



# City Council Report

City Council Meeting: April 26, 2016  
Agenda Item: 7.C

To: Mayor and City Council  
From: Gigi Decavalles-Hughes, Director, Finance Department  
Andy Agle, Director  
Subject: Modifications to the Minimum Wage Ordinance

## Recommended Action

Staff recommends that the City Council:

- 1) Introduce for first reading the attached ordinance amending Chapters 4.62 and 4.63 of the Santa Monica Municipal Code requiring a minimum wage for employees with a phased approach to reach \$15 per hour by 2020 for most businesses, and a living wage for hotel workers to reach parity with the City of Los Angeles hotel wage on July 1, 2017 for hotels;
- 2) Receive initial staff analysis of California Senate Bill No. 3 [Minimum wage; in-home supportive services; paid sick days] setting a minimum wage increase for the State of California; and
- 3) Authorize budget changes as outlined in the Financial Impacts & Budget Actions section of this report.

## Executive Summary

As part of its actions approving a minimum wage ordinance on January 12, 2016 (Attachment A), Council authorized the City Manager to form an ad-hoc working group of business, labor, and community members to address certain issues within the ordinance identified by Council as requiring further discussion and clarification. The Minimum Wage Working Group has completed its meetings and recommended changes to the ordinance responding to this direction, which staff presented in an Information Item on March 31, 2016 (Attachment B). Staff recommends that Council introduce an ordinance reflecting the Working Group's recommendations in the areas of service charges, sick leave, enforcement, wage schedules, and hotel hardship waiver procedure.

On April 4, 2016, Governor Jerry Brown signed into law a minimum wage increase schedule for the State of California, reaching \$15 per hour approximately two years behind the Santa Monica ordinance, on a slightly different schedule, with the option to pause wage increases based on economic or State budget conditions. The first increase is scheduled for January 1, 2017. Staff does not anticipate material changes to Santa Monica's ordinance implementation related to the state law, but will continue to assess its impact for Santa Monica and other cities in the region with minimum wage laws.

## **Background**

Santa Monica's City Council adopted an ordinance setting a minimum wage in Santa Monica on January 12, 2016. The ordinance reflects input and feedback from Santa Monica businesses, workers, advocacy groups, and the community, in addition to subject matter research and expert recommendations. It includes a hotel living wage and provisions relating to service charges, seasonal or first-time workers, paid sick leave, and enforcement, many of which are unique to Santa Monica and reflect the process of engaging with and incorporating feedback from stakeholders.

Testimony at the January 12th meeting affirmed community support for a Santa Monica minimum wage. Representatives of businesses, workers, advocacy groups, and the broader community also drew attention to elements of the ordinance that could benefit from clarification or modification. To meet the primary goal of adopting the minimum wage and in recognition of stakeholder contributions to the process of developing the proposed ordinance, Council adopted the ordinance. To address outstanding concerns, and in light of how recently the law was adopted and its potentially significant impact on affected parties, Council authorized the City Manager to appoint an ad-hoc working group that would meet in public and develop recommendations on issues that Council identified as warranting further discussion and clarification. The Working Group unanimously approved a set of recommendations to modify Santa Monica's minimum wage law, which staff presented to Council in an Information Item on March 31, 2016.

## **Discussion**

This report briefly reviews the Working Group process, presents its recommendations, and summarizes the related changes in the amended ordinance (Attachment C). It also presents State minimum wage law provisions and a preliminary discussion of potential implications for Santa Monica.

## Working Group

Following Council direction at the January 12th, 2016 meeting, the City Manager established an ad-hoc Working Group. The charge of the Working Group was to review

issues identified by Council and to recommend changes to strengthen the ordinance or make it clearer through revised provisions. The Working Group included business, labor, and community representatives: five voting and three ex-officio members. The Working Group met three times in February. In accordance with the Brown Act, staff posted Working Group agendas through the City Clerk's Office, and posted agendas, minutes, shared documents, meeting recordings, and public correspondence on a Minimum Wage Working Group website (Attachment E), accessible through <http://www.smgov.net/minimumwage>. Through discussion and a give-and-take process during which business and labor representatives negotiated for common ground, the Working Group unanimously approved recommendations to amend the minimum wage ordinance. The discussion below describes each issue and recommendation in greater detail, including a summary of the Working Group's discussion for each topic. A more comprehensive account of the Working Group's discussions is available in the meeting minutes and audio recordings, which can be found on the Minimum Wage Working Group website.

