

# Agenda Report

February 1, 2016

**TO:** Honorable Mayor and City Council

**THROUGH:** Economic Development and Technology Committee (January 27, 2016)

**FROM:** City Manager

**SUBJECT: DIRECT THE CITY ATTORNEY TO PREPARE AN ORDINANCE  
REQUIRING THE PAYMENT OF A CITY-WIDE MINIMUM WAGE**

**RECOMMENDATION:**

1. Find the actions proposed herein are exempt from environmental review pursuant to State CEQA Guidelines Section 15061 (b)(3) ("general rule"), Section 15378(b)(4) (definition of project excludes government fiscal activities which do not involve any commitment to any specific project);
2. Direct the City Attorney to prepare an ordinance and return within 30 days requiring the payment of a city-wide minimum wage as follows:
  - a. July 1, 2016 the hourly wage shall be \$10.50
  - b. July 1, 2017 the hourly wage shall be \$12.00
  - c. July 1, 2018 the hourly wage shall be \$13.25
3. Direct staff: a) to return to the City Council no later than February 18, 2019 with a report assessing the impact of the local minimum wage on reducing poverty, unemployment, job creation, and the overall local business climate as further described in the background section of this report; and, b) request direction from the City Council regarding an amendment to the Pasadena Minimum Wage ordinance to increase the wage as follows:
  - a. July 1, 2019 the hourly wage shall be \$14.25
  - b. July 1, 2020 the hourly wage shall be \$15.00
  - c. Beginning July 1, 2022 and each July 1 thereafter the hourly wage shall adjust by an amount equal to the change in the Los Angeles-Riverside-Orange County consumer price index for Urban Wage Earners and Clerical Workers

4. Provide policy direction on elements of the proposed ordinance as outlined in the background section of this report.
5. Direct staff to take appropriate actions and return as necessary to the City Council to increase compensation rates for City employees earning less than the City-wide minimum wage except those employed in job-training and youth employment programs as discussed in the body of this report.

**BACKGROUND:**

To date, fifteen cities in California and the County of Los Angeles have adopted minimum wage ordinances. Of these, eight will ultimately reach \$15 per hour by 2020, while others set a more modest rate. Further, all fifteen include provisions for annual increases based on changes in the Consumer Price Index once they reach their target level.

| City           | Final Hourly Rate \$ | Target Level Effective |
|----------------|----------------------|------------------------|
| Berkeley       | \$15.00              | 10-1-18                |
| County of L.A. | \$15.00              | 7-1-20                 |
| City of L.A.   | \$15.00              | 7-1-20                 |
| El Cerrito     | \$15.00              | 1-1-19                 |
| Emeryville     | \$15.00              | 7-1-18                 |
| Mountain View  | \$15.00              | 7-1-18                 |
| Oakland        | \$12.55              | 1-1-16                 |
| Palo Alto      | \$11.00              | 1-1-16                 |
| Richmond       | \$13.00              | 1-1-18                 |
| San Diego      | \$11.50              | 1-1-17                 |
| Sacramento     | \$12.50              | 1-1-20                 |
| San Francisco  | \$15.00**            | 7-1-18                 |
| San Jose       | \$10.30**            | 1-1-15                 |
| Santa Monica   | \$15.00              | 7-1-20                 |
| Sunnyvale      | \$10.30              | 1-1-15                 |

\*\*Voter approved

Municipal minimum wage ordinances seek to address the problems caused by incomes that are inadequate to sustain workers and their families particularly in areas with a high cost of living. Traditionally, public policy decisions of this nature were left to the federal or state governments which have available a variety of tools in the form of taxation and income redistribution. While it may be that there are more effective macroeconomic ways to address the issues of poverty and growing income inequality, as a municipal government the City of Pasadena, like those others who have established local minimum wages, has limited options. And in the absence of meaningful action at the state or federal level consideration of establishing a local minimum wage may be appropriate.

Accordingly, on July 27, 2015, a few weeks after the City of Los Angeles took formal steps to create a local minimum wage, the Pasadena City Council considered the placement of a future agenda item regarding potential City action to establish a local minimum wage. Following discussion, the matter was referred to the Economic Development and Technology (Edtech) Committee for further review and consideration.

