



# City of Sunnyvale

## Agenda Item

14-0694

Agenda Date: 10/14/2014

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### REPORT TO COUNCIL

#### SUBJECT

Introduce an Ordinance to Add Chapter 3.70 (Minimum Wage) to Title 3 of the Sunnyvale Municipal Code to Require the Payment of a Citywide Minimum Wage; Find that the proposed ordinance is exempt from the California Environmental Quality Act (CEQA) under CEQA Guideline Section 15061 (b)(3); and Approve Budget Modification No.16.

#### BACKGROUND

Currently, most Sunnyvale employers are governed by the State's minimum wage requirement, which is \$9.00 per hour and is set to increase to \$10.00 per hour on January 1, 2016. In San Jose, the current minimum wage is \$10.15 per hour and may increase on January 1, 2015, based on this year's increase in the Consumer Price Index (CPI).

At the May 20, 2014 City Council meeting, Council took three actions related to Study Issue OCM 14-01:

1. Adopted a long-term advocacy position supporting legislation to increase minimum wage and tie future increases to the CPI.
2. Directed staff to return to Council with a minimum wage ordinance (modeled after the City of San Jose's Minimum Wage Ordinance) with no exemptions for specific groups of employees and with annual increases tied to CPI.
3. Directed staff to explore options for contract and in-house enforcement of the ordinance and to return to Council with findings.

Staff has continued to monitor state legislation regarding minimum wage increases and submitted a support letter for SB 935 (De Leon), which proposes to increase the minimum wage over a three year period, and then provide for annual automatic adjustments based on the CPI. SB 935 did not garner enough votes to pass the Assembly Labor and Employment Committee, and will not be heard again this year.

Similar to the San Jose ordinance, the City of Sunnyvale's proposed ordinance (Attachment 1) adopts a local minimum wage which adjusts automatically each year based on any increase in the CPI. The ordinance requires Sunnyvale employers to pay a minimum wage of \$10.30 per hour starting January 1, 2015, for each hour worked within the geographic boundaries of the City of Sunnyvale. 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, hours or working conditions of any employee.

In accordance with Council direction provided to staff on May 20, 2014, the proposed ordinance creates a minimum wage program for the City of Sunnyvale. In order for the City to implement and

administer the proposed ordinance the following is required:

- Adoption of the ordinance by City Council
- Outreach and education for employers and employees
- Informational materials regarding new ordinance
- Clear and concise program guidelines
- Investigation of complaints
- Complaint resolution

### **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.

#### **Council 5.0 *Long-term Advocacy Positions - Socio-Economic:***

**Policy 5.2.3** 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 inflation.

### **ENVIRONMENTAL REVIEW**

Adoption of the proposed ordinance is exempt from the requirements of CEQA in that it is not a project which has the potential for causing a significant effect on the environment. (CEQA Guidelines Section 15061(b)(3).)

### **DISCUSSION**

#### **Proposed Ordinance**

The proposed ordinance creates Chapter 3.70 (Minimum Wage) of Title 3 of the Sunnyvale Municipal Code and requires employers, including the City, to pay a citywide minimum wage to all employees employed within the boundaries of the City of Sunnyvale. The provisions of the proposed ordinance include, but are not limited to:

- A minimum of \$10.30 per hour be paid by employers beginning January 1, 2015
- An adjustment to the minimum wage, every year on January 1, based on the prior year's CPI
- Employers' adherence to the higher minimum wage in the City of Sunnyvale even though the minimum wage rate is higher than the state and federal requirements

While the text of the proposed ordinance is very similar to the one adopted by the City of San Jose, Sunnyvale's ordinance also incorporates state provisions which are contained in San Jose's administrative regulations rather than the ordinance. For instance, state law allows offsets for meals and housing costs if there is a prior voluntary agreement between employee and employer; San Jose also allows the offset, but it is contained in the administrative regulations rather than the ordinance. For convenience to both employers and employees, Sunnyvale proposes to include substantive requirements in the ordinance itself, rather than in administrative regulations.

#### ***Implementation and Enforcement Options***

As per Council direction, staff explored options for in-house and contract enforcement of the proposed ordinance. The enforcement model of the proposed ordinance is complaint-driven. There are two major phases needed for the implementation and enforcement of a minimum wage ordinance:

1. Outreach & Education-actions include, but are not limited to:
  - a. Developing administrative guidelines for program implementation
  - b. Distributing materials regarding the ordinance to employers and employees
  - c. Creating a set of FAQs to respond to inquiries
  - d. Partnering with business associations to distribute information to employers and employees
  - e. Staff training
  - f. Translating documents into different languages as prescribed in ordinance
  - g. Updating information on annual basis
  
2. Administration & Enforcement-actions include, but are not limited to:
  - a. Informal resolution
    - i. Conducting investigations
    - ii. Informal resolution of complaints
    - iii. Receiving and distributing restitution checks for affected employees
  - b. Administrative Citation
    - i. Issuing administrative citations for non-compliance
    - ii. Implementing a process for due process hearings, including defending court appeals
    - iii. Pursuing civil action or other remedies if an employer does not respond to administrative citations
    - iv. Receiving and distributing restitution checks for affected employees

Staff explored the pros and cons of both options for the two phases needed to implement the ordinance. Below is a table outlining staff’s findings:

In-House Enforcement	Pros	Cons
<b>Outreach &amp; Education</b>	Familiarity with constituents	New program - lack of staff expertise
	Businesses familiar with staff	No enforcement infrastructure in place
	Aware of City’s outreach requirements	
<b>Administration &amp; Enforcement</b>		Higher cost due to lack of staff expertise
		Small number of anticipated complaints does not justify ongoing staffing costs
		No infrastructure in place to manage program
		Need to create program from scratch

<b>Contract Enforcement</b>	<b>Pros</b>	<b>Cons</b>
<b>Outreach &amp; Education</b>	Familiarity with ordinance	Not familiar with constituents
		Businesses unfamiliar with staff
		Not familiar with City of Sunnyvale's outreach requirements
<b>Administration &amp; Enforcement</b>	Lower cost due to staff expertise and by leveraging existing staff resources already dedicated to this effort in San Jose	Not familiar with constituents
	Fully developed program in place	Employees having to go through another city for enforcement
	Staff familiar with Ordinance	

The City of 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. Administration and enforcement of a minimum wage program for the City of Sunnyvale is not currently considered a core service. At a minimum, to implement a City of Sunnyvale minimum wage ordinance with City enforcement may require approximately 900 hours of staff time to conduct enforcement, outreach and update employee/employer notifications and guidelines.