### Issues and Recommendations

At its January 12, 2016 meeting, Council identified five provisions of the ordinance for the Working Group to evaluate and consider, including service charges, sick leave, first-time worker exception, education and enforcement, and the mechanics of wage level alignment and the hotel hardship waiver.

#### **Service charges**

##### *Provisions in adopted ordinance*

The service charge and surcharge provisions in the adopted ordinance include requirements for employers to follow, if they elect to use service charges or other surcharges at their businesses. The ordinance provisions are focused on employee protection and transparency to consumers drawing largely from language proposed by Unite Here Local 11, the Restaurant Opportunities Center (ROC), and the CLEAN Car Wash campaign. Some key aspects of these provisions are:

- Service charge proceeds must go to employees who generally provide the service
- Employees are eligible to receive service charge proceeds unless they have a primarily managerial or supervisory role
- Employers must disclose service charge distribution to all employees
- Other surcharges are allowed as long as clearly described and used as stated; healthcare surcharges must be used entirely on employee healthcare or otherwise spent on the employee
- Businesses must clearly describe any charges and their use to customers
- Protections are put in place for employees who currently receive service charge proceeds for banquets and catering services, room service, and portage service

#### *Council direction*

Council's desire for potential refinements responded to testimony about potential abuses related to the use of surcharges, with particular concerns for the definition and implementation of healthcare surcharges. Council also asked the Working Group to review and confirm transparency requirements and consider clarifying operational differences between hotel and restaurant service charges. Council direction included:

- Consider differentiating between hotel and non-hotel in service charges, especially in 4.62.040(2)(A)-(C) (banquets and catering, portage, and room service)
- Consider Alternative 2 (Unite Here, ROC, CLEAN Car Wash recommendation) as presented to Council in the January 12, 2016 staff report
- Ensure strong transparency for employers and consumers (make sure customers are aware of any service charges / surcharges before purchasing meal / hotel accommodation)
- Add supervisor definition, if necessary

#### *Discussion*

Working Group members discussed each point, including the State’s supervisor definition, and reviewed typical employee duties or roles that do not fall cleanly in these categories, the complexity of managing funds collected to provide for employee healthcare, and lessons from healthcare surcharge litigation in San Francisco.

### *Recommendations*

Working Group members approved recommendations that clarify which service charge provisions apply to hotels only, and that incorporate healthcare and benefits surcharges into the service charge definition and provide narrow guidelines for their collection and use. Changes are included in the recommended ordinance, and are detailed below:

- Specify that the provisions in Sections 4.62.040(2)(A)-(C) for banquets and catering, portage, and room service, apply to hotels only
- Include “healthcare surcharge” and “benefits surcharge” in the service charge definition and use
- Remove regulations for other surcharges
- Add directions for use of healthcare surcharges to Section 4.62.040(a)(1) to ensure related revenue is transparent to employees and under employees’ control
- Replace “wages” with “wages and other compensation required by this Chapter” in the description of how to distribute service charges

### *Comments*

Working Group members agreed on the importance of transparency requirements. The group determined that the ordinance language requiring businesses to provide clear and obvious notice of any service charges and their use meets transparency needs.

### *Staff actions / commitments*

As the Working Group recommended, the City Attorney, in coordination with Working Group member Jeremy Blasi, developed amended language for Section 4.62.040 to reflect the Working Group’s agreed-upon recommendations. This language is included in the revised ordinance.

Within the first year of implementation, staff will solicit feedback on how employers and employees are using surcharges to assess need for additional changes or clarification.