As part of its charge to carefully consider the issue, the Edtech Committee held five meetings at various locations throughout the City: August 27<sup>th</sup>, December 10<sup>th</sup> and January 27<sup>th</sup> at City Hall; October 21<sup>st</sup> at Villa Parke Community Center and November 19<sup>th</sup> at Caltech. The Committee reviewed a variety of information including recently adopted minimum wage ordinances from other cities, and economic studies and articles related to potential impacts of raising the minimum wage. At each meeting the Committee heard considerable public testimony, both for and against establishing a local minimum wage. The predominant number of speakers at each meeting was in favor of establishing a local minimum wage.

The Pasadena Chamber of Commerce and other business representatives, citing potential negative impacts on local businesses, have cautioned against establishing a local minimum wage ordinance. Recently, the Chamber put forth an alternative proposal (Attachment A). The Pasadena Chamber of Commerce and Civic Association Alternative would increase the minimum wage to \$12.50 per hour by January 1, 2020 as follows:

| <b>Effective Date</b> | <b>Minimum Hourly Rate</b> |
|-----------------------|----------------------------|
| January 1, 2017       | \$10.50                    |
| January 1, 2018       | \$11.00                    |
| January 1, 2019       | \$11.75                    |
| January 1, 2020       | \$12.50                    |

Additionally, as proposed by the Chamber of Commerce:

- Businesses with fewer than 100 employees would be given one additional year to implement the increased minimum hourly rates.
- Community-based non-profits would be given two additional years to implement the increased minimum hourly rates.
- Programs for Youth Workers and those with significant barriers to employment such as, recently released felons, formerly homeless, recovering substance abusers would be exempt.
- Future increases to the minimum wage would not to be tied to changes in CPI.
- Separate, presumably annual, actions by the City Council for each increase in minimum wage rate would be required.
- A total earnings formula would be employed that would take into account taxable earnings from commissions, tips or other sources employees may receive.

A number of these additional points are discussed later in this report.

At its November 19<sup>th</sup> meeting the Committee hosted a panel discussion whereby each panel member provided a brief presentation and responded to questions from the Committee. The meeting included four noted experts:

Dr. Christine Cooper, Vice President for the Institute for Applied Economics at the Los Angeles Economic Development Corporation, an expert in development economics, environmental economics, regional analysis, and urban sustainability;

Dr. Michael Reich, Professor of Economics and Director of the Institute for Research on Labor and Employment at the University of California at Berkeley, specializing in areas of labor economics and political economy, including the economics of racial inequality, the analysis of labor market segmentation;

Dr. Christopher Thornberg, founding Partner of Beacon Economics, an expert in economic forecasting, regional economics, employment and labor markets, economic policy, and industry and real estate analysis, and

Dan Flaming, President of Economic Roundtable, a nonprofit urban research organization working on social, economic and environmental problems facing communities.

At the December 10<sup>th</sup> meeting there was consensus among the members of the Edtech Committee to forward a recommendation to establish a local minimum wage ordinance, based on the version established by the County of Los Angeles, to the full City Council for its consideration. However, based on the discussion, there were some areas where additional policy direction was necessary.

At the January 27<sup>th</sup> meeting staff presented a proposed framework for a Pasadena Minimum Wage Ordinance and reviewed with the Committee those areas where additional policy direction was requested. For each of these items, which are presented below, staff provided a recommendation for the Committee to consider. Based on input from members of the Committee additional discussion has been added to this report. The City Council is asked to provide appropriate direction to staff.

1. *Small Business Deferral* – The minimum wage ordinances for both the City and County of Los Angeles provide a one-year delay for employers with twenty-five or fewer employees. By way of example, while employers with twenty-six employees must pay their employees \$10.50 on July 1, 2016 and \$12.00 on July 1, 2017, those with twenty-five or fewer have until July 1, 2017 to pay \$10.50 and July 1, 2018 to pay \$12.00. The Chamber of Commerce has proposed that employers with fewer than 100 employees be considered small business and that they be given an additional year to comply. Staff is recommending that the Council adopt the same approach as the City and County of Los Angeles. The Council could elect to go further by providing an exemption for small business altogether; for example, those with twenty-five or perhaps ten employees.

As part of this consideration at the Edtech Committee, there was discussion regarding new, start-up businesses. In considering deferrals or exemptions for new, start-up businesses, staff considered the challenge associated with determining whether a business is in fact, a new business, as often sales tax and business license permits are re-registered under a new name to what is essentially an on-going enterprise. Consequently, staff believes that to the extent any deferral or exemption is applied it should be based on workforce size not duration in business.

