to comply with the provisions of this article.

SEC. 186.02. PAYMENT OF MINIMUM COMPENSATION TO HOTEL WORKERS AND PROVISION OF TIME OFF.

A. **Wages.** In accordance with Section 186.04 of this article, Hotel Employers shall pay Hotel Workers a wage of no less than the hourly rates set under the authority of this article. The minimum wage for each Hotel Worker shall be $15.37 per hour, not including gratuities, Service Charge distributions or bonuses. Starting on July 1, 2017, and continuing thereafter, this rate shall continue to be adjusted as of July 1 of each year consistent with any adjustment pursuant to Section10.37.2(a) of the Los Angeles Administrative Code. The DAA shall publish a bulletin announcing the adjusted rates, which shall take effect on July 1 of each year.

B. **Time Off.**

1. **Compensated Time Off.** A Hotel Employer shall provide at least 96 compensated hours off per year for sick leave, vacation, or personal necessity to full time Hotel Workers to be made available at the Hotel Worker's request.

(a) A full time Hotel Worker is classified as someone who works at least 40 hours a week or in accordance with the Hotel Employer's policies, if more generous. A full time Hotel Worker shall accrue at least 96/52 hours of compensated time off each week in a calendar year that the Hotel Worker has been employed by the Hotel Employer. Compensated time off does not accrue for work in excess of 40 hours a week. Full time Hotel Workers that work less than 40 hours a week will receive the compensated time off in proportional increments.

(b) A part time Hotel Worker is classified as someone who works less than 40 hours per week or in accordance with the Hotel Employer's policies, if more generous. A part time Hotel Worker

shall accrue compensated time off in increments proportional to that accrued by someone who works 40 hours a week, in accordance with Section 186.02 B.1.(a).

(c) **General Rules for Compensated Time Off.**

(i) A Hotel Worker must be eligible to use accrued paid compensated time off after the first six months of employment or consistent with company policies, whichever is sooner.

(ii) A Hotel Employer may not unreasonably deny a Hotel Worker's request to use the accrued compensated time off.

(iii) Unused accrued compensated time off will carry over until the time off reaches a maximum of 192 hours, unless the Hotel Employer's established policy is more generous.

(iv) After a Hotel Worker reaches the maximum accrued compensated time off, a Hotel Employer shall provide a cash payment once every 30 days for accrued compensated time off over the maximum. A Hotel Employer may provide a Hotel Worker with the option of cashing out any portion of, or all of, the Hotel Worker's accrued compensated time off under the maximum, but, in no event, shall the Hotel Employer require a Hotel Worker to cash out any accrued compensated time off. Compensated time off cashed out shall be paid to the Hotel Worker at the wage rate that the Hotel Worker is earning at the time of cash out.

(v) A Hotel Employer may not implement any employment policy to count accrued compensated time off taken under this article as an absence that may result in discipline, discharge, suspension, or any other adverse action.

2. **Uncompensated Time Off.** Hotel Employers shall also permit full time Hotel Workers to take at least 80 additional hours per year of uncompensated time off to be used for sick leave for the illness of the Hotel Worker or a member of his or her immediate family where the Hotel Worker has exhausted his or her compensated time off for that year.

(a) A full time Hotel Worker is classified as someone who works at least 40 hours a week or in accordance with the Hotel Employer's policies, if more generous. A full time Hotel Worker shall accrue at least 80/52 hours of uncompensated time off each week in a calendar year that the Hotel Worker has been employed by the Hotel Employer. Uncompensated time off does not accrue for work in excess of 40 hours a week. Full time Hotel Workers that work less than 40 hours a week will receive the uncompensated time off in proportional increments.

(b) A part time Hotel Worker is classified as someone who works less than 40 hours per week or in accordance with the Hotel Employer's policies, if more generous. A part time Hotel Worker shall accrue uncompensated time off in increments proportional to that accrued by someone who works 40 hours a week, in accordance with Section 186.02 B.2.(a).

(c) **General Rules for Uncompensated Time Off.**

(i) A Hotel Worker must be eligible to use accrued uncompensated time off after the first six months of employment or consistent with company policies, whichever is sooner.

(ii) A Hotel Employer may not unreasonably deny a Hotel Worker's request to use the accrued uncompensated time off.

(iii) Unused accrued uncompensated time off will carry over until the time off reaches a maximum of 80 hours, unless the Hotel Employer's established policy is more generous.

(iv) A Hotel Employer may not implement any employment policy to count uncompensated time off taken under this article as an absence that may result in discipline, discharge, suspension, or any other adverse action.

SEC. 186.03. SERVICE CHARGES.

A. Service Charges shall not be retained by the Hotel Employer but shall be paid in the entirety by the Hotel Employer to the Hotel Worker(s) performing services for the customers from whom the Service Charges are collected. No part of these amounts may be paid to supervisory or managerial employees. The amounts shall be paid to the Hotel Worker(s) equitably and according to the services that are related to the description of the Service Charges given by the Hotel Employer to the customer. The amounts shall be paid to the Hotel Worker(s) in the next payroll following collection of an amount from the customer, including without limitation:

1. Amounts collected for banquets or catered meetings shall be paid equally to the Hotel Worker(s) who actually work the banquet or catered meeting;

2. Amounts collected for room service shall be paid to the Hotel Worker(s) who actually deliver food and beverage associated with the charge; and

3. Amounts collected for porterage service shall be paid to the Hotel Worker(s) who actually carry the baggage associated with the charge.

SEC. 186.04. INCREMENTAL APPLICATION OF MINIMUM WAGE PROVISIONS.

A. **Hotels with 300 or More Rooms.** On July 1, 2015, Hotel Employers with Hotels containing 300 or more guest rooms, or suites of rooms shall pay Hotel Workers according to the provisions in Section 186.02 of this article.