## **Seasonal/First-Time Workers**

### *Provision in adopted ordinance*

The adopted ordinance language builds on a State law provision for first-time workers. It differs in providing for a longer timeframe in which first-time workers could be paid less than the minimum wage, to accommodate employers with full-time summer or part-time longer term seasonal workers. The existing provision provides for:

- Exception at 85% of minimum wage for the first 480 hours or six months, whichever is sooner, for employees working in an occupation or activity for the first time (480 hours=6 months @ 20 hours, 3 months @ 40 hours).

### *Council direction*

Council responded to testimony about a potential negative impact on youth's ability to earn the same wage as other employees, and the possibility for increased job turnover in youth or first-time worker positions. Council asked the Working Group to:

- Review potential impacts on youth employment
- Review potential for increased job turnover
- If no seasonal exemption is proposed, consider impacts to the businesses and the City's goals for Pier affordability

### *Discussion*

Working Group members reviewed seasonal or first-time worker provisions in other cities, and discussed youth financial obligations, the importance of youth employment and providing equal pay for equal work, and potential for greater employee turnover due to the ordinance provision. They also considered costs associated with training first-time workers, creating pathways to employment for first-time workers, the ambiguity of the "learner" definition, and the benefits of Santa Monica aligning with established State law and with the City of Los Angeles ordinance on the issue.

### *Recommendations*

Working Group members recommended modifying the adopted ordinance to match the State learner provision: 85% of the minimum wage for the first 160 hours of work in an activity in which the employee has no similar or related experience. The exemption is narrow, matches the State and the City of Emeryville, and is not age specific.

### *Comments*

Regarding the potential impact on youth employment, job turnover, or pier affordability, the group felt that there was not sufficient data to draw any reliable conclusions, but that these would be areas to monitor going forward.

### *Staff actions / commitments*

Staff committed to work with the State to clarify “similar or related experience”. If this research yields insufficient information, staff could promulgate administrative regulations clarifying use of the provision. Staff further agreed to include information related to this area, including information gathered from the State, as a part of frequently asked questions or a similar guide to accompany the minimum wage ordinance.

## **Sick Leave**

### *Provision in adopted ordinance*

The adopted ordinance provides for sick leave in excess of State law, and matches State conditions for use. It provides that:

- Employees accrue 1 hour for every 30 hours worked (same as State). Accrual cap is 72 hours (9 days) for businesses with 26 or more employees; and 40 hours (5 days) for smaller businesses.
- Accrued time can be used for sick leave only; employees can carry over hours up to the accrual cap; the ability to cash out sick leave is not required.

### *Council direction*

Council responded to business owner and worker advocacy concerns regarding the increase in sick days and potential issues with use. Council asked the Working Group to:

- Review proposals for phasing in days (9 days / 5 days depending on size of business), or establishing 6 days for all businesses
- Consider logistics issues for businesses (i.e. use of accrued sick leave before ending employment)
- Ensure strong worker protections for use of sick leave

### *Discussion*

The group discussed logistics related to sick leave administration and the impact on businesses of the increases required in the ordinance, including potential for employee abuse of sick days. The group also discussed how larger and smaller businesses differ in their ability to provide sick leave.

### *Recommendations*

The Working Group recommended phasing in the required sick leave over two years, with a January instead of July start date, to provide businesses additional time to adjust operations and conduct workforce planning in consideration of increased sick leave amounts. Their recommendation would phase in sick days as follows:

- January 1, 2017: 4 days (small businesses); 5 days (large businesses)
- January 1, 2018: 5 days (small businesses); 9 days (large businesses)

The group also recommended removing a provision stating that employers can require employees to provide reasonable notification of an absence (4.62.025(g)), given that State guidelines for use of sick leave address the issue.

### *Comments*

Working Group members considered the logistics issues discussed at the Council meeting, including the potential that an employee could choose to take up to nine sick days upon giving notice, which would create significant difficulties for employers. While

employers agreed that this and similar issues may occur, and labor advocates expressed willingness to work with employers on these issues, group consensus was that State labor regulations govern use of sick leave, and any efforts Santa Monica might make would not supersede these or change employer requirements.

