



**DATE:** October 9, 2014

**CATEGORY:** Public Hearing

**DEPT.:** City Attorney's Office and City Manager's Office

**TITLE:** **Introduce an Ordinance Adding Chapter 42, Article II to the Mountain View City Code to Require the Payment of a City-Wide Minimum Wage**

### **RECOMMENDATION**

Introduce an Ordinance Adding Chapter 42, Article II to the Mountain View City Code to Require the Payment of a City-Wide Minimum Wage (Attachment 1 to the Council report), to be read in title only, further reading waived, and set a second reading for October 28, 2014.

### **BACKGROUND**

State law requires the minimum wage for all industries to be no less than \$9.00 per hour on and after July 1, 2014, and \$10.00 per hour on and after January 1, 2016. The Federal minimum wage for covered nonexempt employees has been \$7.25 per hour since July 24, 2009.

On November 6, 2012, City of San Jose voters approved a minimum wage ordinance that was placed on the ballot by an initiative. It required employers to pay their employees a minimum wage of \$10.00 per hour as of March 11, 2013 for work performed within the City of San Jose and required the minimum wage to increase annually by the cost of living, beginning on January 1, 2014. The current minimum wage under the San Jose ordinance is \$10.15 per hour, and it will increase by an annual Consumer Price Index (CPI) adjustment to \$10.30 per hour effective January 1, 2015.

On April 22, 2014, Council expressed interest in establishing a minimum wage City-wide and exploring an ordinance based on that adopted in San Jose, and possibly working in coordination with neighboring cities. Council also noted a general awareness of wages not keeping pace with the high cost of living and housing in many Bay Area cities, including Mountain View, as an impetus for consideration of a minimum wage increase. On June 10, 2014, Council directed staff to bring back a minimum wage ordinance in October 2014, modeled on the City of San Jose's ordinance, after conducting one public outreach meeting.

Council also directed staff to research the approaches taken by other cities in the region which have adopted or considered adopting a minimum wage ordinance (Attachment 2). For example, the City of Berkeley adopted a minimum wage ordinance on June 27, 2014 of \$10.00 per hour effective October 1, 2014, and the City of Richmond adopted an ordinance on May 6, 2014 of \$9.60 per hour effective January 1, 2015. In addition, the City of Sunnyvale will consider an ordinance on October 14, 2014. In the interest of addressing the matter expeditiously, and in light of other regional increases already adopted or under consideration, Council did not direct staff to perform a detailed economic analysis of the potential impacts of a minimum wage increase.

## ANALYSIS

### Public Outreach and Input

Most cities who adopted minimum wage ordinances conducted some form of outreach prior to their council's formal consideration of the ordinance. The most common forms of outreach were community input meetings and online surveys.

City of Mountain View staff established the Open City Hall online forum and also conducted a community input meeting. Staff announced these input opportunities via the City website, e-mail distributions, press releases, ad placements in the *Mountain View Voice*, KMVT, social media, outreach to the Mountain View Chamber of Commerce, flyer distribution at City facilities, and outreach in Spanish through the Multilingual Community Outreach Program to local partners and stakeholder groups.

The public outreach meeting on the draft proposed minimum wage ordinance was held on September 8, 2014 at the Senior Center. Staff gave a brief overview of the draft ordinance and invited participants to provide feedback through written comment cards or by speaking at a microphone. Staff also provided translation services through headphones as well as translated for Spanish-speakers at the microphone. The event was attended by approximately 60 people. Of those attending, 18 individuals spoke, with 17 voicing their support for an increased minimum wage in Mountain View, and 1 asked whether the City would provide notice to businesses if the ordinance is adopted. There were also 19 comment cards submitted, all of which supported a minimum wage increase. In addition, many participants voiced their support for raising the minimum wage to either \$12.00 or \$15.00 per hour.

