



## Legislation Text

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Report regarding a study session exploring the potential adoption of an ordinance increasing the minimum wage citywide to \$15 per hour. (*Christina Fernandez, Assistant to the City Manager*)

### **RECOMMENDATION**

**It is recommended that the Council provide direction and guidance in order to adopt an ordinance relating to a citywide minimum wage ordinance.**

### **BACKGROUND/DISCUSSION**

Currently the State's minimum wage is \$12.00 per hour. At a Special City Council meeting on April 9, 2019, City Council directed staff to increase the minimum wage to \$15 per hour for all city employees effective July 1, 2019. This was accomplished through the FY 2019-2020 City Budget, passed by City Council on June 26, 2019. In addition, council directed staff to explore the increase of the minimum wage to \$15 per hour for all businesses citywide with a targeted effective date of January 1, 2020.

### ***State Law***

In April 2016, then Governor Jerry Brown signed into law Senate Bill 3 which increased the state's minimum wage to \$15 per hour for all employers with greater than 26 employees by January 1, 2022 (January 1, 2023 for employers with 25 or fewer employees). Thereafter, the minimum wage will be adjusted annually based on the National Consumer Price Index (CPI-W). The minimum wage schedule for the State of California is attached (Attachment 1).

In addition to California state law, several California cities have passed minimum wage ordinances that have moved ahead of the state's timeframe of 2023.

### ***Minimum Wage Policies in Other Jurisdictions***

In San Mateo County, the cities of San Mateo, Belmont, and Redwood City have adopted Minimum Wage Ordinances. Outside of San Mateo County, San Francisco and several Santa Clara County cities have adopted higher minimum wage standards.

On August 16, 2016, the City of San Mateo became the first city in San Mateo County to adopt a Minimum Wage Ordinance requiring annual increases in the Minimum Wage to be paid within the City boundaries, beyond the state minimum wage requirement. The ordinance requires employers who are subject to the City of San Mateo's Business License Tax or who maintain a facility in the City of San Mateo to pay each employee who performs at least two hours of work in the City of San Mateo, minimum wages not less than \$15 per hour. Both minors and adult employees are subject to this ordinance and tips are not included. Covered employees are entitled to these rights regardless of immigration status. The minimum wage will be adjusted annually beginning on January 1 of each year according to the schedule adopted by the San Mateo City Council. Enforcement of the City of San Mateo's minimum wage is provided by the City of San José's Equality Assurance department as a complaint based system. The City of San Mateo contracts with the City of San

José's Equality Assurance department and the rates vary depending on the number of cases.

Non-profit organizations that are tax exempt per Section 501(c)3 of the tax code must pay their employees no less than \$13.50 per hour. The City of San Mateo took a phased-in approach to the hourly minimum wage rates for 501(c)3 employers:

- January 2017 = \$10.00
- January 2018 = \$10.50
- January 2019 = \$12.50
- January 2020 = \$15.00
- January 2021 = \$15.00 + CPI

For all other businesses citywide, the following schedule applies:

- January 2017 = \$12.50
- January 2018 = \$15.00
- January 2019 = \$15.00
- January 2020 = \$15.00
- January 2021 = \$15.00 + CPI

The City of San Mateo's minimum wage reached \$15 for all employees, except 501(c)3 nonprofit employees, who have a minimum wage of \$13.50. Since implementation, staff have received feedback from business owners about the impact of the wages on their business. In order to comply with the policy, several San Mateo restaurants added a 3% wage fee on checks to cover the increased labor costs, reduced hours of operations, and condensed employee hours in order to remain profitable. All of these businesses have remained in business. Restaurant owners have voiced that the minimum wage is unnecessary because businesses pay \$15 or more in order to be competitive for talent in a tight labor market. Tipped workers are often paid several times higher than the minimum wage due to tips. Restaurant owners have also reported that the minimum wage policy compromises their ability to provide raises to untipped staff in the kitchen and makes it difficult to compete with restaurants in the surrounding cities without a minimum wage policy.

