

collective bargaining, an element that was found in several other LMWO examples referenced in the creation of the draft ordinance.

- **Enforcement**

Section 5.76.090 details enforcement measures for the LMWO. At this time, staff has not identified who will provide the enforcement, however there is a preference to explore contract services as has been done in neighboring jurisdictions. As part of the ordinance adoption, staff will present additional information on enforcement options. Specifically, the draft ordinance provides the following enforcement measures:

1. The city may issue an administrative citation with a daily fine for each day or portion thereof and for each employee or person as to whom the violation occurred or continued.
2. The city may issue an administrative compliance order.
3. The city may initiate a civil action for injunctive relief and damages and civil penalties in a court of competent jurisdiction.

Impact on City Resources

The public engagement plan will require an estimated \$ in direct staff resources, a \$5,000 budget for temporary clerical support services, and a budget of \$15,000 for a robust print and social media campaign, mailed notices to business owners, translation services and supplies for community workshops. Additional funds will be required if the City ultimately elects to outsource enforcement of the LMWO. An estimated outsource contract, based on the City of Redwood City's experience, could be in the neighborhood of \$15,000 to \$25,000 per year, however, no analysis has been conducted to assess the estimate. The direct staff resources are already budgeted but the time devoted to this project will decrease availability to work emergency or new projects.

Environmental Review

This action is not a project within the meaning of the California Environmental Quality Act (CEQA) Guidelines §§ 15378 and 15061(b)(3) as it is a minor change that will not result in any direct or indirect physical change in the environment.

Public Notice

Public notification was achieved by posting the agenda, with the agenda items being listed, at least 72 hours prior to the meeting.

Attachments

- A. IAP2 level of public participation diagram
- B. Updated LMWO work plan
- C. Draft LMWO
- D. Hyperlink – May 7 staff report: menlopark.org/DocumentCenter/View/21432/H1-20190507-Minimum-Wage-CC

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IAP2 SPECTRUM, OF PUBLIC PARTICIPATION

International Association for Public Participation: www.iap2.org

	Increasing Level of Public Impact on the Decision 				
	Inform	Consult	Involve	Collaborate	Empower
Public participation goal	To provide the public with balanced and objective information to assist them in understanding the problem, alternatives, opportunities and/or solutions.	To obtain public feedback on analysis, alternatives and/or decisions.	To work directly with the public throughout the process to ensure that public concerns and aspirations are consistently understood and considered.	To partner with the public in each aspect of the decision including the development of alternatives and the identification of the preferred solution.	To place final decision-making in the hands of the public.
Promise to the public	We will keep you informed.	We will keep you informed, listen to and acknowledge concerns and aspirations, and provide feedback on how public input influenced the decision.	We will work with you to ensure that your concerns and aspirations are directly reflected in the alternatives developed and provide feedback on how public input influenced the decision.	We will look to you for advice and innovation in formulating solutions and incorporate your advice and recommendations into the decisions to the maximum extent possible.	We will implement what you decide
Example techniques	<ul style="list-style-type: none"> ▪ Fact sheets ▪ Web sites ▪ Open houses 	<ul style="list-style-type: none"> ▪ Public comment ▪ Focus groups ▪ Surveys ▪ Public meetings 	<ul style="list-style-type: none"> ▪ Workshops ▪ Deliberative polling 	<ul style="list-style-type: none"> ▪ Citizen advisory committees ▪ Consensus-building ▪ Participatory decision-making 	<ul style="list-style-type: none"> ▪ Citizen juries ▪ Ballots ▪ Delegated decision

