



STAFF REPORT

City Council Meeting Date: 9/24/2019
Staff Report Number: 19-196-CC

Consent Calendar: Waive the second reading and adopt Ordinance No. 1058 adopting a local minimum wage ordinance effective January 1, 2020

Recommendation

Staff recommends that the City Council waive the second reading and adopt Ordinance No. 1058 adopting a local minimum wage ordinance effective January 1, 2020.

Policy Issues

State law requires two City Council actions, a first reading and second reading, to amend or add to a city's municipal code.

Background

Ordinance No. 1058, Attachment A, was first heard by the City Council September 10, where it was approved as amended as detailed below. The staff report outlining the ordinance development is attached as Attachment B.

Analysis

Following a presentation from staff, public comment, and discussion by the City Council, City Councilmember Combs moved and City Councilmember Nash seconded a motion to adopt Ordinance No. 1058 with the following amendment to Section 5.76.020.b.:

- b. "Employee" shall mean any person who:
 - 1. In a calendar week performs at least ~~ten (10)~~ two (2) hours of work for an employer as defined below; and

With the exception of the redline above, Ordinance No. 1058 remains unchanged. The motion passed with a vote of 4-0-1 (City Councilmember Carlton abstained.)

Impact on City Resource

Staff estimates that the on-going costs to administer the local minimum wage ordinance, including contract enforcement, at approximately \$54,000. City staff will return with a midyear budget amendment once the contract enforcement costs are known.

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. Ordinance No. 1058
- B. Hyperlink – September 10 staff report: menlopark.org/DocumentCenter/View/22770/G2---20190910-Local-minimum-wage-ordinance-first-reading-CC

Report prepared by:
Nick Pegueros, Assistant City Manager

ORDINANCE NO. 1058

**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 Exemptions.
- 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, beginning on January 1, 2021, and each January 1 thereafter, the minimum wage shall increase by an amount corresponding to the increase, if any, in the cost of living, not to exceed 3%. The prior year's increase in the cost of living shall be measured by the percentage increase, if any, as of August of the immediately preceding year of 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, with the amount of the minimum wage increase rounded to the nearest multiple of five cents (\$.05). If there is no net increase in the cost of living, the minimum wage shall remain unchanged for that year. The adjusted minimum wage shall be announced by October 1st of each year, or as soon as practicable thereafter if the Consumer Price Index for August has not yet been published, and shall become effective as the new minimum wage on January 1 of each year.

c. The City Council may, by resolution and upon a majority vote of the City Council, temporarily suspend the inflation adjustment in the upcoming calendar year for a period of no more than one calendar year. At the end of the suspension period, the Minimum Wage shall be automatically adjusted by the change in Consumer Price Index in accordance with subsection b above and without further notice or action by the City Council.

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

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 Exemptions.

a. 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.

b. 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.

c. Any learner who has no previous or related experience in the occupation for which they are hired as identified in California Labor Code § 1192. This exemption shall only apply to the first 160 hours of employment as specified in Labor §1192.

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 city councilmembers voting for and against the amendment.

INTRODUCED on this tenth day of September, 2019.

PASSED AND ADOPTED as an ordinance of the City of Menlo Park at a regular meeting of said City Council on this twenty-fourth day of September, 2019, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

APPROVED:

Ray Mueller, Mayor

ATTEST:

Judi A. Herren, City Clerk