B. **Hotels with 150 or More Rooms.** On July 1, 2016, Hotel Employers with Hotels containing 150 or more guest rooms, or suites of rooms shall pay Hotel Workers according to the provisions in Section 186.02 of this article.

C. **AHEZ Hotels.** On July 1, 2015, AHEZ Hotel Employers shall pay AHEZ Hotel Workers solely according to the provisions in Section 186.02 of this article. Prior to July 1, 2015, AHEZ

Hotel Employers shall pay their AHEZ Hotel Workers as provided below (consistent with the former Los Angeles Municipal Code (LAMC) Sections 104.104 A., 104.104 B. and 104.105 A.):

1. **Wages.** AHEZ Hotel Employers shall pay AHEZ Hotel Workers a wage of no less than $11.03 per hour with health benefits, not including gratuities, Service Charge distributions, or bonuses, or $12.28 per hour without health benefits, not including gratuities, Service Charge distributions, or bonuses.

2. **Compensated Days Off.** AHEZ Hotel Employers shall provide AHEZ Hotel Workers at least 12 accrued compensated days off per year for sick leave, vacation, or personal necessity at the AHEZ Hotel Worker's request. AHEZ Hotel Employers shall also permit AHEZ Hotel Workers to take at least an additional ten accrued days a year of uncompensated time to be used for sick leave for the illness of the AHEZ Hotel Worker or a member of his or her immediate family where the AHEZ Hotel Worker has exhausted his or her compensated days off for that year.

3. **Rate.** Health benefits under this article shall consist of the payment of at least $1.25 per hour towards the provision of health care benefits for AHEZ Hotel Workers and their dependents. Proof of the provision of these benefits must be kept on file by the AHEZ Hotel Employer, if applicable.

SEC. 186.05. NOTIFYING HOTEL WORKERS OF THEIR POTENTIAL RIGHT TO THE FEDERAL EARNED INCOME CREDIT.

Hotel Employers shall inform Hotel Workers of their possible right to the federal Earned Income Credit (EIC) under Section 32 of the Internal Revenue Code of 1954, 26 U.S.C. § 32.

SEC. 186.06. RETALIATORY ACTION PROHIBITED.

No Hotel Employer shall discharge, reduce in compensation or otherwise discriminate against any Hotel Worker for opposing any practice proscribed by this article, for participating in proceedings related to this article, for seeking to enforce his or her rights under this article by any lawful means, or for otherwise asserting rights under this article.

SEC. 186.07. ENFORCEMENT.

A. A Hotel Worker claiming violation of this article may bring an action in the Superior Court of the State of California against a Hotel Employer and may be awarded:

1. For failure to pay wages required by this article – back pay for each day during which the violation continued.

2. For retaliatory action – reinstatement, back pay and other legal or equitable relief the court may deem appropriate.

3. For Willful Violations, the amount of monies to be paid under Sections 186.07 A.1. and 2. of this article shall be trebled.

B. If a Hotel Worker is the prevailing party in any legal action taken pursuant to this article, the court shall award reasonable attorney's fees and costs as part of the costs recoverable.

SEC. 186.08. EXEMPTION FOR COLLECTIVE BARGAINING AGREEMENT.

All of the provisions of this article, or any part of the article, may be waived in a bona fide collective bargaining agreement, but only if the waiver is explicitly set forth in that agreement in clear and unambiguous terms. Unilateral implementation of terms and conditions of employment by either party to a collective bargaining relationship shall not constitute or be permitted as a waiver of all or any part of the provisions of this article.

SEC. 186.09. ONE-YEAR WAIVER FOR CERTAIN HOTEL EMPLOYERS.

This article is not intended to cause reduction in employment or work hours for Hotel Workers. Therefore, the City Controller may grant a waiver from the requirements of this section if a Hotel Employer can demonstrate to the City Controller by compelling evidence that compliance with this article would force the Hotel Employer, in order to avoid bankruptcy or a shutdown of the Hotel, to reduce its workforce by more than 20 percent or curtail its Hotel Workers' total hours by more than 30 percent. The City Controller shall reach a determination only after reviewing and auditing, if necessary, the Hotel Employer's financial condition, with such review or audit paid for, at rates set by the City Controller, by the Hotel Employer. Any waiver granted by the City Controller is valid for no more than one year. The City Controller's determination on a waiver application shall be subject to review and reversal by a two-thirds vote of the City Council within ten business days of the City Controller's determination.

SEC. 186.10. NO WAIVER OF RIGHTS.

Except for bona fide collective bargaining agreements, any waiver by a Hotel Worker of any or all of the provisions of this article shall be deemed contrary to public policy and shall be void and unenforceable. Any attempt by a Hotel Employer to have a Hotel Worker waive rights given by this article shall constitute a Willful Violation of this article.

SEC. 186.11. COEXISTENCE WITH OTHER AVAILABLE RELIEF FOR SPECIFIC DEPRIVATIONS OF PROTECTED RIGHTS.

The provisions of this article shall not be construed as limiting any Hotel Worker's right to obtain relief to which he or she may be entitled at law or in equity.

SEC. 186.12. CONFLICTS.

Nothing in this Chapter shall be interpreted or applied so as to create any power or duty in conflict with any federal or State law.

SEC. 186.13. SEVERABILITY.

If any provision of this article is found invalid by a court of competent jurisdiction, the remaining provisions shall remain in full force and effect.

SEC. 186.14. COEXISTENCE WITH OTHER ORDINANCES.

(Added by Ord. No. 183,804, Eff. 9/19/15.)

This article is not superseded by any requirement in Article 7 of Chapter XVIII of the Los Angeles Municipal Code.

