



DATE: February 4, 2020

TO: City Council

FROM: City Manager

SUBJECT: Local Minimum Wage Ordinance: Introduce an Ordinance to Add Article 15 to Chapter 6 of the Hayward Municipal Code Establishing a Local Minimum Wage for Employees Working for Any Employers within the City of Hayward

RECOMMENDATION

That the Council introduces an Ordinance to add Chapter 6 “Minimum Wage Ordinance” to the City of Hayward Municipal Code adopting an increase of the minimum wage for employees working within the City of Hayward to fifteen dollars (\$15.00) per hour by 2021 for large businesses and 2022 for small businesses and finding that the proposed Ordinance is not a project under CEQA and, in any event, exempt under Section 15061 of the CEQA guidelines.

SUMMARY

On April 4, 2016, the State of California adopted legislation that will raise California’s minimum wage to \$15.00 per hour by 2022 for large businesses and 2023 for small businesses. As of January 1, 2020, the minimum wage is \$12.00 for small businesses and \$13.00 an hour for large businesses. As part of a City Council referral, Council directed staff to consider establishing a local minimum wage for employers that maintain a business in the City or perform any work/service within the City limits. At the October 15, 2019 work session, the City Council directed staff to develop a local minimum wage ordinance that accelerates the minimum wage to \$15 per hour in Hayward faster than the increases to the State of California’s minimum wage and to seek business and community input on timing and the potential phasing of a local minimum wage increase.

Based on the community and business input, staff has proposed a minimum wage ordinance that accelerates the minimum wage for large businesses to \$15 per hour by January 2021 and for small businesses by January 2022. Based on the community and business input, Council may want to consider several policy alternatives: 1) since the State law is so close to reaching \$15.00 an hour and due to the estimated cost impact on Hayward businesses, the City should not move forward with a local minimum wage and simply follow State law; 2) Consider OECD definition of small business (or other definitions), which would be 100 employees or less, versus the current State Minimum Wage Law, which defines a small business as 25 employees or less; and/or 3) Consider exemptions for businesses that receive funding from the State and/or have their funding tied to the State Minimum Wage law.

BACKGROUND

On April 4, 2016, the State of California adopted legislation that will raise California's minimum wage to \$15.00 per hour by 2022 for large businesses and 2023 for small businesses. Future wage increase will be tied to inflation reflecting increases in the Consumer Price Index, up to 3.5% per year. As of January 1, 2020, the minimum wage is \$12.00 for small businesses and \$13.00 an hour for large businesses.

State of California Minimum Wage		
Effective Date	Small Businesses – 25 or fewer employees	Large Businesses – 26 or more employees
January 1, 2020	\$12.00	\$13.00
January 1, 2021	\$13.00	\$14.00
January 1, 2022	\$14.00	\$15.00
January 1, 2023	\$15.00	\$15.00
January 1, 2024	\$15.00 + CPI	\$15.00 + CPI

As part of a City Council referral, Council directed staff to consider establishing a local minimum wage for employers that maintain a business in the City or perform any work/service within the City limits. At the October 15, 2019 work session, staff presented an informational report related to the minimum wage, and the City Council provided the following policy direction:

- Develop a minimum wage ordinance that accelerates the local minimum wage to \$15.00 per hour in Hayward faster than the State of California's minimum wage; and
- Explore exceptions and exemptions in the local minimum wage ordinance; and
- Seek business and community input on timing and the potential phasing of a local minimum wage increase.

City staff conducted a robust outreach program over the past four months to business owners, community organizations, and residents about the proposed increase to the local minimum wage. Staff has prepared the draft ordinance after considering feedback received.

Public Engagement and Outreach

Over the past four months, City staff have conducted extensive outreach to business owners, community groups, and residents about the proposed increase to the local minimum wage in Hayward. Communication activities included: mailing flyers and emailing all business located in Hayward (approximately 11,000 businesses) inviting businesses to attend roundtable meetings and/or submit email feedback; distribution of press releases and social media information about the issue and upcoming meetings; nine stakeholder meetings; two citywide business roundtable meetings; and one citywide community meeting (Attachment IX – Engagement and Outreach Schedule).

Staff met with the following key stakeholder groups:

1. United Merchants Association
2. Hayward Business Association
3. Latino Business Roundtable
4. Hayward Chamber of Commerce Government Relations Council
5. Downtown Hayward Improvement Association Board
6. Hayward Chamber of Commerce Board
7. Hayward Non-profit Alliance
8. Cal State University East Bay
9. Hayward Area Recreation District

In addition, staff took additional efforts to identify the 50 oldest businesses in Hayward and conducted personal direct telephone calls to each owner to inform them of upcoming meetings, solicit comments, and answer questions.

The City established a dedicated web page for the minimum wage initiative, which included a subpage of frequently asked questions, and a dedicated email address to solicit minimum wage community feedback: minimum.wage@hayward-ca.gov. All emails received can be found as Attachment X.

