



**CITY OF SAN JOSE
SMALL BUSINESS DEVELOPMENT COMMISSION
MAY 9, 2012**

SPECIAL MEETING

TIME CERTAIN: 6:45 PM

SAN JOSE CITY HALL – 200 E. SANTA CLARA ST. – TOWER 1352

1. CALL TO ORDER

2. APPROVAL OF THE AGENDA – 1 MIN.

UNDER THE CITY’S SUNSHINE/OPEN GOVERNMENT RULES, RESOLUTION 75978, A 2/3 VOTE IS REQUIRED FOR THE COMMISSION TO MAKE A DETERMINATION THAT AN ISSUE HAS ARISEN THAT MUST BE RESOLVED IN LESS THAN FOUR (4) DAYS.

3. OPEN FORUM/ PUBLIC COMMENT / ORAL PETITION PERIOD – 2 MIN. EACH

Any person may address the Commission on any subject not on the agenda. Speakers are asked to state their name and address for the record. Since the subject is not on the agenda, the Brown Act (State Open Meeting Law) prohibits action by Commission members or City Staff. However, Commission members and City Staff may briefly respond to statements or questions and/or provide referral to Staff. The Commission may place the item on an agenda for a future meeting.

4. MINIMUM WAGE INITIATIVE – 30 MIN.

KHAMIS, ACTION

The Commission will consider providing observations to the City regarding the potential impacts of voter approval of an initiative petition that would amend the San Jose Municipal Code, Title 4 to create a minimum wage for the City of San Jose.

5. ADJOURNMENT

For questions regarding the agenda, please contact Dhez Woodworth at (408) 535-8181.

You may view this agenda and related documents at <http://www.sjeconomy.com/businessassistance/sbdc.asp> along with minutes, agendas and packets from previous meetings.

The City of San Jose is committed to open and honest government and strives to consistently meet the community's expectations by providing excellent service, in a positive and timely manner, and in the full view of the public. San Jose's ethics standards are listed at http://www.sanjoseca.gov/clerk/cp_manual/CPM_0_15.pdf.

All public records relating to an open session item on this agenda, which are not exempt from disclosure pursuant to the California Public Records Act, that are distributed to a majority of the legislative body will be available for public inspection at the City Manager's Office at San Jose City Hall, 200 E. Santa Clara St., 17th Floor, San Jose, CA 95113 at the same time that the public records are distributed or made available to the legislative body.

To request an accommodation or alternative format for City-sponsored meetings, events or printed materials, please call Dhez Woodworth of the Office of Economic Development at (408) 535-8181 or (408) 294-9337 (TTY) as soon as possible, but at least three business days before the meeting/event.

From: Hawkins, Dennis (Clerk)
Sent: Friday, May 04, 2012 5:20 PM
Subject: City of San Jose Minimum Wage Initiative
Attachments: MinimumWageBallotTitleandSummary.pdf; MINIMUM WAGE ORDINANCE_Legal Text.pdf

As you may know, recently an initiative measure which would increase the minimum wage in San Jose to \$10.00 per hour has qualified for the ballot. On May 1 the City Council accepted the certification of the measure by the Registrar of Voters and directed staff to return to the Council on May 22 with a report on the effects of the measure. We are reaching out to our community soliciting input on the potential effects of the proposed ordinance. I invite you to submit any information you have regarding the economic, social, or other impacts of increases to the minimum wage. Specifically, we're looking for published academic or other studies, literature, etc. that you feel may be relevant. Also, please feel free to provide us with information regarding other sources or contacts regarding this issue. **Please submit your comments or information by Wednesday, May 9.**

I have attached the Title and Summary of the measure drafted by the City Attorney, a copy of the full text of the measure, and provided you with links to the Council Agenda item:

- Agenda – Memo from City Attorney and City Clerk http://www.sanjoseca.gov/clerk/Agenda/20120501/20120501_0211.pdf
- Memo from Councilmember Liccardo (http://www.sanjoseca.gov/clerk/Agenda/20120501/20120501_0211att.pdf)
- Memo from Councilmember Rocha (http://www.sanjoseca.gov/clerk/Agenda/20120501/20120501_0211att2.pdf)

Under the City Charter and California Elections Code, on May 22 the Council will either a) adopt the proposed ordinance as submitted; b) call a special election; or c) place the measure on the November 2012 ballot. The staff report on the effects of the measure may address the following items:

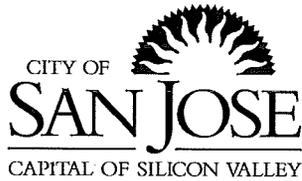
- 1) Its fiscal impact.
- 2) Its effect on the internal consistency of the city's general and specific plans.
- 3) Its effect on the use of land, the impact on the availability and location of housing, and the ability of the city to meet its regional housing needs
- 4) Its impact on funding for infrastructure of all types, including, but not limited to, transportation, schools, parks, and open space. The report may also discuss whether the measure would be likely to result in increased infrastructure costs or savings, including the costs of infrastructure maintenance, to current residents and businesses.
- 5) Its impact on the community's ability to attract and retain business and employment.
- 6) Its impact on the uses of vacant parcels of land.
- 7) Its impact on agricultural lands, open space, traffic congestion, existing business districts, and developed areas designated for revitalization.
- 8) Any other matters the City Council requests to be in the report.

Please feel free to email or call Toni Taber, Assistant City Clerk (phone: 408-535-1270) or myself if you have any questions or need further information. An interdepartmental team of City staff will issue the report to the Council no later than Friday, May 18.

Thank you for any information and thoughts which you can contribute to our understanding of this important issue and its potential effects in our community.

--Dennis

Dennis D. Hawkins, CMC
City Clerk
City of San Jose
200 E. Santa Clara Street, Wing - 2nd Floor
San Jose, CA 95113-1905
Phone: 408.535.1275 - Fax: 408.292.6207



Memorandum

**TO: HONORABLE MAYOR
AND CITY COUNCIL**

**FROM: RICHARD DOYLE
DENNIS HAWKINS**

**SUBJECT: ACTIONS RELATED TO THE
MINIMUM WAGE INITIATIVE**

DATE: April 27, 2012

As recommended by the Rules and Open Government Committee on April 25, 2012:

RECOMMENDATION

1. Accept the Certificate of Sufficiency issued by the County of Santa Clara Registrar of Voters regarding the Minimum Wage Initiative.
2. Refer to staff preparation of a report on the effects of the proposed ordinance consistent with California Elections Code Section 9212 to be presented to the Council no later than May 22, 2012.
3. Agendize for the May 22, 2012 City Council meeting a discussion of the report prepared under Section 9212 and Council action on options consistent with San Jose City Charter, Article 16, Sections 1601 (b) and 1603 (a) (2) and California Elections Code Section 9215:
 - a. Adopt the proposed ordinance as submitted no later than June 1, 2012;
 - b. Adopt a resolution calling an election to submit the initiative to the voters at a Special Municipal Election on a date to be decided; or
 - c. Adopt a resolution no later than August 10, 2012 calling an election to submit the initiative to the voters at the next General Election on Tuesday, November 6, 2012

SUMMARY

The Santa Clara County Registrar of Voters has certified the petition to be sufficient (see attachments 1 and 2). The initiative petition would amend the San Jose Municipal Code, Title 4 to create a minimum wage for the City of San Jose (see attachments 3 and 4). By adopting the

above recommendation, the Council is directing staff to prepare a report on the effects of the proposed ordinance. The report would include elements defined in California Elections Code Section 9212 (listed below). The Council must receive the report within 30 days of the acceptance of the certification of the sufficiency of the petition – in this case, by May 31, 2012. The Rules Committee has directed that the Council receive the 9212 report on May 22 and make a determination at that time of whether to: a) adopt the proposed ordinance as specified; b) adopt a resolution calling an election to submit the initiative to the voters at a Special Municipal Election on a date to be decided, but no earlier than 88 days before the date of the resolution; or c) adopt a resolution by August 10, 2012 calling for an election to submit the initiative to the voters at the next General Election on November 6, 2012.

BACKGROUND

On January 19, 2012, proponents of an initiative which would amend the San Jose Municipal Code, Title 4 filed a Notice of Intent to circulate a petition which would increase the minimum wage paid in San Jose to \$10.00 per hour. At the time that the Notice of Intention was filed, the voter registration report on file with the California Secretary of State showed 383,220 registered voters within San Jose. City Charter Section 1603 (b) requires that an initiative petition be signed by at least Five Percent (5%) of the total number of eligible registered voters to qualify the measure for either a Special Municipal Election or the next General Election (which is November 6, 2012). Based on that registration, the initiative requires 19,161 valid signatures of eligible San Jose registered voters for the initiative to qualify.

On March 29, 2012, the proponents of the initiative petition submitted 36,225 signatures on 5,084 sections. The Office of the City Clerk conducted a prima facie review and raw count of the petition and determined that there appeared to be a sufficient number of signatures to proceed.