Staff has explored both options and plans initially to pursue a hybrid model. Under the hybrid model, the City of Sunnyvale will complete the Outreach and Education phase in-house and contract with the City of San Jose for the Administration & Enforcement- Informal Resolution part of phase two. The City of Sunnyvale will coordinate with San Jose staff, but will have primary responsibility for the Administration & Enforcement-Administrative Citation part of phase two. This operational strategy is based on the fact that preliminary discussions with the City of San Jose suggest that contracting with San Jose will be more cost-effective than providing these services in-house. It also recognizes existing City resources: Sunnyvale is staffed to perform outreach and education functions, but lacks the expertise and resources to execute day-to-day enforcement functions. Given this type of program is new to the City of Sunnyvale and there is no existing City department that administers a similar program, the hybrid model will allow Sunnyvale staff time to become familiar with the program and determine whether other operational strategies should be pursued. The City already has provisions in the Sunnyvale Municipal Code for the issuance of administrative citations and staff will coordinate with the Office of the City Attorney to implement those administrative procedures when necessary.

### **FISCAL IMPACT**

Based on preliminary discussions, the potential fiscal impact of entering into a contract with the City of San Jose may be up to \$30,000 per year. This amount could be lower or higher depending on the number of cases needing to be resolved. The contract with the City of San Jose will only cover administration and enforcement of typical cases; those needing to be moved to the administration

citation phase will return to Sunnyvale for staff issuance of citations and coordination with the Office of the City Attorney. Costs for the outreach and education phase will be absorbed within the current budget.

In addition to the costs of outreach and enforcement, adopting this ordinance also affects the City’s operating costs. The City employs a variety of casual and seasonal staff, primarily in the Recreation Division, who are paid at or below \$10.30 per hour. The state minimum wage is already set to rise to \$10 per hour in 2016. Had the minimum wage of \$10.30 been in place over the last fiscal year, it would have affected approximately 50 employees at a total cost of approximately \$25,000 for the year. Therefore, bringing Sunnyvale staff up to a higher wage will not significantly affect the cost of operations and can be absorbed in the current budget and adjusted for in future budgets. However, on a long-term basis, this ordinance changes the nature of budgeting for these personnel as the costs will subsequently be tied to CPI as opposed to directly under the City’s control.

Staff is recommending that the \$30,000 per year for enforcement be funded from the General Fund Budget Stabilization Fund. Should this cost remain stable, this will have a 20-year impact of approximately \$750,000.

Budget Modification No. 16 has been prepared to appropriate \$30,000 from the Budget Stabilization Fund to a new project to fund minimum wage enforcement activities.

**Budget Modification No. 16**

**FY 2014/15**

	<b>Current</b>	<b>Increase/ (Decrease)</b>	<b>Revised</b>
<b>General Fund</b>			
<u>Expenditures:</u>			
New Project - Minimum Wage Ordinance Enforcement Reserves	\$ 0	\$30,000	\$30,000
Budget Stabilization Fund	\$38,371,772	(\$30,000)	\$38,341,772

**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 sent postcards stating time and location of this evening's Council meeting to businesses with valid business licenses. In addition, staff notified interested parties that attended outreach meetings in the past regarding this issue and posted information regarding the ordinance on the City’s Facebook and Twitter pages.

**ALTERNATIVES**

1. Introduce an ordinance, as presented in Attachment 1, to add Chapter 3.70 (Minimum Wage) to Title 3 of the Sunnyvale Municipal Code to require the payment of a citywide minimum wage

2. Find that the proposed ordinance is exempt from CEQA under CEQA Guideline 15061(b)(3)
3. Approve Budget Modification No. 16
4. Introduce an ordinance with modifications
5. Do not create Chapter 3.70 at this time

**RECOMMENDATION**

Alternatives 1, 2 and 3: Introduce an ordinance, as presented in Attachment 1, to add Chapter 3.70 (Minimum Wage) to Title 3 of the Sunnyvale Municipal Code to require the payment of a citywide minimum wage; Find that the proposed ordinance is exempt from CEQA under CEQA Guideline 15061(b)(3); and Approve Budget Modification No. 16 to fund the hybrid enforcement model.

Staff developed the ordinance in accordance with Council's direction on May 20, 2014. Staff also explored options for contract and in-house enforcement of a minimum wage program. Staff plans initially to implement a hybrid enforcement model based on discussions with San Jose and the limited resources currently available within the City of Sunnyvale. This ordinance creates a new minimum wage program for the City of Sunnyvale and there is no existing City department to administer such a program. The hybrid enforcement model will allow Sunnyvale staff time to become familiar with the program and determine whether other operational strategies should be pursued.

Prepared by: Connie Verceles, Economic Development Manager

Reviewed by: Joan Borger, City Attorney

Reviewed by: Robert A. Walker, Assistant City Manager

Approved by: Deanna J. Santana, City Manager

**ATTACHMENTS**

1. Sunnyvale Draft Ordinance