



City of Sunnyvale

Agenda Item-No Attachments (PDF)

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REPORT TO COUNCIL (REPUBLISHED 5/21/2014)

SUBJECT

Establish a City Advocacy Position on Minimum Wage, and Provide Further Input Regarding Creation of a Local Minimum Wage Ordinance, Including Enforcement and Implementation of Such Ordinance (Study Issue)

BACKGROUND

In June 2013, Council sponsored Study Issue OCM-14-01, *Consider Adopting a Local Minimum Wage Ordinance Modeled on the City of San Jose Initiative* (Attachment 1). At that time, the City Manager made no recommendation on the study issue paper. In the fall of 2013, Governor Jerry Brown signed legislation that would increase the state's minimum wage rate to \$9.00 per hour on July 1, 2014 and \$10.00 per hour on January 1, 2016. Staff updated the study issue paper to include information on the new California law and the City Manager updated the staff recommendation from *no recommendation* to *drop*, citing the new law as the basis for no longer needing a local ordinance. At the 2014 Study/Budget Issues Workshop, however, Council directed staff to study a local minimum wage ordinance similar to the one recently enacted in the City of San Jose that would adopt a \$10 per hour minimum wage with an annual adjustment tied to the Consumer Price Index (CPI). The City of San Jose's ordinance is presented as Attachment 6.

Staff has been researching and evaluating the requirements, including both programmatic and community consequences, for adopting a minimum wage ordinance similar to the initiative passed by San Jose voters in 2012. That initiative increased San Jose's minimum wage from \$8.00 per hour to \$10.00 per hour effective March 11, 2013. Beginning on January 1, 2014, the minimum wage was to be adjusted annually by the amount corresponding to the prior year's August Consumer Price Index (Urban Wage Earners and Clerical Workers, U.S. City Average for All Items) as published by the U.S. Department of Labor. Employers in Sunnyvale are governed by the state's minimum wage requirement, which is currently \$8.00 per hour, and which is set to increase to \$9.00 per hour on July 1, 2014 and \$10.00 per hour on January 1, 2016. In San Jose, the current minimum wage is \$10.15 per hour. The State's minimum wage law does not preempt local ordinances from requiring payment of a higher minimum wage.

Meanwhile, pending legislative efforts at both the state and federal level have presented opportunities to advocate for increased minimum wage rates that staff has been unable to respond to because the City has not adopted a policy position on minimum wage. This report presents a draft Legislative Advocacy Position for Council's consideration, which would enable City advocacy on this topic.

In addition, the report provides information about the typical provisions which make up local minimum wage ordinances, including the provisions in the City of San Jose's initiative that increased the minimum wage and included an annual cost of living adjustment tied to the CPI, and alternatives for

implementation and remedies/enforcement of the ordinance.

EXISTING POLICY

Council Policy 7.3.1 Legislative Management - Goals and Policies:

Policy 7.3B.3 Prepare and update ordinances to reflect current community issues and concerns in compliance with state and federal laws.

Policy 7.3B.4 Prepare and update the Legislative Advocacy Positions as the shorter-term policies that support the General Plan and guide Council and staff on intergovernmental matters.

ENVIRONMENTAL REVIEW

N/A

DISCUSSION

A. City Advocacy Position

There are several key pieces of minimum wage-related legislation making their way through the Congress and the California Legislature. Senate Bill 935 (Leno) may address Council's intent regarding raising the minimum wage and tying annual increases to the CPI. However, the City does not have a policy position allowing advocacy regarding minimum wage increases at the state or federal level. To support this issue at the state and federal level, a new long-term advocacy position such as the following would need to be adopted by Council:

"Supporting the quality of life in Sunnyvale, the City would support legislation to increase the current minimum wage or tie future increases to Consumer Price Index (CPI) or the rate of inflation."

Adoption of such a policy would allow staff to advocate for minimum wage increases at the state and federal level in a timely manner.

B. Local Minimum Wage Ordinance

Since Council's ranking of Study Issue OCM 14-01, staff has evaluated the efforts of other cities on the topic of minimum wage increases and local ordinances, and researched current and pending legislation at the state and federal level. In addition, staff performed outreach in the community via an online survey and targeted industry outreach meetings with business owners, business representatives and business groups, including the Sunnyvale Chamber of Commerce and California Restaurant Association, and nonprofit representatives including the Sunnyvale Community Services Board.