Notes



Local Minimum Wage Ordinance (LMWO) Draft Work Plan

Updated 6/8/19

Item	Activity	Approximate timeframe	Est. Level of effort (staff hours)	Estimated Cost	City staff involved
First City Council meeting	Preliminary research, prepare staff report and presentation, and develop draft work plan	5/7/19 City Council meeting	46	\$ 7,532	City Manager's Office (CMO), Administrative Services (AS)
Second City Council meeting	Follow-up to City Council questions from 5/7; City Council adoption of the public engagement plan	6/18/2019	56	\$ 11,612	CMO, AS, ED, CAO
Prepare public engagement plan	Identify stakeholders, establish level of public engagement (low to high), identify resources and tools necessary for engagement efforts (e.g., facilitator, survey, technology tools, etc.)	6/24/19 to 7/12/19	130	\$ 14,617	CMO, AS, Economic Development (ED), City Attorney's Office (CAO)
Initiate public engagement plan	Establish meeting schedules, secure necessary resources, develop communication tools which could include a project webpage, mailers to community based organizations, mailers to businesses, etc. Translate appropriate materials as necessary	7/15/19 to 8/15/19	129	\$ 15,253	CMO, AS, CAO
Workshops	Host a two workshops of focus group meetings to introduce the LMWO and hear initial feedback, concerns, recommendations	8/14/19 and 9/12/19			CMO, ED
		Meeting prep	40	\$ 4,986	
		Actual meetings	8	\$ 997	
Third City Council meeting	First reading of LMWO	9/10/2019	107	\$ 14,231	CMO, AS, ED, CAO
Fourth City Council meeting	Second reading of LMWO	9/24/2019	12	\$ 1,536	CMO, ED
Implementation	Notices to businesses, develop enforcement program, etc.	October to December 2019	190	\$ 19,166	CMO, ED
		Estimated Initial Cost	718	\$ 89,931	
Annual maintenance	City staff administration: Noticing, enforcement follow-up, etc.	Annual	210	\$ 24,152	CMO, ED
Annual maintenance	Contract services enforcement	Annual		\$ 30,000	TBD
Impact on labor costs	Annual increase in salary and unfunded pension liabilities if implemented	Annual		n/a	
		Estimated Annual Cost		\$ 54,152	

**ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MENLO
PARK ADDING CHAPTER 5.76 [LOCAL MINIMUM WAGE] OF
TITLE 5 [BUSINESS LICENSES AND REGULATIONS] OF THE
MENLO PARK MUNICIPAL CODE TO ADOPT A CITYWIDE
MINIMUM WAGE FOR MENLO PARK EMPLOYEES**

The City Council of the City of Menlo Park does hereby ordain as follows:

SECTION 1. FINDINGS AND DETERMINATIONS.

- A. The Bay Area in general and Menlo Park in particular are becoming increasingly expensive places to live and work.
- B. Payment of a minimum wage advances the interests of the City as a whole, by creating jobs that keep workers and their families out of poverty.
- C. A minimum wage will enable a worker to meet basic needs and avoid economic hardship.
- D. This ordinance is intended to improve the quality of services provided in the City to the public by reducing high turnover, absenteeism, and instability in the workplace.
- E. Prompt and efficient enforcement of this Chapter will provide workers with economic security and assurance that their rights will be respected.

SECTION 2. ADDITION OF CODE. Chapter 5.76 [Local Minimum Wage] of Title 5 [Business Licenses and Regulations] of the Menlo Park Municipal Code is hereby added as follows.

**Chapter 5.76
LOCAL MINIMUM WAGE**

Sections:

- 5.76.010 Purpose.
- 5.76.020 Definitions.
- 5.76.030 Minimum Wage.
- 5.76.040 Exempt Organizations.
- 5.76.050 Waiver through collective bargaining.
- 5.76.060 Notice, posting and payroll records.
- 5.76.070 Retaliation prohibited.
- 5.76.080 Implementation.
- 5.76.090 Enforcement.
- 5.76.100 Relationship to other requirements.

5.76.010 Purpose.

This ordinance shall be known as the “Minimum Wage Ordinance.”

5.76.020 Definitions.

The following words, terms and phrases, when used in this chapter, shall have the meanings set forth in this section, except where the context clearly indicates a different meaning:

- a. "City" shall mean City of Menlo Park or any agency designated by the City of Menlo Park to perform various investigative, enforcement and informal resolution functions pursuant to this chapter.
- b. "Employee" shall mean any person who:
 1. In a calendar week performs at least two (2) hours of work for an employer as defined below; and
 2. Qualifies as an employee entitled to payment of a minimum wage from any employer under the California minimum wage law, as provided under Sec. 1197 of the California Labor Code and wage orders published by the California Industrial Welfare Commission.
- c. "Employer" shall mean any person, including corporate officers or executives, as defined in Sec. 18 of the California Labor Code, who directly or indirectly through any other person, including through the services of a temporary employment agency, staffing agency, or similar entity, employs or exercises control over the wages, hours, or working conditions of any employee and who is either subject to the city's business license requirements, conducts business in Menlo Park or maintains a business facility in the city.
- d. "Minimum wage" shall have the meaning set forth in Sec. 5.76.030 of this chapter.

5.76.030 Minimum Wage.

- a. Employers shall pay employees no less than the minimum wage set forth in this section for each hour worked within the geographic boundaries of the City of Menlo Park.
- b. Effective January 1, 2020, the minimum wage shall be an hourly rate of \$15.00. To prevent inflation from eroding its value, , the City Council will review the February to February change in the Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI-W) for San Francisco – Oakland – Hayward, or its successor index as published by the U.S. Department of Labor or its successor agency, to determine whether to increase to minimum wage for the subsequent calendar year. The City Council shall conduct this review in July and, if the City Council elects to increase the minimum wage, the City shall announce the increased wage by October 1 of each year and such increased wage shall become effective as the new minimum wage on January 1 of the subsequent year.
- c. The City Council may, by resolution and upon a majority vote of the Council, temporarily suspend the Minimum Wage for a period of no more than twelve (12) months. At the end of the suspension period, the Minimum Wage shall be automatically reinstated without further notice or action by the City Council.