Official City of Los Angeles Municipal Code (TM)[3]

CHAPTER XVIII
EMPLOYEE WAGES AND PROTECTIONS

ARTICLE 7
LOS ANGELES MINIMUM WAGE ORDINANCE

(Added by Ord. No. 183,612, Eff. 7/19/15.)

Section

187.00 Purpose.
187.01 Definitions.
187.02 Payment of Minimum Wage to Employees.
187.03 Deferral Application for Certain Non-Profit Employers.
187.04 Notifying Employees of Their Potential Right to the Federal Earned Income Credit.
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187.08 Coexistence with Other Available Relief for Specific Deprivations of Protected Rights.
187.09 Conflicts.
187.10 Reports.
187.11 Severability.

SEC. 187.00. PURPOSE.

According to consultants retained by the City and studies submitted to the City for its consideration, Los Angeles is a low-wage city with a high cost of living. Without action to raise the wage floor, the problems caused by incomes that are inadequate to sustain working families will become more acute. The cost of living is continuing to rise in Los Angeles and labor market projections by the California Employment Development Department show that the number of low-wage jobs will grow faster than the number of mid- and high-wage jobs. Inaction will mean that the share of the labor force that does not receive sustaining pay will grow and the gap between

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[3] Published by Americana Legal Publishing Corporation, One West Fourth St., Suite 300, Cincinnati, OH 45202 and available on line at http://library.amlegal.com/nxt/gateway.dll?f=templates&fn=default.htm&vid=amlegal:la_all_mc Last viewed March 22, 2016

stagnating low wages and the cost of a basic standard of living in Los Angeles will continue to widen.

Contrary to popular perception, the large majority of affected workers are adults, with a median age of 33 (only three percent are teens). The proposed minimum wage increase will greatly benefit workers of color, who represent over 80% of affected workers. Workers of all education levels will benefit from the proposed law, with less educated workers benefitting the most.

Los Angeles also ranks highest in California in child poverty rates. In short, although the City is experiencing strong economic growth which has spurred employment, poverty and inequality remain high and wages continue to stagnate. Affected workers disproportionately live in low-income families; on average, affected workers bring home more than half of their family's income. Affected workers live disproportionately in the lower-income areas of the City. These areas will experience greater earnings gains than the City as a whole due to a higher minimum wage. The research literature suggests that downstream benefits will result from the proposed wage increase, such as improved health outcomes for both workers and their children, and increases in children's academic achievements and cognitive and behavioral outcomes.

Studies show that minimum wage increases reduce worker turnover. Turnover creates financial costs for employers. 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.

The City has recognized that income inequality is one of the most pressing economic and social issues facing Los Angeles. Workers, who must live paycheck to paycheck, are frequently forced to work two or three jobs to provide food and shelter for their families. 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. Therefore, by paying a higher than state-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.

SEC. 187.01. DEFINITIONS.

The following definitions shall apply to this article:

A. "**City**" means the City of Los Angeles.

B. "**Designated Administrative Agency (DAA)**" means the Department of Public Works, Bureau of Contract Administration, which shall bear administrative responsibilities under this article.

C. "**Employee**" means any individual who:

1. In a particular week performs at least two hours of work within the geographic boundaries of the City for an Employer; and

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

D. "**Employer**" means any person, as defined in Section 18 of the California Labor Code, including a corporate officer or executive, who directly or indirectly or through an agent or any other person, including through the services of a temporary service or staffing agency or similar entity, employs or exercises control over the wages, hours or working conditions of any employee.

E. "**Non-Profit Corporation**" means a non-profit 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 non-profit status under Section 501(c)(3) of the United States Internal Revenue Code of 1986, as amended, and all rules and regulations promulgated thereunder.

F. "**Person**" means any person, association, organization, partnership, business trust, limited liability company or corporation.

SEC. 187.02. PAYMENT OF MINIMUM WAGE TO EMPLOYEES.

A. An Employer shall pay an Employee a wage of no less than the hourly rates set under the authority of this article.

B. Employers with 26 or more Employees shall pay a wage of no less than the hourly rates set forth:

1. On July 1, 2016, the hourly wage shall be $10.50.

2. On July 1, 2017, the hourly wage shall be $12.00.

3. On July 1, 2018, the hourly wage shall be $13.25.

4. On July 1, 2019, the hourly wage shall be $14.25.

5. On July 1, 2020, the hourly wage shall be $15.00.

C. Employers with 25 or fewer Employees shall pay a wage of no less than the hourly rates set forth:

1. On July 1, 2017, the hourly wage shall be $10.50.

2. On July 1, 2018, the hourly wage shall be $12.00.

3. On July 1, 2019, the hourly wage shall be $13.25.

4. On July 1, 2020, the hourly wage shall be $14.25.

5. On July 1, 2021, the hourly wage shall be $15.00.

D. On July 1, 2022, and annually thereafter, the minimum wage will increase based on the Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI-W) for the Los Angeles metropolitan area (Los Angeles-Riverside-Orange County, CA), which is published by the Bureau of Labor Statistics. The DAA shall announce the adjusted rates on January 1st and publish a bulletin announcing the adjusted rates, which shall take effect on July 1 of each year.

E. Employees, who are "Learners" as defined in Labor Code Section 1192 and consistent with wage orders published by the California Industrial Welfare Commission and are 14-17 years of age, shall be paid not less than 85% of the minimum wage rounded to the nearest nickel during their first 160 hours of employment. After more than 160 hours of employment, Learners shall be paid the applicable minimum wage pursuant to this section.

F. For purposes of this article, the size of an Employer's business or Non-Profit Corporation shall be determined by the average number of Employees employed during the previous calendar year.

SEC. 187.03. DEFERRAL APPLICATION FOR CERTAIN NON-PROFIT EMPLOYERS.