There appears to be a growing concern that the current state minimum wage does not acknowledge the high cost of living in California and in particular the Bay Area. The cities of San Francisco and San Jose have already enacted local minimum wage laws, and a number of other Bay Area cities are in the process of considering them. Some cities are having discussions about the viability of a *regional* minimum wage for a geographic area, such as a county. Additionally, both the federal and state legislatures are considering amending their minimum wage laws. Below is a table showing some of the efforts currently underway:

Jurisdiction	Proposal per hour	Tied to CPI/Inflation	Status/Exemptions
US Congress, <i>Minimum Wage Fairness Act</i>	\$10.10	Yes; tied to Inflation	Failed to garner support from the Senate, but several additional bills are pending. The minimum wage issue continues to be an actively discussed topic at the Federal level.
California Legislature, SB 935 (Leno)	1/1/15 \$11.00 1/1/16 \$12.00 1/1/17 \$13.00	Yes; tied to Inflation beginning January 2018	Suspense file (used by Appropriations Committees in both houses of the legislature to temporarily hold bills with \$150,000 or more of expenditures).
Berkeley	7/1/14 \$9.00 (same as state) 1/1/15 \$10.00 1/1/16 \$10.75	No	Second Reading of the ordinance to be on 5/20/14. The Council also established a task force to work with businesses on additional increases. Task force would explore creating a "regional minimum wage" with Oakland and other East Bay cities. Some exemptions, but "direct tipped" employees included in the ordinance.
Richmond	1/1/15 \$9.60 1/1/16 \$11.52 1/1/17 \$12.30	Yes; tied to CPI beginning January 2018	Council directed staff to draft an ordinance with several exemptions, including, but not limited to: 1. People less than 18 years of age 2. Businesses with fewer than 10 employees 3. Employees that are regularly tipped
Mountain View	Nothing formally proposed	Nothing formally proposed	Community activists asking council to consider a ballot initiative or adopt ordinance to raise minimum wage to \$15 per hour.

In addition to the efforts under way in Richmond, Berkeley, and Mountain View, similar initiatives are also being considered in Los Angeles, Oakland, and San Diego. In all of these jurisdictions, councils are being lobbied to join San Francisco and San Jose in setting a minimum wage higher than state law and, in some cases, to include an automatic annual increase linked to the CPI.

Community Outreach

A survey was created and promoted via Facebook, Twitter, and direct emails, resulting in about 460 participants providing input (Attachment 2). Approximately 65 percent of survey respondents were

Sunnyvale residents, 23 percent were business owners, and the remaining 12 percent choosing either employee or “other”. About 78 percent of residents support an increase to \$10.00 per hour prior to the state’s increase in January 2016, and about 74 percent support linking the increase to the CPI. Business owners’ responses were split nearly down the middle with 53 percent opposing an increase to the minimum wage (47 percent in support) and 51 percent opposing linking future increases to the CPI (49 percent in support).

The nonprofits unanimously support a minimum wage increase and support linking future increases to the CPI (Attachment 5). Sunnyvale Community Services Board of Directors, an emergency assistance provider, voted unanimously to support a minimum wage increase and tying future increases to the CPI. The main reason for the support is due to the high cost of living in Sunnyvale. These organizations are seeing more clients unable to pay for basic necessities such as housing and food.

Points for Council Consideration

1. Typical Provisions of a Local Ordinance

The San Jose local minimum wage law adopts a local minimum wage which adjusts automatically each year based on any increase to the CPI. It requires employers to pay its minimum wage for each hour worked within the geographic boundaries of the City. It defines “Employer” as any person, including corporate officers or executives, as defined in Section 18 of the California Labor Code, who directly or indirectly through any other person, including through the services of a temporary employment agency, staffing agency or similar entity, employs or exercises control over the wages, hour or working conditions of any Employee and who is either subject to the Business License Tax Chapter of the Municipal Code or maintain a facility in the City.” The ordinance set the original minimum wage at \$10.00 per hour; under the adjustment formula, on January 1, 2014, San Jose increased its minimum wage to \$10.15 per hour.