Staff also reached out to the Hayward Unified School District and Chabot College and sent information about the options being considered. Each of these organizations responded that they did not need to meet as the ordinance did not apply to their organization.

At each of the meetings, staff provided background information and outlined two proposed options for accelerating the minimum wage in Hayward. Option 1 proposed to reach the \$15.00 an hour rate for small and large businesses one year prior to the State regulations with an initial \$1.00 increase occurring July 1, 2020, and a subsequent increase occurring January 1, 2021. Option 2 proposed to also reach \$15.00 an hour for small and large businesses one year prior to the State regulations but would have a \$2.00 increase occurring for both types of businesses on January 1, 2021 with no initial mid-year adjustment. The definition of small and large businesses would match that of the State with small businesses having 25 or fewer employees. No other exemptions or exceptions were proposed.

Feedback Received from Outreach Efforts:

Approximately 110 total attendees participated in all the stakeholder outreach meetings. The most common feedback themes are areas follows:

1. Since the State law is so close to reaching \$15.00 an hour, the City should not move forward with a local minimum wage. Stay the course and follow the current State law.
2. If a proposal was to move forward, participants recommended to not have the July 1, 2020 increase, and continue with the January 1, 2021, \$2.00 an hour increase. Businesses have already set prices, negotiated with suppliers, etc. for 2020. In

addition, a mid-year increase causes issues with employee yearly evaluations, calculated pay-roll deductions, and other personnel items.

3. The proposed exemption of the small businesses having an additional year, similar to the State law, was supported by a majority of participants. Two participants whose businesses received funding from the State requested additional exemptions as their funding is tied to the State minimum wage rates. If a local minimum wage is enacted, their funding does not increase and they would be required to either lay off staff or shut down.
4. Many of the businesses had concerns regarding wage compaction for longtime and up-line employees. As the starting pay increases for new employees, businesses have to increase pay for long term employees and up-line employees to keep them at the same pay differentials. These increases can have a negative impact on businesses. Participants included that it could increase turnover if existing employees feel they are being undervalued by not getting paid much more than new hires. Other participants indicated it would hurt their business' bottom-line and force them to cut hours, employees or close.
5. Employers indicated that an increase of a dollar in hourly wage rates cost the business more than a dollar. As discussed below and detailed in Attachment VI, employers pay State and Federal payroll taxes that based on a percentage of an employee's income, not a flat rate.

Demographic, Business, and Employee Data:

As part of the outreach efforts, several participants asked for the City to analyze the impacts of wage increases on businesses, actual pay increases for employees, and other data points. As found in Attachment III and IV, staff evaluated resident, business, and employee demographic data which includes: ethnic diversity, income data, poverty data, number of businesses in Hayward and the number of employees at those companies, total number of full time positions at Hayward businesses, number of employees that both work and live in Hayward, percentage of employees that are paid minimum wage, age demographics of minimum wage employees, and average employee counts for those industries that are more likely to have minimum wage employees.

Attachment V provides an Employee Income Comparisons with actual paycheck deductions comparing the change in net pay changes as the hourly pay rate increases at the minimum wage. As the payrate increases, required deduction percentages for both State and Federal taxes, as well as Social Security, Medicare and State Disability Insurance increases as well. The analysis found that an employee being paid \$12.00 an hour brings home a net pay of \$10.02 an hour while an employee making \$13.00 an hour brings home a new pay of \$10.83 an hour.

Finally, Attachment VI presents an Employer Cost Comparison providing data on the additional required costs employers are required to pay to the State and Federal government. These payroll taxes are based on a percentage of an employee's income, not a flat rate. As hourly rates increase, the employer is required to increase the taxes paid out. On average, a \$1.00 increase in employee's wages costs an employer \$1.77 or more depending on the industry.

DISCUSSION

Based on the direction at the October 15, 2019 City Council Work Session and input from stakeholders, staff has proposed the following key parameters in the draft ordinance (Attachment II):

Covered Employees

The minimum wage requirement set forth in the draft ordinance applies to adult and minor employees who work two or more hours per week within the City's geographic boundaries.

Amount and Timeframe

The first local wage increase for Hayward would take place January 1, 2021 to allow for public outreach/notification and to provide businesses lead time to prepare business plans and budgets to adapt to the wage increase. The first increase would be \$2.00 an hour for both small and large businesses. Small businesses would be paying \$14.00 an hour and large employers would pay \$15.00 an hour.

In January 1, 2022, small employers would have an additional \$1.00 an hour increase to bring the pay to \$15.00 an hour. Large employers would hold at \$15.00 an hour. In January 2023, both small and large businesses would hold at the \$15.00 an hour rate, which is consistent with State Minimum Wage law. In January 2024 and moving forward, State Minimum Wage law will govern if any CPI increases to the minimum wage are required.