#### *Staff actions / commitments*

In addition to the Working Group recommendations, staff recommends the following minor adjustments to clarify the ordinance provisions and align sick leave requirements with State law. These are the following:

- Modify language to show that accrual of paid sick days begins upon the hire date (the provision that employees cannot use sick leave until the 90th day of employment would be unchanged).
- Insert language clarifying that sick leave can be carried over to the next calendar or fiscal year, as is the case in San Francisco and Oakland.

#### **Education and enforcement**

##### *Provision in adopted ordinance*

The adopted ordinance requires businesses to post minimum wage law requirements and retain payroll and other records; provides for fines, administrative citations, and criminal penalties; gives employees private right of action and recovery of attorneys' fees and costs, and includes retaliation protection. These provisions are common among other minimum wage ordinances, and are among those that the UCLA Labor Center and other worker advocacy groups recommend.

##### *Council direction*

Council's direction regarding enforcement reflected worker and labor requests that enforcement provisions be comprehensive; and responded to business testimony about excessive penalties. Council also asked the group to consider outreach and education practices that could assist staff in the law's implementation. Council asked the Working Group to:

- Ensure enforcement provisions for grievances adequately protect workers

- Ensure record keeping requirements apply to all areas of the ordinance
- Review the penalty accrual provisions (e.g. daily vs. by pay period); and review San Francisco's waiver provision
- Suggest best practices for outreach to employees and employers

### *Discussion*

The Working Group discussed reasons for and potential unintended consequences of the ordinance enforcement provisions, focusing on retaliation and penalty guidelines. Members balanced the need for strong deterrents against retaliation, wage theft, and other violations with the potential for unfounded and costly lawsuits incentivized by high penalty limits. Members also considered the interpretation of compensation and non-wage benefits in the context of adjustments employers are prohibited from making to fund the wage increase. The group discussed the type of employer activity that would reasonably constitute a valid wage claim, and ways to decrease the chance that smaller misdemeanor penalties escalate into extreme situations that might force businesses to close. The group also discussed some best practices for outreach and education, including reference to San Francisco as a model.

### *Recommendations*

Working Group members agreed on adjustments to provide flexibility in penalty assessments, the need to better differentiate regular operational adjustments from unlawful compensation or other benefit reductions, and the alignment of the Santa Monica ordinance with Los Angeles and San Francisco for length of rebuttable presumption period (the time during which a negative employment action is presumed to be retaliatory). Specifically, the recommendations would:

- Reduce the rebuttable presumption period from 180 to 90 days (matching San Francisco and Los Angeles)
- More closely define unlawful practices to those changes made to directly fund required wages and benefits
- In civil penalties, provide for fines of “up to” \$100, and provide the option to treble penalties in the case of willful violations rather than a requirement to do so.

### *Staff actions / commitments*

Staff will review the ordinance in one year, as has been done for some other new City ordinances, to assess need for further adjustments. Staff committed to further researching San Francisco education and enforcement practices, including working with community-based organizations, and will follow these recommendations to the extent that they are practicable and useful in Santa Monica's context. Staff will coordinate with State and other regional partners on education and enforcement where feasible and beneficial.

## **Other Topics**

### *Provisions in adopted ordinance*

#### Wage Rates

The adopted ordinance proposes two new wage rates which differ from each other (the minimum wage and hotel living wage), and, because of timing, from the City of Los Angeles hotel workers wage. Apart from this ordinance, the City's living wage (applied to certain City contractors) is also different than the City's general minimum wage and hotel rates. The adopted ordinance provides for:

- General minimum wage at \$15 per hour by 2020, increasing by the consumer price index starting in 2022
- Hotel wage at \$15.37 per hour by 2017, increasing by the consumer price index starting in 2018 (one year behind Los Angeles)

The living wage for City contractors with annual agreements greater than \$52,400 (in Chapter 4.26 of the municipal code) will be \$15.87 per hour in FY 2016-17, and increases annually by the consumer price index (CPI).