The DAA shall establish a procedure to allow an Employer that is a Non-Profit Corporation with 26 or more Employees to qualify for the deferral rate schedule specified in Section 187.02 C. A Non-Profit Employer seeking the deferral must establish by compelling evidence that:

A. The chief executive officer earns a salary which, when calculated on an hourly basis, is less than five times the lowest wage paid by the corporation; or

B. It is a Transitional Employer as defined in Section 10.31.1(h) of the Los Angeles Administrative Code; or

C. It serves as a child care provider; or

D. It is funded primarily by City, County, State or Federal grants or reimbursements.

SEC. 187.04. NOTIFYING EMPLOYEES OF THEIR POTENTIAL RIGHT TO THE FEDERAL EARNED INCOME CREDIT.

Employers shall inform Employees of their possible right to the federal Earned Income Credit (EIC) under Section 32 of the Internal Revenue Code of 1954, 26 U.S.C. Section 32.

SEC. 187.05. RETALIATORY ACTION PROHIBITED.

No Employer shall discharge, reduce in compensation or otherwise discriminate against any Employee for opposing any practice proscribed by this article, for participating in proceedings related to this article, for seeking to enforce his or her rights under this article by any lawful means, or for otherwise asserting rights under this article.

SEC. 187.06. IMPLEMENTATION.

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

SEC. 187.07. NO WAIVER OF RIGHTS.

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

SEC. 187.08. COEXISTENCE WITH OTHER AVAILABLE RELIEF FOR SPECIFIC DEPRIVATIONS OF PROTECTED RIGHTS.

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

SEC. 187.09. CONFLICTS.

Nothing in this article shall be interpreted or applied so as to create any power or duty in conflict with any federal or State law.

SEC. 187.10. REPORTS.

Every three years after July 1, 2016, the Chief Legislative Analyst (CLA) with the assistance of the City Administrative Officer (CAO) shall commission a study to review the state of the City's economy; minimum wage impacts; textile and apparel manufacturing impacts; temporary workers, guards and janitors impacts; home health care services impacts; residential care and nursing facilities impacts; child day care services impacts; restaurants and bars impacts; personal and repair

services impacts; transitional jobs programs impacts; service charges, commissions and guaranteed gratuities impacts; and wage theft enforcement. On an annual basis, the CLA and CAO shall collect economic data, including jobs, earnings and sales tax.

SEC. 187.11. SEVERABILITY.

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

IN THE SUPREME COURT OF THE STATE OF NEVADA

WESTERN CAB COMPANY,

Petitioners,

vs.

THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA, IN AND FOR THE COUNTY OF CLARK; AND THE HONORABLE RONALD J. ISRAEL, DISTRICT JUDGE,

Respondents,

and

LAKSIRI PERERA, IRSHAD AHMED, MICHAL SARGEANT, individually and behalf of others similarly situated,

Real Parties in Interest.

Case No. 69408

District Court Case: A-14-707425-C

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Clerk of Supreme Court

AMICUS CURIAE BRIEF FOR THE NEVADA NELA IN SUPPORT OF RESPONDENTS AND THE REAL PARTIES IN INTEREST

Docket 69408 Document 2016-10672

NRAP 26.1 DISCLOSURE

Pursuant to NRAP 26.1, the undersigned counsel of record certifies that Amicus Nevada NELA is a non-profit organization and affiliate chapter of the National Employment Lawyers Association ("NELA").

The undersigned counsel of record further certifies that Ms. Dana Sniegocki is the only attorney who has appeared or is expected to appeal for the Real Party of Interest. Ms. Sniegocki is an attorney with Leon Greenberg, P.C. and is the Vice-President of Nevada NELA. Ms. Sniegocki has not participated in the drafting of this brief.

Dated: April 4, 2016

Respectfully Submitted,

/s/Mark R. Thierman

Mark R. Thierman, Attorney
Nevada NELA Amicus Support

NEVADA NELA
Joshua D. Buck, President
Michael Balaban, Secretary-Treasurer
Christian Gabroy, Member At-Large
7287 Lakeside Drive
Reno, Nevada 89511
Telephone: (775) 284-1500
Facsimile: (775) 703-5027

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AMICUS CURIAE BRIEF FOR THE NEVADA NELA IN SUPPORT OF RESPONDENTS AND THE REAL PARTIES IN INTEREST

I. STATEMENT OF INTEREST OF AMICUS CURIAE NEVADA NELA

The Nevada Employment Lawyers Association (Nevada NELA) is a Nevada non-profit organization of attorneys who advance employee rights, justice and equality in the workplace for all Nevada employees. Nevada NELA is a proud affiliate of the National Employment Lawyers Association (NELA). NELA was founded in 1985 to provide assistance and support to lawyers in protecting the rights of employees. NELA and its 69 state and local affiliates have more than 4,000 members in every state of the union.[1] Amicus Curiae Nevada NELA files this brief in support of Petitioner and the Real Parties in Interest.

