



DATE: October 15, 2019
TO: Mayor and City Council
FROM: City Manager
SUBJECT: Acceleration of Statewide Minimum Wage in the City of Hayward

RECOMMENDATION

That the City Council receives information on creating a local minimum wage and provides direction to staff on policy options and a community outreach program.

SUMMARY

The City Council will be reviewing information from other cities that have adopted an accelerated minimum wage prior to the State’s adopted acceleration plan and providing direction to staff on options to explore with the Hayward community.

BACKGROUND

The City Council provided direction to staff to consider establishing a local minimum wage that accelerates the implementation of the Statewide minimum wage for employers that maintain a business in the City or perform any work/service within the City limits. This report will provide an initial review of information from other cities, and local minimum wage requirements, as well as identify potential policy options for the Council to consider for Hayward.

Federal, State and Local Minimum Wages

The minimum wage established by federal, State, and local government law sets the lowest wage an employer may legally pay to workers. As of January 1, 2019, California law requires the minimum wage for all industries to be no less than \$11.00 per hour for businesses with less than 25 employees and \$12.00 per hour for businesses with 26 or more employees. The federal minimum wage for covered nonexempt employees has been \$7.25 per hour since July 24, 2009.

On April 4, 2016, California Governor Jerry Brown signed legislation (SB 3, Leno) which will raise California’s minimum wage to \$15.00 per hour by 2023. After January 1, 2023, future wage increases are tied to inflation, reflecting increases in the Consumer Price Index, up to

3.5% per year. Under the new state law, the wage increase schedule may be temporarily suspended by the Governor during economic downturns. The increased minimum wage levels would be applied uniformly across the State. The law also maintains existing exemptions in the State’s minimum wage law. This legislation gives California the highest minimum wage in the country along with New York, where minimum wages will rise to \$15 per hour in 2020.

State of California Minimum Wage Schedule		
Effective Date	Employers w/ 25 Employees or Less	Employers w/ 26 Employees or More
January 1, 2016	\$10.00	\$10.00
January 1, 2017	\$10.00	\$10.50
January 1, 2018	\$10.50	\$11.00
January 1, 2019	\$11.00	\$12.00
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

Source: [California Labor Commission](https://www.dir.ca.gov/dlse/faq_minimumwage.htm) ¹

Local governments retain the ability to adopt local wage ordinances. Such ordinances can increase the minimum wage more rapidly than the statewide timeframe or can increase the minimum wage beyond the level set by the State. When there are conflicts in the laws, the employer must follow the strictest standard, meaning that employers must follow the standard that is most favorable to the employee. Since the State’s law on minimum wage is higher than the federal law, covered employers are required to pay the State’s minimum wage. Similarly, should the City enact a minimum wage ordinance that is higher than State law, covered employers are required to pay the City’s minimum wage. Currently, Hayward employers are subject to federal and State minimum wage laws.

In July 2012, only five local agencies (cities and counties) nation-wide had enacted a minimum wage ordinance. As of January 1, 2019, forty-three local agencies across the country had enacted a local minimum wage ordinance. Twenty-three of the forty-three agencies are located in the Bay Area (Attachment II).

Currently, in Alameda County, six cities have adopted minimum wage ordinances:

- Alameda – Currently \$13.50. \$15.00 by July 1, 2020 with inflation adjustments beginning July 1, 2022 and every July thereafter.
- Berkeley – Currently \$15.59. Adjusted for inflation on July 1, 2020, and every July thereafter.

¹ https://www.dir.ca.gov/dlse/faq_minimumwage.htm

- Emeryville – Currently \$16.30. Adjusted for inflation on July 1, 2020, and every July thereafter.
- Fremont - Currently \$11.00 for small employers, \$13.50 for large employers. Will rise to \$15.00 for small employers on July 2021 and \$15.00 for large employers on July 2020. Adjusted for inflation every July thereafter.
- Oakland – Currently \$13.80. Adjusted for inflation January 1, 2020 and every January thereafter.
- San Leandro – Currently \$14.00. \$15.00 on July 1, 2020

Note that State, federal, and county agencies, including school and other special districts, are not required to pay a local minimum wage when the work performed is related to their governmental function.