In a resolution granting a temporary suspension of the Minimum Wage, the City Council shall make the following finding: Local or other economic conditions justify temporarily suspending the Minimum Wage.

Nothing herein shall prohibit the City Council from adopting consecutive temporary

suspension periods, as provided herein.

d. A violation for unlawfully failing to pay the minimum wage shall be deemed to continue from the date immediately following the date that the wages were due and payable as provided in Part 1. (commencing with Sec. 200) of Division 2 of the California Labor Code, to the date immediately preceding the date the wages are paid in full.

5.76.040 Exempt organizations.

State, federal and county agencies, including school districts, shall not be required to pay minimum wage when the work performed is related to their governmental function. However, for work that is not related to their governmental function, including, but not limited to: booster or gift shops, non-K-12 cafeterias, on-site concessions and similar operations, minimum wage shall be required to be paid. Minimum wage shall also be required to be paid by lessees or renters of facilities or space from an exempt organization.

Any organization claiming "auxiliary organization" status under California Education Code Sec. 89901 or Sec. 72670(c) shall not be required to pay minimum wage. The organization, upon request of the city, shall provide documentary proof of its auxiliary organization status.

5.76.050 Waiver through collective bargaining.

To the extent required by federal law, all or any portion of the applicable requirements of this chapter may be waived in a bona fide collective bargaining agreement, provided that such waiver is explicitly set forth in such agreement in clear and unambiguous terms.

5.76.060 Notice, posting and payroll records.

a. By December 1 of each year, the city shall publish and make available to employers a bulletin announcing the adjusted minimum wage rate for the upcoming year, which shall take effect on January 1 of each year. In conjunction with this bulletin, the city shall, by December 1 of each year, publish and make available to employers a notice suitable for posting by employers in the workplace informing employees of the current minimum wage rate and of their rights under this chapter. Such notice shall be in English and other languages as provided in any regulations promulgated under Section 5.76.080 (a).

b. Every employer shall post in a conspicuous place at any workplace or job site where any employee works the notice published each year by the city informing employees of the current minimum wage rate and of their rights under this chapter. Every employer shall post such notices in any language spoken by at least five (5) percent of the employees at the workplace or job site. Every employer shall also provide each employee at the time of hire with the employer's name, address and telephone number in writing.

c. Employers shall retain payroll records pertaining to employees for a period of four (4) years, and shall allow the city access to such records, with appropriate notice and at a mutually agreeable time, to monitor compliance with the requirements of this chapter. Where an employer does not maintain or retain adequate records documenting

wages paid or does not allow the city reasonable access to such records, the employee's account of how much he or she was paid shall be presumed to be accurate, absent clear and convincing evidence otherwise.

5.76.070 Retaliation prohibited.

a. It shall be unlawful for an employer or any other party to discriminate in any manner or take adverse action against any person in retaliation for exercising rights protected under this chapter. Rights protected under this chapter include, but are not limited to: the right to file a complaint or inform any person about any party's alleged noncompliance with this chapter; and the right to inform any person of his or her potential rights under this chapter and to assist him or her in asserting such rights. Protections of this chapter shall apply to any person who mistakenly, but in good faith, alleges noncompliance with this chapter.

b. Taking adverse action against a person within ninety (90) days of the person's exercise of rights protected under this chapter shall raise a rebuttable presumption of having done so in retaliation for the exercise of such rights.

5.76.080 Implementation.

a. **Guidelines.** The city manager or designee shall be authorized to coordinate implementation and enforcement of this chapter and may promulgate appropriate guidelines or rules for such purposes. Any guidelines or rules promulgated by the city shall have the force and effect of law and may be relied on by employers, employees and other parties to determine their rights and responsibilities under this chapter. Any guidelines or rules may establish procedures for ensuring fair, efficient and cost effective implementation of this chapter, including supplementary procedures for helping to inform employees of their rights under this chapter, for monitoring employer compliance with this chapter and for providing administrative hearings to determine whether an employer or other person has violated the requirements of this chapter.

b. **Reporting Violations.** An employee or any other person may report to the city in writing any suspected violation of this chapter. The city shall encourage reporting pursuant to this subsection by keeping confidential, to the maximum extent permitted by applicable laws, the name and other identifying information of the employee or person reporting the violation, provided, however, that with the authorization of such person, the city may disclose his or her name and identifying information as necessary to enforce this chapter or other employee protection laws. In order to further encourage reporting by employees, if the city notifies an employer that the city is investigating a complaint, the city shall require the employer to post or otherwise notify its employees that the city is conducting an investigation, using a form provided by the city.

c. **Investigation.** The city or its designated agent shall be responsible for investigating any possible violations of this chapter by an employer or other person. The city or its designated agent shall have the authority to inspect workplaces, interview persons and request the city attorney to subpoena books, papers, records or other items relevant to the enforcement of this chapter.

d. **Informal Resolution.** The city shall make every effort to resolve complaints informally, in a timely manner.