2. *Deferral for certain Non-Profits with greater than 25 employees* – The County of Los Angeles' minimum wage ordinance does not contain any exemption or deferral for non-profits. The City of Los Angeles' ordinance does include a provision whereby non-profits with 26 or more employees meeting certain criteria may be eligible for the small business deferral discussed above. Specifically, the City of Los Angeles Ordinance provides that an employer that is a Non-Profit Corporation with 26 or more employees may qualify for the same deferral schedule as small businesses provided the Non-Profit establishes by compelling evidence that:

- a. The chief executive officer earns a salary which, when calculated on an hourly basis, is less than five times the lowest wage paid by the corporation; or
- b. It is a Transitional Employer (i.e., an organization that provides transitional jobs for the long-term unemployed); or
- c. It serves as a child care provider; or
- d. It is funded primarily by City, County, State or Federal grants or reimbursements.

As part of the discussion on January 27<sup>th</sup> Councilmember Wilson asked that consideration be given to establishing a provision similar to that of the City of Los Angeles. The City Council is therefore asked to provide policy direction in this regard.

3. *Total Earnings Exemption* – As mentioned earlier, the Chamber of Commerce has recommended that any local ordinance include a provision whereby employees who receive taxable earnings, such as tips for those working in the restaurant industry, be exempted from the minimum wage requirement so long as the employee's overall income (tips included) meets the local minimum wage. The example provided by the Chamber is the ordinance adopted by Seattle, Washington, which factors in tips.

The California Labor Code specifies that gratuities are the sole property of the employee or employees to whom they are provided. Nevertheless, persons receiving tips, commissions and other forms of earnings are required by law to report such earnings. In cases where restaurant patrons provide tips via credit or debit card, such earnings are captured and reported by the restaurant. When receiving tips in the form of cash, employees are obligated to self-report.

As proposed by the Chamber, the minimum wage would not apply to any employee whose "Total Earnings" for a given pay period (typically two weeks) were at least the amount specified in the City's ordinance. The definition of "Total Earnings" would include all taxable earnings by every description received directly or indirectly as a result of services and labor performed by the employee, e.g. commissions or tips.

To date, none of the cities in California that have adopted minimum wage ordinances have included total earnings exemptions. Recently, however, the City of Long Beach, which on January 19<sup>th</sup> directed the preparation of a minimum wage ordinance, signaled its intention to seek changes in state law regarding tips. Nevertheless, the adoption of a total earnings exemption is likely to invite litigation as even its proponents acknowledge there is no legal authority which specifically addresses this issue.

Locally, such an exemption would have its greatest impact on the food service industry. Based on data from the American Communities survey, which was presented at the November 19<sup>th</sup> Edtech meeting, it is estimated that restaurant and bar workers comprise 12% of low-wage workers in Pasadena. Of the roughly 4,000 persons estimated to work in restaurants and bars locally, nearly 2/3rds earn less than \$15 per hour. Keeping in mind the underlying policy objective, coupled with the desire not to make Pasadena the test case for litigation, staff does not recommend pursuing the Chamber's proposal in regard to a total earnings exemption.

4. *"Learners" exemption* – The California Labor Code defines a "Learner" as an employee during their first 160 hours of employment in a new career field, regardless of age. Many local businesses employ interns and new personnel requiring on-the-job training. Typically, internships/training programs are short-term in nature but provide important entry opportunities for those entering the labor force or those embarking on a new career. In addition, youth programs are typically designed to provide young people an opportunity to gain needed work experience, without having to compete with adults for those entry-level jobs.

The City of Los Angeles' minimum wage ordinance further defines "Learners" as employees who are 14-17 years of age and specifies that the "Learners" shall be paid no less than 85% of the applicable minimum wage for the first 160 hours of employment, thereby creating a lower required minimum wage for youth employment. The County of Los Angeles' ordinance does not address the issue of "Learners" at all.

As part of the January 27<sup>th</sup> discussion, staff recommended that the City adopt an exemption for "Learners" consistent with the State Labor Code whereby persons regardless of age must be paid not less than 85% of the state minimum wage during their first 160 hours of employment in occupations in which they have no previous similar or related experience. As part of the Committee's discussion, Councilmember Hampton suggested extending this period to something longer than 160 hours, so as to create more opportunities for new employment including youth

employment. The City of Santa Monica provides a Learner exemption for the first 480 hours of employment or six months, whichever comes first. Based on the discussion at the Committee level, staff is recommending that the same allowance of 480 hours or six months whichever comes first be provided to employers in Pasadena.