II. SUMMARY OF ARGUMENT

The purpose of this brief is to inform the Court that each of Petitioner Western Cab Company's "serious issues" of Nevada employment law has already

[1] Nevada NELA members advocate in a wide variety of employment related matters, on both an individual and class basis, including: Wage issues, such as claims involving overtime pay, minimum wage, commissions, prevailing wage claims for state and federal contracts, and other pay related matters; Discrimination on the basis of race, gender, religion, national origin, disability, age, pregnancy, and sexual orientation; Harassment on the basis of race, gender, religion, national origin, disability, age and pregnancy; Sexual harassment; Violations of the family leave laws; Retaliation for engaging in protected activity; Whistleblower for reporting or opposing violations of state or federal laws; Breach of contract claims; Severance package negotiations; Civil Rights violations; Non-compete and confidentiality agreements; Unemployment compensation issues; Employee benefits; Disability benefits based on policies through employment.

been decided against the position of Petitioner and in favor of the employees in a series of cases challenging the authority of the City of Los Angeles to impose local wage ordinances requiring payment of minimum wages in excess of both state and federal mandates. Similar in concept to the Nevada constitutional minimum wage amendment, the City of Los Angeles passed a collection of wage ordinances which were the product of intense Union lobbying, required an even higher minimum wage for those employees who were not offered free or subsidized health insurance, included a mechanism to adjust upwards the minimum wages over time and provided exceptions from coverage for unionized employers under certain circumstances. The Los Angeles ordinances mandated a minimum wage much, much greater than the minimum wages required under general state and federal law, and far in excess of the wages private sector employers were paying at the time. In addition, twenty-nine states, plus the District of Columbia, have state minimum wage requirements in excess of the federal minimum wages. In all cases, local wage ordinances were held to be constitutional and binding despite employer challenges based on the same theories Petitioner argues for in this case. For the same reasons, this Court should likewise overrule Petitioner's discredited arguments.

III. RELEVANT LAWS

A. Nevada Constitutional Minimum Wage Amendment.

Article XV Section 16 of the Nevada Constitution extends the state minimum wage to all employees, with just three exceptions 1) an employee who is under eighteen (18) years of age, 2) an employee employed by a nonprofit organization for after school or summer employment or 3) an employee employed as a trainee for a period not longer than ninety (90) days. Section 16(a) of Article XV of the Nevada Constitution states, in relevant part:

> Each employer shall pay a wage to each employee of not less than the hourly rates set forth in this section. The rate shall be five dollars and fifteen cents ($5.15) per hour worked, if the employer provides health benefits as described herein, or six dollars and fifteen cents ($6.15) per hour if the employer does not provide such benefits. Offering health benefits within the meaning of this section shall consist of making health insurance available to the employee for the employee and the employee's dependents at a total cost to the employee for premiums of not more than 10 percent of the employee's gross taxable income from the employer.

B. Los Angeles Living Wage Ordinances

Recently, the City of Los Angeles has enacted a series of ordinances establishing a local minimum wage for workers higher than both the state and federal minimal wages. For example, the Los Angeles Living Wage Ordinance ("LWO"), mandates that employers pay their employees $14.80 per hour, or $10.30 per hour if the contractor provides health benefits. *See* L.A. Admin. Code § 10.37.2(a). The Citywide Hotel Worker Minimum Wage Ordinance ("Wage Ordinance" or "WO") sets even a higher minimum wage for all workers at hotels

with more than 150 rooms of $15.37 per hour. *See* Article 6 of Chapter XVIII of the Los Angeles Municipal Code. Lastly, the Los Angeles Minimum Wage Ordinance sets the minimum wage of $10.50 per hour for all employees who work two or more hours per week in the City of Los Angeles. *See* Los Angeles Municipal Code Sections 187.01- 187.11. The passage of these ordinances was the product of intense Union lobbying. These ordinances require a higher minimum wage for those employees who are not offered subsidized health insurance; they include a mechanism to adjust upwards the minimum wages over time; and provided exceptions from coverage for unionized employers under certain circumstances.[2] All these statutes have been legally challenged in one way or by the same theories as Petitioner argues here and, in every case, the ordinances have been upheld.

IV. ARGUMENT

A. Nevada's Minimum Wage Amendment Is Not Preempted By Federal Labor Law—i.e., National Labor Relations Act

The test of NLRA preemption is whether or not the newly enacted so-called local minimum wage regulation effectively forced the employer to sign a union agreement, colloquially called "joining the union." In *Am. Hotel & Lodging Ass'n*

[2] In addition, 29 States and the District of Columbia have minimum wage requirements higher than the federal minimum wages, and not one of them has been declared unconstitutional on any grounds, including the grounds argued by Petitioner herein.

v. City of Los Angeles, 119 F. Supp. 3d 1177, 1188 (C.D. Cal. 2015), Judge André Birotte, Jr. of the United States District Court for the Central District of California held that the National Labor Relations Act ("NLRA"), 29 U.S.C. §151 et seq., did not preempt the Los Angeles Citywide Hotel Worker Minimum Wage Ordinance because the minimum wage ordinance did not encourage or discourage collective bargaining or self-organizing.[3] 119 F. Supp. 3d at 1187. The court recognized that "[w]hile the Ninth Circuit has recognized that in an extreme case, the substantive requirements of a minimum labor standard could be so restrictive as to virtually dictate the results of the collective bargaining and self-organizing process, this occurs only where one or both parties are deprived of a meaningful choice as between complying with the substantive requirements and entering into a collective bargaining agreement." *Id.* The court then concluded that the employers,

> have failed to meet their burden that the Wage Ordinance's $15.37 per hour minimum wage is so onerous that it is economically unfeasible and therefore forces the hand of non-union hotels to unionize. [The employers'] own evidence establishes that Hotel Employers have a meaningful choice as between paying the $15.37 per hour minimum wage and entering into collective bargaining agreements, and so the Wage Ordinance's minimum wage provision does not compel preemption. Similarly, [the employers] have failed to meet their burden that the Wage Ordinance's waiver provision interferes with collective bargaining and labor relations or is otherwise

[3]Likewise, California Court of Appeals also rejected Petitioner's preemption arguments in the case of *S. California Edison Co. v. Pub. Utilities Comm'n*, 140 Cal. App. 4th 1085, 1105, 45 Cal. Rptr. 3d 485, 500 (2006).

> inconsistent with the NLRA's legislative goals and purposes. Union opt-out provisions are also presumptively valid, and union employees are entitled to the full protections of minimum labor standards absent a collective bargaining agreement for something different, including during any gap periods between such agreements.