During the period of August 18 through September 19, 2014, the City sought additional community input on the proposed draft minimum wage ordinance through Open City Hall, an online forum for civic engagement. Open City Hall was designed so that community members could comment on key City government issues from their

computer or mobile device. The minimum wage ordinance was the first topic posted for feedback on this forum. Citizens accessed the tool by visiting [www.mountainview.gov/council/open\\_city\\_hall](http://www.mountainview.gov/council/open_city_hall) and providing feedback to the question: "Should the City of Mountain View adopt an ordinance setting a local minimum wage?"

As of September 19, 2014, a total of 110 responses were given on Open City Hall. Of those responses, 88 supported a minimum wage ordinance, 18 were against, and 4 responses were unclear. Of the 88 responses in favor of an ordinance, 56 indicated that the minimum wage should be higher than \$10.15 per hour, with at least 30 of those stating it should be \$15.00 per hour or higher. Out of the 110 responses, 60 of those were registered comments, or were made "on forum," and are, therefore, available for viewing at the link shown above.

### **Potential Business and Economic Impact**

Although Council did not direct staff to perform a detailed economic analysis of the potential impacts of a minimum wage increase in Mountain View, the results of local surveys and studies were gathered in order to provide a general overview.

Two predominant viewpoints on the impact of a minimum wage increase are whether an increase would stimulate the economy, boost spending, and reduce employee turnover versus whether it would create increased business costs, higher prices on goods and services, and job losses.

These varying perspectives are reflected in surveys conducted of the local business community. This year, the Mountain View Chamber of Commerce conducted a survey of its members to determine the impacts to local businesses, as did the City of Sunnyvale. In 2012, the San Jose Chamber of Commerce and the Silicon Valley Council of Nonprofits also conducted surveys. It is important to note that each survey utilized different methodology in collecting data and the results do not represent a scientific sample of the surveyed population (Attachment 3).

The Mountain View Chamber of Commerce survey found that 77 percent of the 62 businesses responding would support a minimum wage ordinance, while 23 percent of respondents indicated they would not support an ordinance. In addition, 12 percent of respondents indicated that their suppliers may raise rates/fees, and 11 percent stated they would cut back on worker hours. The City of Sunnyvale survey found 70 percent of respondents (employers, employees, and residents) in support of a minimum wage ordinance, while 30 percent did not support an ordinance. Of those responding, approximately 30 percent stated they would delay future hiring and would cut back on worker hours.

In the San Jose Chamber of Commerce survey, 30 percent of respondents stated they would support an increase in the minimum wage, while 60 percent reported they would not. Fifty-one percent (51%) of all respondents stated they would cut back on worker hours to adjust for a new wage. In addition, the Silicon Valley Council of Nonprofits survey found that 60 percent of respondents believe a minimum wage ordinance would improve the standard of living for the clients that they serve. At least 13 percent of nonprofit respondents in this survey worried that a minimum wage ordinance would cause hiring freezes and would lead to inflation that would erode the value of the new wage.

In 2012, during the City of San Jose minimum wage deliberations, a study was released by Beacon Economics on behalf of the California Restaurant Association, which advised that minimum wage ordinances have a large impact on the restaurant industry, where profit margins are generally slim. The report suggested that San Jose's minimum wage ordinance would lead to a loss of 900 to 3,100 jobs, and would cost San Jose employers \$88 million to \$96 million in increased wages and payroll expenses, which would be partially offset from increased spending by workers of \$26 million to \$28 million.

A subsequent report issued by the Institute for Research on Labor and Employment at the University of California, Berkeley, differed from the Beacon Economics findings. In contrast, Berkeley economists found that increasing the minimum wage would increase business operating costs by an "average of less than 2.5 percent," and would create cost savings due to lower employee turnover rates and higher worker productivity. Further, with more income, minimum wage workers would have more spending power and inject more money into the local economy, which would benefit both businesses through increased sales and the government through increased sales tax revenue. Finally, the report asserts that gainful employment of low-wage workers does not change after a minimum wage increase, and any negative outcomes typically affect teens, not adults.