Staff has met with business owners and groups, the Sunnyvale Chamber of Commerce, and nonprofit organizations to discuss the study issue. A survey was also conducted to gather additional input from the community at large. Based on the feedback from these groups, below are additional provisions for Council consideration, including potential exemptions for specific working groups and the intervals at which adjustments to the minimum are applied.

Increases to CPI or Inflation.

Some businesses are supportive of increasing the City’s minimum wage to \$10.00 prior to the state’s mandated \$10.00 per hour on January 1, 2016. However, the majority of businesses, including the Chamber of Commerce and California Restaurant Association, are opposed to linking any future increases to the CPI. Business owners representing sectors such as restaurants, hotels, small retail businesses, stated that they currently pay more than the State’s minimum wage. However, most of the impacted businesses say that linking the minimum wage to the CPI would change the minimum wage every year and would be costly and inconvenient as they will not be able to accurately predict annual budgets.

Intervals at which adjustments to the minimum wage would be considered.

As an alternative to an annual increase that ties to CPI, the Sunnyvale Chamber of Commerce is proposing that Council consider a fixed minimum wage with reviews every

three years and adjustments to a predictable and fixed amount (Attachment 3). The logic behind the proposal is that if the CPI increases by two percent on year one, four percent on year two, and three percent on year three, when Council reviews the minimum wage issue in year three, the increase could be up to nine percent.

Potential exemptions for specified working groups or categories of people.

Directly-Tipped Employees: The California Restaurant Association strongly opposes any minimum wage increase (Attachment 4) due to the industry's low profit margins and their assertion that tipped employees would profit the most from a minimum wage increase. Restaurant owners repeatedly stated that minimum wage should not apply to *directly-tipped* employees because they have higher compensation when tips are taken into account, and because more base pay for tipped workers would mean less funding would be available for non-tipped employees. At the state level, California Labor Code 351 precludes crediting tips against wages to meet a minimum wage requirement. San Jose's ordinance (Attachment 6) does not exclude any *directly-tipped* employees from the minimum wage requirement.

Additional Exemptions Being Considered by Other Cities: Other cities, including Berkeley and Richmond, are considering exempting businesses with less than a certain number of employees, persons less than 18 years of age, and directly-tipped employees.

2. Implementation and Enforcement

San Jose and San Francisco's minimum wage ordinances were mandated by voter initiatives. San Francisco voters approved their minimum wage ordinance in 2003. San Francisco's program is enforced by its Labor Standards Enforcement, which also enforces Healthy San Francisco (a healthcare ordinance) and its Paid Sick Leave requirement. The San Jose Minimum Wage Initiative was approved by voters in November 2012 and took effect March 2013. San Jose's program enforcement is managed by the city's Office of Equality Assurance, which also manages the city's Living Wage and Prevailing Wage programs. The City of San Jose has two full-time positions assigned to enforcement of their program - a division manager and a contract compliance specialist. The City of San Jose's ordinance identifies two means of enforcement or remedy, including administrative action by the city's Office of Equality Assurance (OEA) and/or a private enforcement action through the courts by the person aggrieved by the violation.

The San Jose minimum wage ordinance basically creates a minimum wage program. In order for the City to implement an ordinance modeled after the one adopted in the City of San Jose, the following activities would be required.

Implementation:

- Provide outreach and education to affected businesses and employees about their rights and responsibilities, which would include creation and distribution of educational materials with annual updates.
- Develop any guidelines required to implement the program.
- Answer questions about the ordinance.

Administrative Enforcement:

- Accept complaints.
- Investigate complaints made regarding compliance, which include interviewing employees, requesting and reviewing documentation, and possible subpoenas.
- Negotiate informal resolutions of complaints.
- Issue administrative citations for noncompliance.
- Provide appeals with the hearing office for administrative citations.
- Collect and track administrative citations.

Unlike San Jose and San Francisco, Sunnyvale does not have infrastructure in place nor staff expertise to manage a minimum wage program. Currently, persons employed within the City rely on the State's Department of Industrial Relations to enforce any wage issues between an employee and their employer. Enforcement of a minimum wage ordinance program for the City is not currently considered a core service. Development of such a program would take time and resources. Staff estimates that up to six months and approximately 900 staff hours may be needed to fully develop an implementation and enforcement program based on adoption of a minimum wage ordinance. The amount of hours may increase or decrease depending on any exemptions and the intervals on which increases are made.