Id. at 1203.

Fortuna Enterprises, L.P. v. City of Los Angeles, 673 F. Supp. 2d 1000, 1009 (C.D. Cal. 2008), similarly held that a minimum wage statute was not preempted by the NLRA because it did not effectively preclude the employer remaining non-signatory with the union. *Id.* The Court in *Fortuna* noted the difference between a prevailing wage ordinance that is tethered to a particular craft collective bargaining agreement, and a general minimum wage statute, which is unrelated to any particular union agreement. *Id.* The court in *Fortuna* found that the local ordinance was a general minimum wage statute that fell within the police power of the state and was traditionally a matter of local concern. *Id.* The Court in *Fortuna* also considered a two dollar differential between the federal minimum wage and the local minimum wage law to be too small to force an employer to join the union. *Id.*

There are no relevant factual differences between the Los Angeles minimum wage ordinances and the Nevada Constitutional Minimum Wage Amendment that would justify a departure from the analysis mentioned above. For instance, both the Citywide Hotel Worker Minimum Wage Ordinance and the Nevada

Constitutional Minimum Wage establish a two-tier wage floor based upon whether or not the employer offers acceptable health insurance; they both were passed after heavy endorsements from organized labor; they both narrow the gap between higher paid, unionized employees and minimum wage, non-union employees; and they both allow a collective bargaining agreement to waive the provisions of the these laws. It follows that these preemption decisions would logically apply to the Nevada Constitution's Minimum Wage Amendment.

In that vein, the Nevada Constitutional Minimum Wage Amendment is a minimum wage law that applies to such a broad group of employees that it cannot possibly be aimed towards forcing an employer to accept any particular identifiable collective bargaining agreement or join any particular union. Unlike a prevailing wage law, the minimum wage amendment in this case does not track or target any craft or occupation with a standardized, industry-wide union agreement. Nor does it reflect any differences in type of work or seniority like a union agreement would. Furthermore, the differential between state and federal minimum wage in Nevada is only one dollar an hour (or 13%) without health insurance, and there is no difference with insurance. In sum, while the Nevada Minimum Wage Amendment may have an incidental impact of raising the wages of lower paid non-union workers more than higher paid union workers, the Nevada Minimum Wage

Amendment fails the test for NLRA preemption because it does not effectively force employers to join the union.

B. The Minimum Wage Amendment Is Not Preempted By ERISA

The court in *Calop Bus. Sys., Inc. v. City of Los Angeles*, 984 F. Supp. 2d 981 (C.D. Cal. 2013) (affirmed by 614 F. App'x 867 (9th Cir. 2015)), rejected arguments that the Employee Retirement Income Security Act ("ERISA"), 29 U.S.C. §1001, et seq., preempted the Los Angeles Living Wage Ordinance, as urged by Petitioner herein. First, the federal District Court held that the Los Angeles Living Wage Ordinance (hereinafter also "LWO") did not "relate to" an ERISA plan, because the law did not "has a "reference to" or a "connection with" any particular ERISA plan. The court in *Calop* found that the LWO made no attempt to regulate any plan of insurance or to force the employer to change its insurance plan. Instead, just like the Nevada Minimum Wage ordinance, the LWO merely allows payment of a lower minimum wage to employees whose employers had purchased health insurance for them:

> The LWO is not per se subject to ERISA because it is a minimum wage regulation. Wages are a traditional subject of the state's police powers. See *WSB Electric, Inc. v. Curry*, 88 F.3d 788, 791 (9th Cir.1996) ("It is well settled that wages are a subject of traditional state concern, and are not included in ERISA's definition of 'employee benefit plan,' " citing *Massachusetts v. Morash*, 490 U.S. 107, 118, 109 S.Ct. 1668, 104 L.Ed.2d 98 (1989) (holding that ERISA does not preempt a state law regulating vacation pay)). Nonetheless, ERISA could preempt the LWO if it refers to, or has a connection with, employee welfare benefit plans.

Id. at 1003.

Second, the court in *Calop* held that "[b]ecause the LWO neither refers to nor has a connection with ERISA plans, it is not preempted by § 1144(a)." As the court further explained:

> Here, as in *WSB Electric*, the LWO expressly references ERISA plans in that it mentions health benefits. Like the law at issue in *WSB Electric*, however, the LWO does not have an effect on any ERISA plan. The LWO sets a minimum wage that certain employers must pay, and permits them either to pay it all in cash or through a combination of cash and benefits contributions. Like the wage law in *WSB Electric*, the LWO "regulates wages generally, not wages that are part of a particular employee benefit plan." Id. at 792. As the Ninth Circuit held in that case, "[t]he references to ERISA plans in the [LWO] have no effect on any ERISA plans, but simply take them into account when calculating the cash wage that must be paid." Id. at 793. The LWO does not require that employers provide health benefits, dictate the level or type of health benefits an employer must provide, or state which health benefit plan an employer must choose. Where, as here, wage laws function irrespective of ERISA plans, they do not refer to ERISA plans and are not preempted by § 1144(a). *Dillingham,* 519 U.S. at 327, 117 S.Ct. 832 (stating that California's prevailing wage statute "functions irrespective of the existence of an ERISA plan" and that, "[a]ccordingly, [it] does not make reference to ERISA plans").

Id.

In addition, the regulations of the Nevada Labor Commissioner attempting to specify the acceptable types of health plans for credit toward the Nevada Minimum Wage Amendment do not result in ERISA preemption because of the so-called savings clause which carves out from preemption "any law of any State which regulates insurance, banking, or securities." 29 U.S.C. § 1144(b)(2)(A).