Since the San Jose minimum wage increase took effect on January 1, 2014, the Institute for Research on Labor and Employment estimates that operating costs for restaurants rose by approximately 0.25 percent to 1.0 percent over the past year and prices for customers rose less than 1.0 percent on average. These cost increases coincided with a booming economy and increased consumer spending throughout Silicon Valley. Employers also reported experienced employees staying longer at their jobs. Overall, minimum wage ordinances may create tangible impacts to the business community and consumers. The magnitude of these impacts is difficult to assess and would likely vary by city.

## **Legal Framework of Ordinance**

As directed by Council, the framework of the proposed minimum wage ordinance follows the San Jose model. Because its ordinance was adopted by initiative, San Jose anticipates developing a companion set of administrative guidelines to assist in implementation and enforcement of the ordinance. The guidelines do not alter the text of the ordinance (as voter initiatives cannot be substantively altered) but rather would clarify its terms based on application of the ordinance to specific facts. The City of Mountain View has the option to insert additional terms to its minimum wage ordinance as it is not constrained by voter initiative established for San Jose's and, therefore, the draft ordinance includes terms clarifying exempt organizations such as State, Federal, and County agencies, as well as school districts because of sovereign immunity. Other than this item, and certain enforcement procedures discussed below, the draft ordinance is identical to San Jose's ordinance. The ordinance also authorizes the City to adopt administrative guidelines to retain flexibility in developing implementation and enforcement procedures and responding to specific instances.

As drafted, the ordinance requires covered employers who are either subject to the City's business license requirements or who maintain a business facility in the City to pay the minimum wage to covered employees. Covered employees are those who perform at least two (2) hours of work in a calendar week within the geographic boundaries of the City. Note that independent contractors are exempt from State minimum wage law and would similarly not be considered covered employees under the City's ordinance. The ordinance, as drafted, would become effective on July 1, 2015 to provide time to educate the community and allow employers to prepare for implementation of the ordinance. The City's minimum wage on July 1, 2015 would be San Jose's 2015 rate of \$10.30 per hour and would be adjusted by CPI annually thereafter on January 1 of each following year.

Other significant terms of the ordinance include that covered employers are required, in addition to the payment of the minimum wage, to:

- Post a notice at the workplace of the current and prospective minimum wage rates and the employees' rights under the local law;
- Maintain payroll records for a period of four years; and
- Provide the employer's name, address, and telephone number in writing to each employee at the time of hire.

The ordinance also prohibits retaliation or discrimination against any person seeking to enforce its terms. The enforcement provisions of the ordinance include the right for

employees to pursue a civil action to recover back wages and to seek reinstatement. The ordinance also authorizes the City to issue administrative citations and monetary fines, conduct administrative hearings, and seek injunctive relief against noncompliant employers.

### **Compliance and Enforcement**

If Mountain View adopts an ordinance substantially the same as San Jose's, compliance and enforcement under the ordinance could be a coordinated effort with the City of San Jose Office of Equality Assurance (OEA). Staff recommends that, at least initially, certain functions be performed by the OEA because: (1) the OEA has dedicated staff who are well-versed in the workings of the ordinance which would offer efficient enforcement for the City; and (2) through initial assistance from the OEA, the City will learn from San Jose's experience in administering the ordinance, with the possibility of eventually taking over full compliance and enforcement functions after the ordinance has been operational for a period of time in the City.

Prior to presenting the ordinance for Council's consideration, City staff met with OEA staff who indicated they are willing to contract with the City to handle early enforcement functions such as initial complaint intake and investigation, and informal resolution of complaints. This arrangement would be memorialized by contract between the City and OEA, with fees to be set as flat fee per task. The OEA has proposed a scope of services and a per-task rate schedule to the City. Based on the relatively low number of enforcement cases handled by San Jose to date, staff estimates the annual cost of OEA enforcement assistance to be low, not exceeding several thousand dollars annually. City of Sunnyvale staff has indicated that if a local minimum wage is adopted, staff will recommend that Sunnyvale contract with OEA to perform initial complaint intake and investigation and informal resolution of complaints.