#### Hotel hardship waiver provision

The ordinance provides for a one-year waiver upon approval for hotels that 1) would need to cut staff by more than 20% to avoid bankruptcy and/or shut down OR 2) would need to cut hours by more than 30% to avoid bankruptcy and/or shut down. In this provision, the Finance Director would grant a waiver based on expert external review of

the applying hotel's financial records. The hotel or hotel workers could appeal the decision to a hearing examiner.

### *Council direction*

To avoid confusion and in response to concern about hotel worker parity with Los Angeles, Council requested a review of options for streamlining wage rates. Council also requested that the Working Group consider ways to make the hotel hardship waiver process more transparent. Direction was to:

- Align various wage rates (general minimum wage, hotel wage, City living wage, LA hotels) over time
- Discuss potential to incorporate public hearing or worker testimony into hotel hardship process, without requiring hotel to share private financial information.

### *Discussion*

The group discussed timing of the Santa Monica hotel wage increase and opportunities for matching Los Angeles. They discussed the hardship waiver process, including the type of analysis and review necessary to make the determination required by the ordinance.

### *Recommendations.*

The Working Group recommended amending the ordinance to match the Los Angeles hotel wage, which will be \$15.37 per hour plus an inflation measure, on July 1, 2017, and to align Santa Monica's living wage for City contractors with the hotel wage on July 1, 2018.

The group recommended that the ordinance require a hotel applying for a waiver to notify its employees by posting a notification of the hotel's application in an area accessible to all employees. This would afford workers the opportunity to be heard in the City's regular administrative hearing process.

### *Staff actions / commitments*

Staff will assess when and by what method it makes the most sense to adjust the living wage applied to City contractors based on inflation measures in the next two years.

The Working Group unanimously approved the recommendations above.

State of California Minimum Wage Bill

Governor Jerry Brown signed Senate Bill No. 3 (Minimum wage; in-home supportive services; paid sick days) into law on April 4, 2016.

*Major provisions*

The law requires incremental minimum wage increases to \$15 per hour, and extends the State sick leave provision to in-home supportive services (IHSS) workers, following the schedule below:

Year*	Wage Rate**		Sick Leave
	Large Businesses (26 or more employees)	Small Businesses (25 or fewer employees)	IHSS Workers
2017	\$10.50	\$10.00	
2018	\$11.00	\$10.50	8 hours
2019	\$12.00	\$11.00	
2020	\$13.00	\$12.00	***16 hours
2021	\$14.00	\$13.00	
2022	\$15.00	\$14.00	***24 hours
2023	\$15.00	\$15.00	

\*Wage rates are effective January 1st of each year. Sick leave hours are effective July 1st.

\*\*The wage rate progression depends on annual assessment of economic and budget conditions described below.

\*\*\*Sick leave thresholds beyond the initial 8 hour requirement are linked to the large business wage rate thresholds (\$13 per hour and \$15 per hour) rather than the year.

Following the minimum wage reaching its final target of \$15 per hour in the schedule for large and small businesses, the wage will increase annually by the lesser of 3.5% or the July-June CPI inflation measure.

The law provides the Governor an option to pause increases in this schedule if he or she determines that either economic or budget conditions demonstrate that the State cannot support the next scheduled increase. The Governor will indicate his or her decision on the next year's wage increase by September 1 prior to the planned increase, and would make this decision by proclamation. The Governor can pause increases a maximum of two times. Thus, the latest that the State minimum wage would reach \$15 per hour is 2025 for large and 2026 for smaller businesses.

#### Economic conditions

The Governor may choose to suspend the next scheduled increase if either A) or B) is met AND C) is met.

- A. Employment decrease for three months from April to June prior to the adjustment (total nonfarm employment, seasonally adjusted)
- B. Employment decrease for six months from January to June prior to the adjustment (total nonfarm employment, seasonally adjusted)
- C. Sales and Use tax receipts show an annual decrease (July 1 to June 30 before the increase)

#### Budget condition

The Governor may choose to suspend the next scheduled increase if the State General Fund would be in a deficit in either the current or either of the two following fiscal years (defined as a negative balance in the Special Fund for Economic Uncertainties that exceeds 1 percent of total state General Fund revenue and transfers).