5.76.090 Enforcement.

a. Where prompt compliance is not forthcoming, the city shall take any appropriate enforcement action to secure compliance. In addition to all other civil remedies, the city may enforce this ordinance pursuant to Title 1 of the Menlo Park Municipal Code. To secure compliance, the city may use the following enforcement measures:

1. The city may issue an administrative citation with a daily fine for each day or portion thereof and for each employee or person as to whom the violation occurred or continued.

2. The city may issue an administrative compliance order.

3. The city may initiate a civil action for injunctive relief and damages and civil penalties in a court of competent jurisdiction.

b. Any person aggrieved by a violation of this chapter, any entity a member of which is aggrieved by a violation of this chapter or any other person or entity acting on behalf of the public as provided for under applicable state law may bring a civil action in a court of competent jurisdiction against the employer or other person violating this chapter and, upon prevailing, shall be awarded reasonable attorneys' fees and costs and shall be entitled to such legal or equitable relief as may be appropriate to remedy the violation including, without limitation, the payment of any back wages unlawfully withheld, the payment of an additional sum as a civil penalty in the amount of fifty dollars (\$50) to each employee or person whose rights under this chapter were violated for each day that the violation occurred or continued, reinstatement in employment and/or injunctive relief; provided, however, that any person or entity enforcing this chapter on behalf of the public as provided for under applicable state law shall, upon prevailing, be entitled only to equitable, injunctive or restitutionary relief to employees, and reasonable attorneys' fees and costs.

c. This section shall not be construed to limit an employee's right to bring legal action for a violation of any other laws concerning wages, hours or other standards or rights, nor shall exhaustion of remedies under this chapter be a prerequisite to the assertion of any right.

d. Except where prohibited by state or federal law, city agencies or departments may revoke or suspend any registration certificates, permits or licenses held or requested by the employer until such time as the violation is remedied.

e. **Relief.** The remedies for violation of this chapter include, but are not limited to:

1. Reinstatement, and the payment of back wages unlawfully withheld, and the payment of an additional sum as a civil penalty in the amount of fifty dollars (\$50) to each employee or person whose rights under this chapter were violated for each day or portion thereof that the violation occurred or continued, and fines imposed pursuant to other provisions of this code or State law.

2. Interest on all due and unpaid wages at the rate of interest specified in subdivision (b) of Sec. 3289 of the California Civil Code, which shall accrue from the date that the wages were due and payable as provided in Part 1 (commencing with Sec. 200) of Division 2 of the California Labor Code, to the date the wages are paid in full.

3. Reimbursement of the city's administrative costs of enforcement and reasonable attorney's fees.

f. **Posted Notice.** If a repeated violation of this chapter has been finally determined, the city may require the employer to post public notice of the employer's failure to comply in a form determined by the city.

5.76.100 Relationship to other requirements.

This chapter provides for payment of a local minimum wage and shall not be construed to preempt or otherwise limit or affect the applicability of any other law, regulation, requirement, policy or standard that provides for payment of higher or supplemental wages or benefits, or that extends other protections.

SECTION 3. SEVERABILITY. If any section of this ordinance, or part hereof, is held by a court of competent jurisdiction in a final judicial action to be void, voidable or unenforceable, such section, or part hereof, shall be deemed severable from the remaining sections of this ordinance and shall in no way affect the validity of the remaining sections hereof.

SECTION 4. CALIFORNIA ENVIRONMENTAL QUALITY ACT DETERMINATION. The City Council hereby finds that this ordinance is not subject to the provisions of the California Environmental Quality Act ("CEQA") under Section 15061(b)(3) of the CEQA Guidelines because it can be seen with certainty to have no possibility of having a significant effect on the environment.

SECTION 5. EFFECTIVE DATE AND PUBLISHING. This ordinance shall take effect 30 days after adoption. The City Clerk shall cause publication of the ordinance within 15 days after passage in a newspaper of general circulation published and circulated in the city or, if none, the posted in at least three public places in the city. Within 15 days after the adoption of the ordinance amendment, a summary of the amendment shall be published with the names of the council members voting for and against the amendment.