It may be possible to contract out enforcement actions with another local agency that already has resources dedicated to enforce such an ordinance. Should Council choose to explore this option, staff would return with language presenting enforcement options for Council consideration. Additionally, Council could consider an ordinance that adopted a local minimum wage that did not include administrative enforcement provisions and provided only a private enforcement mechanism. Under that scenario, an aggrieved person would file an enforcement action directly with the courts rather than through a complaint with the City.

FISCAL IMPACT

There is no immediate fiscal impact to Council's adopting an advocacy position or providing direction on the specific provisions it would want in a local ordinance. At a minimum, to implement a City minimum wage ordinance with City enforcement may require approximately 900 hours of staff time to conduct outreach and update employee/employer notifications and guidelines; the estimated cost for promotional and outreach materials would be approximately \$10,000 per year. Specific costs for the various provisions of a potential ordinance as presented in this report could vary and would be presented to Council in a follow-up report.

PUBLIC CONTACT

Public contact was made by posting the Council agenda on the City's official-notice bulletin board outside City Hall, at the Sunnyvale Senior Center, Community Center and Department of Public Safety; and by making the agenda and report available at the Sunnyvale Public Library, the Office of the City Clerk and on the City's website. Staff also notified interested parties and those that submitted comments and/or attended the outreach meetings.

As previously mentioned, staff conducted a community survey regarding the issue; survey results are presented as Attachment 2. Additional letters received on this matter are presented as Attachments 3, 4, and 5

ALTERNATIVES

1. Advocacy Position:
 - a. Adopt a new long-term advocacy position as presented: *Supporting the quality of life in Sunnyvale, the City would support legislation to increase the current minimum wage or tie future increases to Consumer Price Index (CPI) or the rate of inflation.*
 - b. Adopt a modified long-term advocacy position.
 - c. Do not adopt a City advocacy position on this subject.
2. Direct staff to Create a Minimum Wage Ordinance:
 - a. Automatic Future Increases.
 - i. Annual increases tied to CPI.
 - ii. Increases every three years tied to CPI.
 - iii. Other interval as directed by Council.
 - iv. Do not tie future increases of the minimum wage to CPI.
 - b. Potential exemptions for specified working groups or categories of people.
 - i. Exempt *directly-tipped* employees.
 - ii. Exempt businesses with less than a certain number of employees, as specified by Council.
 - iii. Exempt persons within age ranges as specified by Council.
 - iv. Exempt public agencies and/or nonprofits.
 - v. Other exemptions as directed by Council.
 - vi. Do not provide any exemptions.
 - c. Enforcement options:
 - i. Direct staff to explore options for in-house City enforcement of the ordinance and return to Council with their findings.
 - ii. Direct staff to explore options for contract enforcement of the ordinance and return to Council with findings.
 - iii. Other action as directed by Council.
 - iv. Introduce an Ordinance with no City enforcement and only a Private Right of Action.
3. Do not move forward with a minimum wage ordinance.
4. Other action as directed by Council.

RECOMMENDATION

Staff makes no recommendation on Alternatives 1 (City advocacy position) or 2 (whether or not City should adopt a minimum wage ordinance). However, should Council pursue an ordinance, staff recommends that Council provide guidance addressing each of the Alternative categories - *Automatic Future Increases*, *Potential Exemptions*, and *Enforcement Options*. More specifically with regard to *Enforcement Options*, should Council pursue an ordinance with City enforcement, staff recommends Council move both Alternatives 2c(i) and 2c(ii) to ensure staff returns with a comprehensive list of options.

The costs and effort required for either of those options could vary significantly. An in-house program, for example, would require development from the ground up as currently the City has no supportive infrastructure in place. The cost of a contracted enforcement service might be less; however there may be additional inconveniences to the aggrieved parties in traveling to another city to file a complaint. Exploring both options would benefit Council by resulting in a more comprehensive list of options.

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ATTACHMENTS

1. Study Issue OCM-14-01
2. Minimum Wage Increase Survey Results
3. Sunnyvale Chamber of Commerce Letter
4. California Restaurant Association Letter
5. Silicon Valley Council of Nonprofits Letter
6. City of San Jose Minimum Wage Ordinance