#### City of Daly City

On January 14, 2019, the Daly City Council adopted the Daly City Minimum Wage Ordinance that increases the minimum wage to \$15 by 2021. The local minimum wage will increase at a faster pace than the state's minimum wage schedule. The ordinance applies to all businesses and employees that perform at least two hours of work within the City of Daly City.

Daly City's Minimum Wage schedule is as follows:

- February 13, 2019 = \$12.00 per hour
- January 1, 2020 = \$13.75 per hour
- January 1, 2021 = \$15.00 per hour
- January 1, 2022 and thereafter = Adjusted annually based on the regional Consumer Price Index

Daly City employers may not include tips, or fringe benefits such as health insurance, vacation, sick leave, or other benefits to offset or use as a credit towards the employer's obligation to pay the City's minimum wage.

Employees are protected from retaliation and may file a civil lawsuit against any employers for any violation of

the ordinance or may file a complaint with the City of Daly City. The City of Daly City will investigate possible violations and require access to payroll records. Remedies include reinstatement, the payment of back wages unlawfully withheld, and payment of a civil penalty of \$40 for each day the employer was in violation. Employers must also retain employee records specifying their name, hours worked, and pay rate.

#### City of Redwood City

In April 2018, the City of Redwood City passed a new minimum wage ordinance increasing the wage to \$15 per hour faster than the requirements under state law. Starting on January 1, 2019, Redwood City's minimum wage increased to \$13.50 per hour and applies to all businesses within the geographic boundaries of Redwood City for any employee who works at least two or more hours per week.

Redwood City's Minimum Wage schedule is as follows:

- January 1, 2019 = \$13.50 per hour
- January 1, 2020 = \$15 per hour + CPI
- After 2020 = Adjusted annually based on the regional Consumer Price Index

An employee classified as a "learner" as defined by the California Industrial Welfare Commission Order No. 4-2001 is to be paid no less than 85% of the applicable Minimum Wage for the first 160 hours of employment. Thereafter, the applicable Minimum Wage applies.

Fringe benefits such as vacation, health insurance, and paid leave does not offset the employer's obligation to pay the City's minimum wage. In addition, tips and gratuities do not count towards hourly wages. The minimum wage applies to all businesses located in the City of Redwood City regardless of size.

The City of Redwood City contracts with the City of San José's Office of Equality Assurance to provide enforcement for the Minimum Wage Ordinance. However, the City may conduct investigations and request the City Attorney to subpoena books, papers, and other records. Redwood City highly encourages its businesses to keep records for three years of each employee.

Penalties may include:

- An administrative citation of \$50 for each day and for each employee to whom the violation occurred
- The City may issue an administrative compliance order
- The City may initiate civil action for injunctive relief
- Reimbursement of the City's administrative costs of enforcement and reasonable attorney's fees
- The City may revoke or suspend registration certificates, permits or licenses

#### City of Belmont

On November 14, 2017, the Belmont City Council adopted a Minimum Wage Ordinance increasing the minimum wage to \$15.00 per hour by 2020.

Beginning January 1, 2019, all employers who perform at least 2 hours of work per week within the City of Belmont must pay those employees minimum wages of not less than \$13.50 per hour. The minimum wage requirement applies to adult and minor employees who perform two or more hours per week. Tips and gratuities do not count as credit towards the minimum wage. Beginning January 1, 2021, and annually thereafter, the Belmont minimum wage will be adjusted on the Regional Consumer Price Index.

Belmont's Minimum Wage schedule is as follows:

- July 1, 2018 = \$12.50
- January 1, 2019 = \$13.50
- January 1, 2020 = \$15.00
- January 1, 2021 = \$15.90
- January 1, 2022 and each following year = Regional CPI Increase, up to 3.5%

The City of Belmont contracts with the City of San José's Office of Equality Assurance to provide enforcement. In addition, employees may file a civil lawsuit against their employers for any violation of the ordinance or may file a complaint with the City of Belmont. The City may investigate and require access to payroll records. The City will enforce violations of the minimum wage ordinance by ordering reinstatement of employees and payment of back wages unlawfully withheld.

### ***Business Town Hall Meetings***

The City Manager's office, in coordination with the Economic and Community Development Department, hosted a series of four Business Town Hall meetings on July 17, 2019, June 24, 2019, June 27, 2019 and June 28, 2019. Two meetings were held in the morning and two in the evening.