Thus, while ERISA has broad preemptive force, its "saving clause then reclaims a substantial amount of ground." *Rush Prudential HMO, Inc. v. Moran*, 536 U.S. 355, 364, 122 S.Ct. 2151, 153 L.Ed.2d 375 (2002). The Labor Commissioner is allowed to regulate the type of health insurance for which a credit may be taken against the minimum wage law because direct regulation of an ERISA plan by a state official is protected from preemption by the ERISA savings clause. *See Standard Ins. Co. v. Morrison*, 584 F.3d 837, 841 (9th Cir. 2009); *accord Golden Gate Rest. Ass'n v. City & Cty. of San Francisco*, 512 F.3d 1112, 1127 (9th Cir. 2008) (holding that a San Francisco ordinance mandating employer contribution to health plan was not preempted by ERISA).

C. The Minimum Wage Amendment Is Not Void For Vagueness

The *Calop Business Systems* case also held that the Los Angeles Living Wage Ordinance was not void for vagueness for the same reasons that apply to the Nevada Minimum Wage Amendment. Like the employer in *Calop,* Petitioner argues in this case that the Nevada Minimum Wage Amendment is unconstitutionally vague for two reasons. First, because the supersession clause allows a collective bargaining agreement to set wages lower than the minimum wage set by the Minimum Wage Amendment and second because the Nevada Minimum Wage Amendment 'does not define 'health benefits. Like the Court in *Calop,* this Court should reject both arguments.

First, words of the Nevada Minimum Wage Amendment make the duty to pay the Nevada Minimum Wage clear and explicit. The Nevada Minimum Wage Amendment says an employer must pay its employees the $8.25 an hour unless the employer offers health benefits, in which case, the employer must only pay a minimum wage of $7.25 an hour. This is the same language used in the LWO. As the District Court in *Calop* states (footnotes omitted):

> Here, the court need not look to a dictionary because the terms used in the LWO are clear and unambiguous. The ordinance provides that "Employers shall pay Employees ... ten dollars and thirty cents ($10.30) per hour with health benefits or, if health benefits are not provided, then fourteen dollars and eighty cents ($14.80) per hour for Airport Employees." L.A. Admin. Code, § 10.37.2(a). The LWO sets forth detailed definitions of Employer, Employee, Airport Employer, Airport Employee. The supersession clause states that "[p]arties subject to this article may by collective bargaining agreement provide that such agreement shall supersede the requirements of this article." Id., § 10.37.12. The plain language of the ordinance is transparently clear with respect to employers like Calop, who are not parties to a collective bargaining agreement and who do not provide health benefits for their employees. Such employers must pay their employees $14.80 an hour. The language leaves even less to be interpreted than "picketing in such a manner as to obstruct or unreasonably interfere," the phrase the Supreme Court held was not unconstitutionally vague in *Cameron*, 390 U.S. at 616, 88 S.Ct. 1335.

Id. at 997.

Contrary to the argument of Petitioner, opt-out provisions for union signatory employers from a minimum wage regulation does not invalidate a minimum wage law under the due process clause. In *RUI One Corp. v. City of Berkeley,* 371 F.3d 1137 (9th Cir.2004), the Ninth Circuit Court of Appeals

considered a facial challenge to a living wage ordinance that allowed employers who had entered into bona fide collective bargaining agreements to opt out of the ordinance. *Id.* at 1156. The court rejected the argument that such a provision was an unconstitutional delegation of legislative power to the unions because "a provision allowing employees bargaining collectively to opt out of the provisions of a labor regulation is not a delegation of legislative power at all." *Id.* at 1156–57 (citing *New Motor Vehicle Bd. v. Orrin W. Fox Co.,* 439 U.S. 96, 109, 99 S.Ct. 403, 58 L.Ed.2d 361 (1978) ("An otherwise valid regulation is not rendered invalid simply because those whom the regulation is designed to safeguard may elect to forgo its protection")). The Ninth Circuit Court of Appeals found in *RUI One Corp* that the Berkeley City Council had validly exercised its legislative power by enacting an ordinance that only covered businesses in a certain geographic location, with a certain number of employees, that did not have a collective bargaining agreement in place expressly waiving its applicability. *Id.* at 1157. The court noted that "[l]abor unions negotiating collective bargaining agreements with employers are not legislating, but rather negotiating on behalf of their members; if they reach an agreement with the employer for certain employee benefits and employment conditions that they consider superior to, but incompatible with, the Living Wage Ordinance, the parties can decide to waive its applicability." *Id.*

Second, the Nevada Minimum Wage Amendment is not unconstitutionally vague because it does not define the term "health benefits." The Nevada Minimum Wage Amendment defines health benefits as "Offering health benefits within the meaning of this section shall consist of making health insurance available to the employee for the employee and the employee's dependents at a total cost to the employee for premiums of not more than 10 percent of the employee's gross taxable income from the employer." NRS 608.1555 also states that the benefits for health care are the same as a policy of health insurance as defined and regulated by chapters 689A and 689B of the NRS. Read in context with comparable legislation, there is nothing vague or undefined in the Nevada Minimum Wage Amendment.

More importantly, however, this is a purely theoretical argument since Petitioner does not claim it even arguably falls within the health benefits exception to the higher minimum wage requirement of the Nevada Constitution. Thus, Petitioner lacks standing to challenge this provision since it never claimed it provided its employees any policy of health insurance or health benefits of any kind. A party must have Article III standing to raise a challenge to an ordinance. *Hunt v. City of Los Angeles*, 638 F.3d 703, 709 (9th Cir. 2011). "Beyond these general standing requirements, constitutional claims also trigger special standing principles." *Id.* As stated in *Calop*,

> Included in these requirements is the fact that, "to raise a vagueness argument, Plaintiffs' conduct must not be 'clearly' prohibited by the ordinances at issue." Id. Calop lacks standing to assert that the term "health benefits" is unconstitutionally vague because paying its employees $11.55 without providing health benefits from January 19 to February 1, 2010 was clearly prohibited by the LWO. Calop has not argued or adduced any evidence that it provided any type of health benefit to its employees during that period. Thus, whether "health benefits" includes vision and dental plans or insurance policies with deductibles did not affect the sanction imposed on Calop. Calop thus lacks standing to challenge the vagueness of this aspect of the LWO, and has not demonstrated that it can prevail on this aspect of its due process claim.