Definition of Small vs. Large Business

The proposed ordinance defines a small business as those businesses with 25 or fewer employees. Large businesses have 26 or more employees. This definition is consistent with current State Minimum Wage Law.

Note that the definition of a small business varies among different business programs. The Affordable Care Act defines a small business as 50 employees or less. The Organization for Economic Cooperation and Development (OECD.org) defines small businesses as 100 employees or less. OECD is an international organization, in which the United States is a member, that works to build better policies to foster prosperity for all defines. The U.S. Small Business Administration (sba.gov) defines a small business as 500 employees or less.

The City could consider using a different definition of small business instead of the State regulation until the full acceleration under State law is achieved. However, this could result in some minor additional costs to the City if any enforcement efforts are needed as the City's ordinance would be different from the State's.

Noticing

The proposed ordinance includes various provisions regarding notification to employees and businesses, implementation procedures, and enforcement mechanisms. Pending City Council adoption of this ordinance, staff would conduct extensive outreach this summer and fall to notify employees and businesses of the higher minimum wage requirement beginning January 1, 2021.

Enforcement

The proposed ordinance includes fines if a business is not compliant with the adopted local minimum wage law. The fines are based on the number of employees affected and the time that the business was out of compliance. The State of California passed Assembly Bill 970 in 2015, which authorizes the Labor Commissioner and the Department of Industrial Regulations to investigate and enforce local minimum wage laws in addition to the State law. This bill was adopted by the state to encourage smaller cities to adopt minimum wage laws but to alleviate them of the burden of enforcement of the local law. Under this bill, the City will waive its rights to collect any fines or fees that result from the enforcement.

Other local jurisdictions contacted have found that the amount of staff time and dollars required to enforce the local minimum wage usually exceeds the fines collected from small businesses. Allowing the State Labor Commissioner to enforce the ordinance will be the most cost-effective means. Employees who believe that they have been paid incorrectly will continue to file claims through the Department of Industrial Regulations as they currently do and would do once again in 2023 when the State minimum wage law goes back into effect in Hayward. Staff recommends that enforcement of the local minimum wage ordinance be handled by the State Labor Commissioner if adopted.

Exemptions

The draft ordinance includes an exemption for Federal, State, and County agencies, including school districts. The City cannot impose a minimum wage on these government entities. Each has their own jurisdiction and is not subject to the City's oversight when it relates to their government function. Government agencies can subject themselves to the City's ordinance on a voluntary basis.

ECONOMIC IMPACT

Attachment VII provides an analysis of the estimated additional income that will be generated for those residents that work in Hayward in minimum wage positions. The analysis also estimates the additional costs to businesses associated with accommodating the wage increase for all minimum wage jobs. In general, Hayward residents that hold minimum wage positions will see an estimated total of \$23,836,476 in new income as the pay rate increases from \$12.00 to \$15.00 an hour. Hayward businesses will see an estimated cost increase of \$170,587,123 as the minimum wage rate increases from \$12.00 to \$15.00 an hour. This significant difference is because while there are an estimated 23,814 minimum wage jobs offered in the City, only approximately 5,116 are held by Hayward residents.

FISCAL IMPACT

A fiscal impact to the City with a local minimum wage will be the need to dedicate staff and fiscal resources towards the ongoing implementation of the ordinance. Should Council decide to create a minimum wage that differs from that of the State, the costs associated with notifications that must be made to businesses for each wage rate adjustment that differs from state law is currently estimated at approximately \$17,000 each year. If the Council is to adopt

an ordinance that aligns the local minimum wage with the state law at \$15.00 per hour, then the cost of the additional notifications will no longer be incurred after 2023. Annual notification costs will be incurred by the City indefinitely for as long as the City's minimum wage would differ from that of the State.

If the City Council chooses to handle enforcement of the ordinance or contract the service to another agency, rather than allowing the State to enforce, there would be additional costs associated with the enforcement that would impact the city. Typical enforcement includes community outreach, compliance review, and managing a complaint process. Although the City does not have an estimated cost for this work, other jurisdictions that staff spoke with currently budget between \$30,000 - \$50,000 per year for this service. If these duties were to be handled solely by city staff, it is estimated that .25 - .5 FTE would be necessary to meet the demand. The total time required of staff could fluctuate as enforcement would be complaint based. There would be minimal to no additional cost to the City if the City allows the Labor Commissioner and the Department of Industrial Regulations to handle all investigations and enforcement.

STRATEGIC INITIATIVES

This agenda item does not directly relate to the Council's Strategic Initiatives.

NEXT STEPS

If the ordinance is adopted, the ordinance will go into effect 30 days after a second reading with the first minimum wage increase beginning January 1, 2021. After adoption of the ordinance, notification and outreach efforts will begin this spring and summer. No later than October 1, 2020, per the ordinance, official notices would be made available to all businesses via the City website. All businesses would receive at least three mailed and emailed notifications prior to the increase taking affect on January 1, 2021.

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Approved by:



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