5. *Phased Implementation* – Pasadena is much smaller than the City of Los Angeles and the unincorporated county areas. During the Edtech Committee's discussions, concerns were raised as to whether adopting a local minimum wage would place Pasadena at a competitive disadvantage relative to other cities, particularly in the San Gabriel Valley or just to the west with whom it may compete for jobs. Conversely, advocates have shared their hope that as more cities adopt higher minimum wages, it will lead others to follow suit.

Taking both views into account, staff is recommending that should the City Council adopt a minimum wage ordinance, that initially it provide for increases only through July 1, 2018. As proposed, staff would return to the City Council no later than February 15, 2019 with a report assessing the impact of the local minimum wage on reducing poverty, unemployment, job creation, and the overall local business climate. Such analysis would be expected to include such data as:

- Change in business establishments by industry sector
- Average payrolls by industry sector
- Occupation and median earnings for the civilian employed population 16 years and over in Pasadena
- Unemployment rates
- Taxable Sales (City of Pasadena) compared to the benchmark cities
- Sales Tax trends in existing geographically defined business districts in Pasadena
- Pasadena business license and Health Department data related to renewals and discontinued accounts (business closures)
- Vacancy rate for commercial / storefront space
- Request for job placement services at the Foothill Workforce Investment Board by age group
- Number of Pasadena households defined in various low income categories

It is important to note that while the prescribed report would be presented in 2019, pending further City Council action, staff would begin tracking this data immediately which could then be presented periodically to the Edtech Committee.

Upon submission of the report in 2019, staff would request direction from the City Council regarding an amendment to the ordinance to increase the minimum wage as follows:

- a. July 1, 2019 the hourly wage shall be \$14.25
- b. July 1, 2020 the hourly wage shall be \$15.00

- c. Beginning July 1, 2022 and each July 1 thereafter the hourly wage shall adjust by an amount equal to the change in the Los Angeles-Riverside-Orange County consumer price index for all urban consumers

6. *Enforcement* – Throughout the series of meetings held by the Edtech Committee, significant public comment was received regarding the problem of wage theft. Currently, enforcement for wage theft claims are handled by the State Department of Industrial Relations. However, the magnitude of the problem appears to be overtaxing the state's resources. As cities have established minimum wage ordinances some have established offices to handle enforcement and address wage theft while others are coordinating such efforts. For example, the City of San Jose will be providing enforcement for the cities of Sunnyvale, Mountain View, Palo Alto and Santa Clara.

The Edtech Committee felt that a robust enforcement effort should be established in Pasadena. Accordingly, if directed to draft a minimum wage ordinance, staff will develop, concurrently, a strategy for enforcement that is expected to include various elements including: 1) Authorizing a private right of action to be initiated by an individual or individuals and couple that right of action with a multiplier on damages (three times the wages owed for example); 2) Providing for an award of attorneys' fees to attorneys representing employees in actions to enforce the minimum wage initiated on behalf of an employee, when violations are found; 3) Imposing monetary penalties, in addition to back wages, on any employer found to have violated the minimum wage law; 4) Enhancing penalties if employers are found to have retaliated against employees; 5) Providing other incentives to private sector attorneys to investigate and maintain actions to enforce the minimum wage; 6) Providing conditions on the issuance of regulatory permits to include compliance with the minimum wage law.

Staff will also pursue the feasibility of prosecuting violations of the minimum wage ordinance through the City Prosecutor's Office and/or contracting with the County of Los Angeles for additional services. Another idea that was discussed at the January 27<sup>th</sup> meeting was working cooperatively/contracting with community-based organizations to establish resource centers for workers and assist with enforcement.

7. *Application to the City's Workforce* – The adoption of a local minimum wage ordinance would apply to employers in the City but not to the City as an employer itself. Nevertheless, as discussed with the Edtech Committee, the intent is to adjust salaries within the City's own workforce to mirror any local minimum wage. This would be achieved through amendments to the salary resolution and any applicable Memorandums of Understanding with bargaining units. The Human Resources Department would coordinate this effort, which will include a financial impact analysis, and return to the City Council separately for requisite approvals.