For enforcement cases that are not resolved by the preliminary and informal processes performed by OEA, the City will conduct enforcement hearings in accordance with established administrative hearing procedures already contained in the City Code. Based on San Jose's experience to date, the staff resources needed for this are not expected to be significant, but that could change over time.

Adoption of an ordinance to increase the minimum wage City-wide is exempt from CEQA per Guidelines Section 15061(b)(3), because it can be seen with certainty that there is no possibility that the action may have a significant effect on the environment.

## **FISCAL IMPACT**

The adoption of a minimum wage ordinance is anticipated to have a minimal fiscal impact on the City in terms of both wages paid by the City and anticipated enforcement costs. The City currently pays the State minimum wage of \$9.00 per hour or above to all City employees. Approximately 14 hourly positions are paid at minimum wage. The State minimum wage will increase to \$10.00 per hour on January 1, 2016, and the City would similarly pay that wage rate if it does not adopt a minimum wage ordinance. In addition, all City contractors are also required to pay their employees the State minimum wage. If adopted, the City minimum wage would be \$10.30 per hour on July 1, 2015, adjusted annually thereafter by CPI increases on January 1 of each following year.

In terms of enforcement costs, the ordinance as drafted allows delegation of preliminary investigation and informal resolution tasks to the San Jose OEA, which staff recommends. The OEA has provided the City with a flat fee, per-task schedule which ranges from \$200 to \$1,000 per task based on complexity of work and size of employer being investigated. Based upon a relatively low volume of complaints received in San Jose since the adoption of its ordinance, the cost for this delegated work is estimated to not exceed several thousand dollars per year.

Once a complaint advances to the formal administrative hearing stage, the ordinance provides that the City will handle such procedures in accordance with already-established procedures in the City Code. The City sometimes employs an outside hearing officer to conduct such hearings pursuant to an hourly rate. The estimated cost for a hearing officer is approximately \$150 per hour and costs for hearings vary depending upon the complexity of the complaint. Based on the low number of complaints which reached the administrative hearing stage in San Jose, staff anticipates City costs for formal administrative hearing procedures to be nominal. The proposed ordinance would become effective July 1, 2015, concurrent with the City's fiscal year. Anticipated costs could be built into the Fiscal Year 2015-16 budget.

## **CONCLUSION**

As directed by Council, staff has prepared a draft ordinance based upon San Jose's ordinance which, if adopted, would set the minimum wage in the City of Mountain View at \$10.30 per hour effective July 1, 2015. Community input has been sought and information on other communities' ordinances is provided.

**ALTERNATIVES**

1. Council could opt to not adopt an ordinance establishing a City-wide minimum wage.
2. Council could adopt a City-wide minimum wage in an amount different than the City of San Jose.
3. Council could consider whether certain employers should be exempted from paying the minimum wage (such as small businesses and/or not-for-profit organizations).
4. Council could consider whether certain categories of employees should not be covered by the ordinance (such as teenagers).
5. Council could consider modifying the effective date of the ordinance (currently July 1, 2015).
6. Council could provide other direction.

**PUBLIC NOTICING**

Agenda posting. In addition, multiple forms of public noticing (City website, newspaper, social media, KMVT cable television, and communications to stakeholders) were used for the September 8, 2014 community input meeting as well as the October 9, 2014 Council meeting.

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- Attachments:
1. Ordinance Adding Chapter 42, Article II, to the Mountain View City Code to Require the Payment of a City-Wide Minimum Wage
  2. Cities Which Have or May Adopt Minimum Wage Ordinances
  3. Minimum Wage Survey Results