On April 2, 2012, the petition was transferred to the County of Santa Clara Registrar of Voters for signature verification. The Registrar of Voters began the process of verifying all signatures contained on the petitions with instructions to stop the count once 19,500 valid signatures were confirmed. The Registrar reported on April 24, 2012 that the petition has qualified with the sufficient number of signatures, as summarized below. Therefore, the Registrar has certified the petition to be sufficient to initiate further Council action as described below.

Total Number of Signatures Submitted	36,225
Number of Signatures Verified	27,757
Number of Signatures found Sufficient	19,518
Number Signatures found Not Sufficient	8,250
Number of signatures Not Sufficient – Duplicate	606
Number of signatures Not Checked	8,468

ANALYSIS

The initiative process in San José is guided by the City Charter and the California Elections Code. Once certified as qualified, under Elections Code Sections 9114 and 9211, the City Clerk has a duty to bring the Certificate of Sufficiency to the City Council at its next regularly scheduled meeting. The City Council must make a determination of how to proceed within ten (10) days of notice of the certification.

In placing this item on the May 1, 2012 City Council Agenda, the Rules and Open Government Committee directed the City Clerk to present two actions to the Council: 1) Acceptance of the Certificate of Sufficiency and 2) Direction to staff to complete a report on the effects of the proposed ordinance in Section 9212 as outlined below.

If the Council adopts the recommended actions, the City will comply with legal requirements. In addition, this action provides staff direction and some time to prepare a report to the Council on the effects of the proposed ordinance. The Council would then have information available to either adopt the ordinance as proposed or submit the initiative to the voters.

Consistent with California Elections Code §9215, the Council has four options to consider:

1) Report on the Effect of the Initiative:

Under Elections Code §9215, the City Council may order a report on the effect of the proposed initiative as defined in California Elections Code §9212, which provides that the Council may refer the initiative measure to any city agency or agencies for a report, which may include the following topics:

- 1) Its fiscal impact.
- 2) Its effect on the internal consistency of the city's general and specific plans.
- 3) Its effect on the use of land, the impact on the availability and location of housing, and the ability of the city to meet its regional housing needs
- 4) Its impact on funding for infrastructure of all types, including, but not limited to, transportation, schools, parks, and open space. The report may also discuss whether the measure would be likely to result in increased infrastructure costs or savings, including the costs of infrastructure maintenance, to current residents and businesses.
- 5) Its impact on the community's ability to attract and retain business and employment.
- 6) Its impact on the uses of vacant parcels of land.
- 7) Its impact on agricultural lands, open space, traffic congestion, existing business districts, and developed areas designated for revitalization.
- 8) Any other matters the City Council requests to be in the report.

The report shall be presented to the legislative body within the time specified by the Council, but no later than 30 days after the elections official certifies the sufficiency of

the petition. The Rules Committee recommends that the Council refer preparation of this report to staff and agendize the report for discussion on May 22, 2012. The Council must then take one of the actions described in Elections Code Section 9215 as detailed below.

2) Adopt Ordinance as proposed:

Under City Charter Section 1603 (a) (1) and California Elections Code §9215 (a), the Council may adopt the ordinance, without alteration, at the regular meeting at which the certification of the petition is presented, or within 10 days after the 9212 report is presented. If this option is pursued, the Council must act on the adoption of the proposed ordinance as submitted no later than June 1, 2012.

3) Order a Special Municipal Election:

If the City Council does not adopt the proposed ordinance in its entirety, then under City Charter, Article 16, Section 1603 (a) (2), if the petition is signed by at least five percent (5%) of eligible registered voters in effect at the time the notice of intent to circulate the petition is published, then the proposed ordinance, without alteration, may be submitted by the Council to the voters at a Special Municipal Election. The Council would have to adopt a resolution calling an election to submit the initiative to the voters at a Special Municipal Election on a date to be decided, but no earlier than 88 days and no later than 103 days from the date of the resolution.

4) Order an election on the next General Election Date:

If the City Council does not adopt the proposed ordinance in its entirety, then under City Charter, Article 16, Section 1603 (a) (2), if the petition is signed by at least five percent (5%) of eligible registered voters in effect at the time the notice of intent to circulate the petition is published, then the proposed ordinance, without alteration, shall be submitted by the Council to the voters at the next General Election, which is November 6, 2012. The Council would have to adopt a resolution to submit the proposed ordinance to the voters by August 10, 2012; the last regular Council meeting before that date is August 7, 2012.