#### *Implications for Santa Monica*

When overlapping labor laws exist, employers must abide by the most generous and most protective. Santa Monica's general minimum wage rate for large and small businesses and for hotels will be more generous than those required by the State law; thus this law does not change circumstances materially for Santa Monica businesses or workers. There is one exemption that will be less important for affected organizations because of the higher State law:

- **Transitional worker exemption.** The ordinance provides for below minimum wage payments for employers that provide transitional jobs for the hardest to employ during the first 18 months of the employee's work in the transitional job. This exemption would still be valid, but will provide less relief for the transitional employer.

Santa Monica employers should also be aware of one area where State minimum wage law requirements are more generous than those prescribed in the local law:

- **IHSS sick leave requirements.** Affected providers in Santa Monica must abide by the State law requiring sick days, although these employers are exempt from the local sick leave and minimum wage requirements.

#### *Regional implications and actions*

Los Angeles City and County staff are reviewing the State law to determine how if at all it will impact their respective minimum wage laws. Staff will continue to coordinate with Los Angeles City and County, and other area cities with local minimum wage ordinances, and communicate any response to City Council.

#### Alternatives

Council could choose not to adopt the Working Group's recommendations. This would result in moving forward with the ordinance as adopted on January 12th, 2016.

The recommended changes represent significant thought and research from Working Group members, and reflect compromises to provide workable solutions for some difficult and contentious issues. Staff believes that the proposed changes make the

ordinance stronger and clearer, and recommends that Council adopt the ordinance with the recommended amendments.

### Next Steps

If Council adopts the amended ordinance, the law would proceed to second reading and go into effect after 30 days. Staff would then continue with activities related to its implementation.

### *Communication, Outreach and Education, Enforcement*

Staff has continued to update relevant information on the City's minimum wage webpage at <http://www.smgov.net/minimumwage> (Attachment D), and responds to minimum wage questions. Internally, staff has prepared a communications plan building on existing business and community networks and resources; communications activity would increase with Council's action on proposed amendments. Staff is also coordinating with Los Angeles County on communication and outreach efforts, to maximize existing resources and provide a consistent regional message.

Staff is continuing discussion with the Los Angeles County Department of Consumer and Business Affairs (DCBA) Wage Enforcement Program (WEP) to provide enforcement services for Santa Monica, and will return to Council with a partnership proposal before the end of the fiscal year.

In the January 12, 2016 report, staff proposed an initial budget of \$80,000 to fund the City's communication, outreach and education activities, including grants to Community Based Organizations (CBOs), but did not formally request the budget at that time. Staff requests an appropriation of \$80,000 to fund these activities, based on the amount that San Francisco appropriates for CBO contracts annually.

### *Reporting*

As the Working Group requested, and as Council and the City Manager suggested at the January 12th, 2016 adoption, staff will review the ordinance in one year's time, and will report to Council on lessons learned.

## Financial Impacts and Budget Actions

There is no immediate financial impact or budget action necessary as a result of the recommended action. Approving a budget for communication, outreach and education efforts requires the following FY 2015-16 appropriation:

01221.555060      \$80,000

The amount includes one-time costs for communication, outreach, and education efforts associated with the new minimum wage law. It is likely that staff will require an ongoing annual amount for the services. Staff will request the budget at a later time with better information about ongoing program needs.

**Prepared By:**      Stephanie Lazicki, Principal Administrative Analyst

**Approved**

**Forwarded to Council**

  
Gigi Decavalles-Hughes, Director

4/14/2016

  
Rick Cole, City Manager

4/18/2016

## Attachments:

- A. January 12, 2016 (Web link)
- B. Information Item - Minimum Wage Working Group Recommendations
- C. Amended Minimum Wage Ordinance
- D. Minimum Wage Website
- E. Minimum Wage Working Group website
- F. Written comments

## G. Powerpoint