The City advertised the town hall meetings through mailers sent to every business license holder citywide. Approximately 6,000 mailers were sent via U.S. Postal Mail to every business license address. Please see *Attachment 2* for a copy of the mailer. In addition, the non-profit organization Gatepath personally handed out mailers to every business along Grand Avenue and Linden Avenue.

Further, the City advertised the business town hall meetings on social media platforms including the City's Facebook page, the Economic and Community Development Facebook page, NextDoor and the City's Website Calendar of Events. The Economic and Community Development department and the City Manager's office also provided e-blasts to their distribution lists. Lastly, the city also called businesses along Grand Avenue to inform them of the business town hall meeting dates.

Representatives from the hotel, restaurant, tobacco retail, and grocer industries participated in the Business Town Hall meetings. However, despite the above named outreach efforts, fewer than 20 businesses cumulatively participated.

### ***The City of South San Francisco - Proposed Minimum Wage Ordinance***

The proposed minimum wage ordinance increases the city's minimum wage to \$15.00 per hour effective January 1, 2020 for all employees who perform at least two hours of work per week within the geographic boundaries of the city. Beginning on January 1, 2021, and each January thereafter, the minimum wage will increase by a percentage amount equal to the prior year's increase, if any, in the Consumer Price Index (CPI) for San Francisco-Oakland-San José's as determined by the Department of Labor.

The City will publish and make available to employers a bulletin announcing the adjusted minimum wage rate to take effect January 1 of the following year. In conjunction with the bulletin, the City will by November 1 of each year make available to employers a notice suitable for posting by employers in the workplace informing employers of the current minimum wage rate and of their rights.

The employer will also give written notification to each employee of his or her rights under this ordinance. The

City is authorized to prepare and make available to employers in the top three languages spoken by residents of the City per the U.S. Census Data a notice suitable for posting in the workplace.

The City's ordinance will not count tips or gratuities as part of the minimum wage for employees. California law prohibits an employer from using an employee's tips and gratuities as a credit toward its obligation to pay the minimum wage.

The City's ordinance will apply to all businesses regardless of size and type of business. While there is not a special exemption made for employees under the age of 18, per California State Law (California Industrial Welfare Commission Order No. 4-2001), an employee who is defined as a "learner" shall be paid no less than 85% of the applicable Minimum Wage for the first 160 hour of employment. Thereafter, the learner shall be paid the applicable minimum wage.

The City of South San Francisco may contract with the City of San José's Office of Equality Assurance to conduct initial investigations of complaints, resolve complaints, and provide restitution of wages to employees. Cases where the employer refuses to pay wage restitution are to be administered by the City under an existing administrative enforcement provision set forth in Chapter 1.24.

The City may take any enforcement action set forth in Chapter 1.24 of the Municipal Code to address violations. An employee may also bring an action against the employer in court to enforce the Minimum Wage Ordinance seeking remedies such as back pay, reinstatement, injunctive relief, or civil penalties. In addition, to back wages unlawfully withheld payment of an additional civil penalty in the amount of \$50 to each employee per day in violation.

### ***Business Feedback***

#### Restaurants

Small, independent restaurants oppose raising the minimum wage. Restaurants assert they pay well above the proposed \$15.00 per hour to their "back of the house" employees due to difficulties filling those positions. Servers paid the state minimum wage of \$12 per hour are receiving much more in wages due to tips. Anecdotally, one restaurant estimated their servers earn up to \$40 per hour with tips.

Independently owned restaurants and hotels state that the minimum wage will have a greater impact on small and medium sized businesses as larger businesses may more easily absorb an increase in wages.

The California Restaurant Association points to the City of Redwood City as an example of unintended consequences. The California Restaurant Association asserts that their members had to cut labor hours, reduce operating hours, remove menu items, and delay expanding their businesses. In addition, many businesses began to explore electronic ordering.

As a result, the California Restaurant Association proposed a shared cost compensation model to "even the playing field" between tipped and non-tipped employees. The city's attorneys have reviewed the notion of crediting tips as a portion of wages and found that California law prohibits an employer from using an employee's tips and gratuities as a credit toward its obligation to pay the minimum wage.