Demographics of City of Hayward workforce

Based on 2014 U.S. Census Bureau data, the City of Hayward has 79,500 workers who reside within the City. Some of the key characteristics of that workforce include:

- The majority of workers in Hayward (55%) are age 30 to 54, while 27% of the remaining work force are 29 and younger and 17% are 55 and older.
- Approximately 10.5% of Hayward households are below the poverty level. The poverty rate among those who worked full time was 2% and 12.75% for those who worked part time. The poverty rate is 17% for those who did not work.
- A vast majority of workers (68%) make more than \$4,166 per month (approximately \$25/hour), while 27.7% make between \$1,250 per month (\$7.35/hour) and \$4,165 per month (\$24/hour) and 4.1% make \$1,249 per month or less.
- Approximately 11% of Hayward households receive Food Stamp/SNAP benefits each year.
- The workforce is split fairly evenly between men (54%) and women (45%).
- About 40% of workers identify as Hispanic or Latino, with the remaining 59% identifying their ethnicity as not Hispanic or Latino.
- A large percent of the City’s workers (43%) are employed in five main industries: Office and Administrative Support, Sales, Management, Production, and Construction.

Business & Employment Characteristics

Based on data collected by the City of Hayward Revenue Services Division, there are currently 7,203 registered business licenses in the City. Some of the key data that is collected from businesses include:

- The majority of businesses (4,281) report having at least one employee other than the owner of the business. Those not listing employees are generally home-based businesses or rental properties.

- A total of 49,545 employees are reported by City of Hayward businesses. This number is different from the census number of employees who reside in Hayward because the census tracks are where people live, not where they work.
- Approximately 89% (3,841) of the businesses that report having employees, employ less than 26 employees per business for a total of 18,780 employees.
- Just 10% (440) of Hayward businesses employ 62% (30,765) of the workforce.

DISCUSSION

This next section provides information on policy alternatives for the Council to consider along with information on how these alternatives have been created. In examining the development of a local minimum wage ordinance, areas of policy significance include: the dollar amount and time frame to increase a local minimum wage; exceptions and exemptions; ongoing minimum wage ordinance monitoring and enforcement; community engagement and communication activities; and potential City impacts.

Policy Alternatives

The State regulations for minimum wage will increase the minimum wage in Hayward to \$15.00 per hour by 2022 for employers with 26 or more employees and to \$15 per hour by 2023 for employers with 25 or less employees. The key policy issue for the City Council is whether the minimum wage in Hayward should increase to \$15.00 per hour faster than the Statewide timeframe, and at what pace that increase should take place.

City staff developed three potential alternatives for the City Council to examine that would increase the local minimum wage to \$15.00 faster than the rate established by State Law. The tables below compare the three alternatives to current State law. The tables are followed by a description of each alternative and the potential pros and cons.

Potential Local Minimum Wage Acceleration Scenarios

25 or Less Employees			
Effective Date	Current State of California Regulations	Alternative 1	Alternative 2
January 1, 2019	\$11.00	\$11.00	\$11.00
January 1, 2020	\$12.00	\$12.00	\$12.00
July 1, 2020		\$13.00	
January 1, 2021	\$13.00	\$14.00	\$14.00
January 1, 2022	\$14.00	\$15.00	\$15.00

January 1, 2023	\$15.00	\$15.00	\$15.00
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26 or More Employees			
Effective Date	Current State of California Regulations	Alternative 1	Alternative 2
January 1, 2019	\$12.00	\$12.00	\$12.00
January 1, 2020	\$13.00	\$13.00	\$13.00
July 1, 2020		\$14.00	
January 1, 2021	\$14.00	\$15.00	\$15.00
January 1, 2022	\$15.00	\$15.00	\$15.00
January 1, 2023	\$15.00	\$15.00	\$15.00

Alternative 1

A local minimum wage ordinance would go into effect July 1, 2020 with a \$1.00 per hour increase. Additional increases would occur annually in January until the business based on size reaches \$15.00 per hour. Businesses would reach \$15.00 per hour 1 year prior to the State requirement.