As it relates to this subject, the City operates two employment programs which serve youth up to the age of 24; the Summer Rose employment program and the



Ambassador program, as well as the MASH job-training program which provides a unique training opportunity for otherwise unskilled adults (18 years and older) to gain those skills and work habits necessary to obtain a permanent job. Staff is recommending that in recognition of the training aspect of these programs and in order to maximize participation, that they remain tied to the state minimum wage. Similar action to exempt training and seasonal employment was taken by the City Council in association with the establishment of the Living Wage Ordinance.

The table on the following page summarizes the staff proposal and provides a comparison to the ordinances of the City of Los Angeles and the County of Los Angeles.

| <b>Feature</b>  | <b>Pasadena - Staff Recommendation</b>   | <b>City of Los Angeles</b>  | <b>County of Los Angeles</b>                        |
|---|--|---|---|
| <b>Minimum Wage Rate</b>                                      | July 1, 2016 - \$10.50   | July 1, 2016 - \$10.50  | July 1, 2016 - \$10.50                              |
|   | July 1, 2017 - \$12.00   | July 1, 2017 - \$12.00  | July 1, 2017 - \$12.00                              |
|   | July 1, 2018 - \$13.25   | July 1, 2018 - \$13.25  | July 1, 2018 - \$13.25                              |
|   | Pending Further Council Action:<br><br>July 1, 2019 - \$14.25  | July 1, 2019 - \$14.25  | July 1, 2019 - \$14.25                              |
|   | July 1, 2020 - \$15.00   | July 1, 2020 - \$15.00  | July 1, 2020 - \$15.00                              |
|   | July 1, 2022 and annually thereafter CPI adjustment  | July 1, 2022 and annually thereafter CPI adjustment   | July 1, 2022 and annually thereafter CPI adjustment |
| <b>Deferral for small business with 25 or fewer employees</b> | One year lag in wage applicability   | One year lag in wage applicability  | One year lag in wage applicability                  |
| <b>Deferral for non-profits with more than 26 employees</b>   | -CEO salary is less than five times that of lowest paid employee; or<br>-Is a Transitional Employer; or<br>-Serves as a child care provider; or<br>-Is primarily funded by City, County, State or Federal grants or reimbursements | -CEO salary is less than five times that of lowest paid employee; or<br>-Is a Transitional Employer; or<br>-Serves as a child care provider; or<br>-Is primarily funded by City, County, State or Federal grants or reimbursements    | No Deferral   |
| <b>Exemption for Learners</b>                                 | Regardless of age, paid consistent with state law during first 480 hours of employment or six months whichever comes first in occupations in which employee has no previous similar or related experience.                         | Applies only to youth between ages of 14-17: Regardless of age, paid not less than 85% of the state minimum wage during first 160 hours of employment in occupations in which employee has no previous similar or related experience. | No Exemption  |

**COUNCIL POLICY CONSIDERATION:**

The City Council's Strategic Plan Goals include Improving Quality of Life and Enhancing the Local Economy. The consideration of establishing a local minimum wage bears a direct nexus to these goals.

**FISCAL AND ECONOMIC IMPACT:**

The proposed actions will have an undetermined direct and indirect impact on the City and the local economy. The precise impact will be a function of many factors. As proposed staff will return after three years of application with an assessment of the impacts on the local economy.

As it relates to the cost of applying the minimum wage to the City's own workforce, and based on the staff recommendations above, the estimated annual budget impact is expected to range between \$500,000-\$700,000 spread across various City funds, with the majority impact in the General Fund. If so directed, as the various amendments to the salary resolution and memorandums of understanding come forward, staff will include more precise estimates.

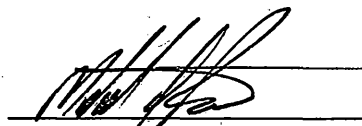
Additionally, increasing the pay to select classifications, however, could potentially create pay compaction issues and lead to a larger trickle-up effect on a wider range of City positions. As a result, further analysis would need to be performed to determine whether additional pay changes would be recommended to ensure pay differentials between levels of positions are paid and fairness in compensation provided to employees performing higher level work and which requires more years of experience, education, or training to perform. Such assessment would also be part of any recommended actions.

Respectfully submitted,



STEVE MERMELL  
Assistant City Manager

Approved by:



MICHAEL J. BECK  
City Manager

- Attachment A - Pasadena Chamber of Commerce and Civic Association Alternative
- Attachment B - City of Los Angeles Minimum Wage Ordinance
- Attachment C - County of Los Angeles Minimum Wage Ordinance