#### Grocers

The grocery industry employs part time employees under the age of 18. A cashier must be 18 years or older in

order to sell alcohol, therefore the positions minors currently hold include tasks such as cleaning, bagging, or cart returners. If a \$15 minimum wage is implemented, then the grocer will terminate those positions held by minors in order to hire a cashier at \$15 per hour. Other benefits such as a 401K and yearly raises may no longer be offered to full time, long term employees. The grocer would like to see a slower ramp up period aligned with the state mandate. In addition, the grocer would like to provide a provision for “learners” in order to be able to employ those with little or no experience.

### Hotels

Hotel owners assert that a \$1 increase is really much more when a business accounts for benefits such as worker’s compensation and health care. For those employees without employer-based health care, many are refusing to work more hours for fear of losing their Medi-Cal benefits. In addition, many businesses are losing their employees to the “gig” economy.

Additionally, they assert housing as the root of all of these problems. Rising rents are causing the talent pool to shrink. Many owners are now filling vacancies themselves because they cannot fill positions. Businesses believe raising the minimum wage will exacerbate this problem by leading to higher living costs.

The proposed effective date of January 1, 2020 is reported as too soon for all businesses. Businesses would prefer a more phased in approach similar to the City of San Mateo. More incremental increases over a longer ramp up period was favored among businesses.

### *A Note about Tips and Gratuities*

California Labor Code section 351 prohibits employers from keeping any portion of a gratuity left for employees by a patron. Instead, state law requires employees to receive the minimum wage and any tips or gratuities left from them by business patrons. The law further states that gratuities are the “sole property” of the employee or employees to whom they are given. It is illegal for employers to make wage deductions from gratuities as direct or indirect credits against an employee’s wages. Additionally, if patrons pay gratuity without deducting any credit card payment processing fees or costs that may be charged to the employer by the credit card company. Gratuity payments made by credit cards must be paid to the employees by the next regular payday.

If employers include tips or gratuities as part of the minimum wage, employees may file a wage claim with the Division of Labor Standards Enforcement (the Labor Commissioner’s Office) or they may file a lawsuit against their employers to recover the lost wages.

### *Competing Minimum Wage Ordinances*

City of South San Francisco employers are subject to Federal, State, and the City of South San Francisco minimum wage laws. When there are conflicts in the laws, the employer must follow the strictest standard, meaning the employers must follow the standard that is the most favorable to the employee. Since the City of South San Francisco ordinance is higher than federal and state law, covered employers are required to pay the City’s minimum wage.

Staff Recommendation

It is recommended that the Council provide further direction and guidance in adopting an ordinance relating to a citywide minimum wage ordinance.

Per Council direction at a Special City Council Meeting in April 2019, staff recommends introducing an ordinance effective January 1, 2020. Employers who are subject to the City of South San Francisco Business License or who maintain a facility in the City of South San Francisco must pay each employee who performs at least two hours of work per week in the City of South San Francisco, minimum wages not less than \$15.00 per hour. Thereafter, the minimum wage will be adjusted annually based on the National Consumer Price Index (CPI-W).

Per California State Law (California Industrial Welfare Commission Order No. 4-2001), an employee who is defined as a “learner” shall be paid no less than 85% of the applicable Minimum Wage for the first 160 hour of employment. Thereafter, the learner shall be paid the applicable minimum wage.

FISCAL IMPACT

The estimated financial impact to the City of South San Francisco is \$20,000 per year, which includes \$10,000 for the printing and mailing of minimum wage collateral and an estimated \$10,000 to use the Office of Equality Assurance as an investigative and enforcement agency.

RELATIONSHIP TO STRATEGIC PLAN

Implementation of a Minimum Wage Ordinance citywide meets strategic plan initiative of providing a high quality of life.

CONCLUSION

**It is recommended that the Council provide direction and guidance relating to a citywide minimum wage ordinance.**

Attachments:

1. Matrix of Minimum Wage Ordinances
2. Business Town Hall Mailer
3. Minimum Wage PowerPoint Presentation