- Pros:
 - Allows for adequate time to notify and educate businesses on the pending increase.
 - Allows businesses time to adjust pricing and financial systems to accommodate the change from State requirements.
 - Provides an increase to employees at a quicker pace than State law.
- Cons:
 - Requires a mid-year notification and change for businesses, which is off schedule from State law and may cause confusion.

Alternative 2

A local minimum wage ordinance would go into effect January 1, 2021 with a \$1.00 per hour increase above State law. Businesses would reach \$15.00 per hour 1 year prior to the State requirement.

- Pros:

- Allows for adequate time to notify and educate businesses on the pending increase.
 - Allows businesses time to adjust pricing and financial systems to accommodate the change from State requirements.
- Cons:
 - While employees would make more than State law, the increase would be slower than Alternative 1.

In each of these alternatives, staff recommends that once the minimum wage for the business reaches \$15.00 per hour, the minimum wage holds at that rate until State law matches the \$15.00 per hour rate to avoid the need for the City to notice, monitor, and enforce the law after 2023. For large businesses, this would happen for the years 2022 and 2023 and for small businesses, 2023. In January 2024, the State will then begin adding a CPI adjustment to the minimum wage not to exceed 3.5% each year. With this format, the State minimum wage law would take effect and no additional noticing, monitoring, or enforcement by the City would be required to continue above and beyond the State enforcement, eliminating any long-term annual City staffing and enforcement costs.

Time Frame for Increasing the Minimum Wage

Based on staff's research, almost all increases in the minimum wage at a Statewide or local level have phased-in the increase. This includes the State's legislation, which increases the wage to \$15.00 over a six-year period. Currently, of the six cities in Alameda County that have enacted minimum wage ordinances, all but two are phasing in the minimum wage increases over two years. Those cities with the phased in approach for increasing minimum wage in Alameda County will hit \$15.00 an hour by 2020, which was between 2 and 3 years from their first increase before State requirements.

The phased acceleration of the wage rate provides time for businesses to adapt their cost structure and pricing to adapt to the increase.

Exceptions and Exemptions

Other jurisdictions that have adopted wage increases created different exceptions and exemptions for types of industries, business sizes, youth workers, collective bargaining agreements, and other specifications in their local minimum wage ordinances based on feedback from the community and businesses. For example, the City of San Mateo made an exception for non-profits, allowing them to have an additional year to comply with increased levels. Other cities such as Fremont allow small business with 25 or fewer employees an additional year to comply, similar to the state regulations.

One exemption that many cities have had requested from the business community is for a lower minimum wage for tipped employees. Per State Law, an employer may not use an employee's tips as a credit toward its obligation to pay the minimum wage. All employees of a business would be subject to the same wage requirement regardless of tips or gratuities

received. However, the Council could decide to exempt tipped employees from the minimum wage acceleration.

Staff only included the exception of businesses with 25 or fewer employees to have one additional year to reach the \$15.00 per hour rate than those businesses with 26 or more businesses. This approach is intended to align with the State and limit long term monitoring and enforcement impacts to the City. Additional exceptions or exemptions, while feasible could add further complication and confusion for implementation of the ordinance for businesses and would increase the need for staff time and additional resources for ongoing monitoring and enforcement of grievances reported by employees.

Minimum Wage Ordinance Enforcement

Establishing appropriate enforcement provisions is a key component of a minimum wage ordinance. As part of adopting a local minimum wage ordinance, the City will need to establish and implement systems to enforce an ordinance. Generally, enforcement of the local minimum wage is handled on a complaint basis, in which employees who are not being paid the correct wage must file a grievance complaint. At that time, an investigation proceeds and corrective action can be taken. Enforcement of the ordinance can be either handled by City staff or contracted out to an outside agency. The anticipated staff time and costs associated with either option will have to be more fully explored to determine which is the better option for the City. As stated above, staff recommends that once the minimum wage for the business reaches \$15.00 per hour, the minimum wage holds at that rate until State law matches the \$15.00 per hour rate to avoid the need for the City to notice, monitor, and enforce the law after 2023, eliminating any long-term annual City staffing and enforcement costs.