Id. at 1000. Like the employer in *Calop*, Petitioner cannot complain about the definition of the term health benefits in the Nevada Minimum Wage Amendment because Petitioner has not claimed to have provided its employees with any sort of health insurance at all. *Id.* at 997-98. Accordingly, this argument should be rejected.

D. Pursuant to NRS 608.100(b), 613.120, 613.140, and 613.150, Petitioner Is Estopped From Using Unlawful Employee Rebates And Kickbacks To Offset Its Minimum Wage Requirements

NRS 608.100(b) states that it "is unlawful for any employer to require an employee to rebate, refund or return any part of the wage, salary or compensation earned by and paid to the employee." NRS 613.120, 613.140 and 613.150 are further examples of unlawful rebates or kickbacks from employees. While there may or may not be a direct private cause of action to enforce these anti-kickback provisions of the Nevada Revised Statutes, an employer is estopped from claiming

a credit against its minimum wage obligations for any payments to an employee which are used to buy the employer's supplies, to supplement the employer's cost of operations or in any other way rebated or "kicked back" illegally to the employer. To take credit towards payment of the minimum wages required by law, payments made to the employee must be made "free and clear." *See e.g.*, NRS 608.100(b), 613.120, 613.140 and 613.150. Under federal law, employees must receive the minimum wage and all overtime wages finally and unconditionally or "free and clear." *See* 29 C.F.R. § 531.35. Nevada law is no less protective.

V. CONCLUSION

For the reasons stated herein, the Court should deny Petitioners' request for review.

Dated: April 5, 2016

Respectfully Submitted,

/s/Mark R. Thierman

Mark R. Thierman, Attorney
Nevada NELA Amicus Support

NEVADA NELA
Joshua D. Buck, President
Michael Balaban, Secretary-Treasurer
Christian Gabroy, Member At-Large
7287 Lakeside Drive
Reno, Nevada 89511
Telephone: (775) 284-1500
Facsimile: (775) 703-5027

CERTIFICATE OF COMPLIANCE

I hereby certify that this brief complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5) and the type style requirements of NRAP 32(a)(6) because:

- ■ This brief has been prepared in a proportionally spaced typeface using Microsoft Word 2010 in 14 point font size and Times New Roman.

I further certify that this brief complies with the page length or type volume limitations of NRAP 32(a)(7) and NRAP 29(e) because, excluding the parts of the brief exempted by NRAP 32(a)(7)(C), it is either:

- □ Proportionately spaced, has a typeface of 14 points or more, and contains 4,573 words:
- □ Monospaced, has 10.5 or fewer characters per inch, and contains ___words or ___lines of text; or
- ■ Does not exceed 15 pages.

Finally, I hereby certify that I have read this amicus brief, and to the best of my knowledge, information, and belief, it is not frivolous or interposed for any improper purpose. I further certify that this brief complies with all applicable Nevada Rules of Appellate Procedure, in particular NRAP 28(e)(1), which requires every assertion in the brief regarding matters in the record to be supported by a

reference to the page and volume number, if any, of the transcript or appendix where the matter relied on is to be found.

I understand that I may be subject to sanctions in the event that the accompanying brief is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

Dated: April 5, 2016

Respectfully Submitted,

/s/Mark R. Thierman

Mark R. Thierman, Attorney
Nevada NELA Amicus Support

NEVADA NELA
Joshua D. Buck, President
Michael Balaban, Secretary-Treasurer
Christian Gabroy, Member At-Large
7287 Lakeside Drive
Reno, Nevada 89511
Telephone: (775) 284-1500
Fascimile: (775) 284-1506

CERTIFICATE OF SERVICE

I am a resident of the State of Nevada, over the age of eighteen years, and not a party to the within action. My business address is 7287 Lakeside Drive, Reno, Nevada 89511. On April 5, 2016, the following document was served on the following:

AMICUS CURIAE BRIEF FOR THE NEVADA NELA IN SUPPORT OF RESPONDENTS

■ By **CM/ECF:** Pursuant to N.E.F.R., the above-referenced document was electronically filed and served upon the parties listed below through the Court's Case Management and Electronic Case Filing (CM/ECF) system.

Malani L. Kotchka
Hejmanowski & McCrea, LLC
520 South Fourth Street, Suite 320
Las Vegas, NV 89101
Telephone: (702) 834-8777
Facsimile: (702) 834-5262
Email: mlk@hmlawlv.com

Leon Greenberg, Esq.
Dana Sniegocki, Esq.
Leon Greenberg PC
2965 South Jones Blvd., Suite E4
Las Vegas, NV 89146
Telephone: (702) 383-6085
Facsimile: (702) 385-1827
Email: leongreenberg@overtimelaw.com

■ By **United States Mail:** A true copy of the document was served via first class, postage-paid U.S. Mail on this 5th day of April, 2016, to the following:

The Honorable Linda Marie Bell
District Court Judge
Eighth Judicial District Court of Nevada
200 Lewis Avenue, #3B
Las Vegas, NV 89101

I declare under penalty of perjury under the laws of the State of Nevada that the foregoing is true and correct.

Executed on April 5, 2016 at Reno, Nevada.

By: /s/ Jasmin Williams
Jasmin Williams