Community Engagement and Outreach Strategy

Conducting robust community engagement and communication activities with business stakeholders and the community is of utmost importance in the successful examination, preparation, and implementation of a local minimum wage ordinance. Staff met with representatives from other Bay Area cities who recently implemented local minimum wage ordinances for their respective cities. All stressed the importance of engaging businesses, business associations, nonprofits, labor groups, local government agencies, and the community at-large. Staff plans to conduct significant outreach efforts to communicate and obtain feedback. The recommended community engagement and outreach strategy entails a two-pronged approach of face-to-face interactions with stakeholders and community members and the use of online tools and communication activities to solicit feedback.

Dependent on the timeframe for implementing a proposed ordinance, staff proposes undertaking the following outreach and communication initiatives to obtain community input:

1. Make presentations to the Hayward Chamber of Commerce Board and committees, the Downtown Hayward Improvement Association, United Merchant Association, and Hayward Business Association
2. Conduct business outreach meetings/roundtables with businesses, non-profits, and outside government agencies such as Hayward Unified and HARD
3. Conduct a community-wide outreach meeting

4. Mail postcards to every Hayward business with a City business license on file
5. Establish a City webpage with information on the City's efforts to study the issue and engage the business community, including FAQs.
6. Use other communication channels including social media platforms, email newsletters, and partner organizations.
7. Translate educational materials in Spanish and other languages as identified by Community and Media Relations staff.

The community engagement and outreach process will culminate with a presentation of stakeholder and community member input and feedback to the City Council. In general, most cities conduct their outreach efforts over a 4 to 6-month period in order to allow adequate input from the community. The more extensive outreach and education program the City can engage in prior to the ordinance taking effect, the lower the rate of grievances filed for businesses not paying the correct wage, and the less impact to the City's staffing and financial resources.

FISCAL IMPACT

In most cities that adopt an increased minimum wage, there is a fiscal impact to the jurisdiction due to the increase in wages for employees currently employed by the City that are paid less than \$15.00. However, the City of Hayward adopted a Living Wage Ordinance in July 1999, which is designed to upwardly adjust and reflect a change in the Bay Area Consumer Price Index. As such, the current lowest paid employees for the City of Hayward organization are earning a salary of \$15.82 per hour. If the Council were to enact a local minimum wage of \$15.00, there would not be a direct fiscal impact on City operations from salary adjustments that would be needed.

One potential fiscal impact to the City for enacting a local minimum wage that differs from that of the State's established minimum wage would be associated with the cost for staff and fiscal resources towards the implementation and ongoing monitoring/enforcement of the ordinance. If the Council chooses to create an ordinance that does not come into alignment with the State at any point in time, the annual notification cost and cost of administering the program will be incurred by the City indefinitely. The cost to enforce the ordinance, respond to grievance filings, and ensure compliance with a new City minimum wage ordinance will also impact the City. Typical duties of enforcement include community outreach, compliance review, and managing a complaint process. Some of these enforcement duties could potentially be contracted out. Although the City does not have an estimated cost for this service, several other cities that staff spoke with that have a minimum wage ordinance that differs from the State and actively enforce the ordinance currently budget between \$30,000 - \$50,000 per year for this service. Demand for the program is complaint based and would likely fluctuate on a year to year basis. Should the Council decide to create an ordinance that does not align (after 2023) with the State's minimum wage, staff will work to design a monitoring and enforcement program and provide Council with an estimated cost of providing these services to the Hayward Community.

There are also costs associated with the notifications that must be made to all businesses for each wage rate adjustment that differs from state law; this cost is currently estimated at \$17,000 each year.

If the Council adopts an ordinance that aligns the local minimum wage with the State law at \$15.00 per hour, then the need for additional notification and enforcement will no longer be necessary after 2023, and the cost will no longer exist.

STRATEGIC INITIATIVES

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

NEXT STEPS

Staff will incorporate Council's feedback and move forward with community outreach. This includes conducting Citywide engagement and communication activities to solicit feedback from businesses and the community on the City's consideration of a local minimum wage ordinance. Staff envisions this process will take place over the next two to three months and anticipates returning to the Council in January 2020 to present community feedback and a recommended local minimum wage ordinance. If a minimum wage ordinance is approved by the City Council in January, implementation (including education of employees and establishment of enforcement mechanisms) could occur over the next 5 to 11 months, depending on the direction provided by the Council this evening.

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