COST SUMMARY/IMPLICATIONS

The cost for the signature verification already incurred with the County of Santa Clara is estimated to be approximately \$2.25 per signature plus overhead charges. Any cost impact from passing the ordinance without going to election would be information researched and presented with the 9212 Report.

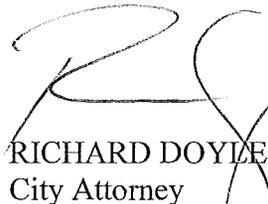
As for election costs, one of the biggest variables is whether or not the election is consolidated with any other election. For a special election that is not consolidated with another election, the

City of San José would bear the full cost of the election including printing, mailing and personnel costs with the Santa Clara County Registrar of Voters. The Office of the City Clerk is in the process of obtaining updated cost projections from the Santa Clara County Registrar of Voters for a "stand-alone" special election and estimated costs for the November 2012 General Election. The estimated election costs and assumptions will be presented with the 9212 report.

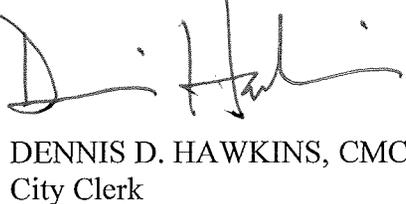
To provide some reference, however, in the November 2010 General Election, the City had three citywide measures on the ballot plus three Council district elections. The total cost for the three measures was \$968,677, which averages to \$322,892 per measure. Measure U was the first citywide measure and cost \$545,484, and the costs for Measures V (\$213,073) and W (\$210,120) were the second and third measures. The above costs were based upon the City not publishing the full text of the measure in the sample ballot and allowing only ballot arguments, but not including rebuttal arguments. These are options that the Council would consider in any resolution calling an election for this measure.

CEQA:

Not a project.



RICHARD DOYLE
City Attorney



DENNIS D. HAWKINS, CMC
City Clerk

For questions please contact Dennis Hawkins, City Clerk, at (408) 535-1275 or
Lisa Herrick, Senior Deputy City Attorney at (408) 535-1963.

County of Santa Clara

Registrar of Voters

1555 Berger Drive, Bldg. 2
San Jose, CA 95112
Mailing Address: P.O. Box 611360, San Jose, CA 95161-1360
(408) 299-VOTE (8683) 866-430-VOTE (8683) FAX: (408) 998-7314
www.sccvote.org



April 24, 2012

Mr. Dennis Hawkins, CMC
City Clerk
City of San Jose,
200 East Santa Clara Street, Wing – 2nd Floor
San Jose, CA 95113

RE: "AN INITIATIVE ORDINANCE SEEKING TO IMPLEMENT AND ENFORCE THE
PAYMENT OF A MINIMUM WAGE IN THE CITY OF SAN JOSE"

Dear Mr. Hawkins:

The initiative petition submitted to our office on April 2, 2012 contained 36,225 signatures. Based on the registered voters in the City of San José as of the last report of registration to the Secretary of State (Election Code Section 2187) the petition needs 19,161 valid signatures to pass.

Your jurisdiction requested that the Registrar of Voters examine and verify a sufficient number of the signatures filed by the proponents until 19,500 signatures were verified and found sufficient, 339 more sufficient signatures than are required for the initiative to qualify for the ballot. We verified a total of 19,518 valid signatures, which is 357 more sufficient signatures than are required. In accord with Election Code sections 9114 and 9115, the Registrar of Voters verified 27,757 of 36,225 signatures submitted by the proponents. Your jurisdiction required 19,161 verified sufficient signatures, therefore the petition is sufficient.

If you have any questions concerning this matter, please feel free to contact me at (408) 282-3051.

Sincerely,

Maggy Smith
Election Division Coordinator
Voter Registration Division
County of Santa Clara

ms: JobC95 local jur ltr req 100 v042512

CLERK'S CERTIFICATE TO INITIATIVE PETITION

I, BARRY GARNER, Registrar of Voters of the **County of Santa Clara**, State of California, hereby certify:

That the **"AN INITIATIVE ORDINANCE SEEKING TO IMPLEMENT AND ENFORCE THE PAYMENT OF A MINIMUM WAGE IN THE CITY OF SAN JOSE"** Initiative measure has been filed with this office on April 2, 2012.

That said petition consists of 5,084 sections;

That each section contains signatures purporting to be the signatures of qualified electors of this county;

That attached to this petition at the time it was filed was an affidavit purporting to be the affidavit of the person who solicited the signatures, and containing the dates between which the purported qualified electors signed this petition;

That the affiant stated his or her own qualification, that he or she had solicited the signatures upon that section, that all of the signatures were made in his or her presence, and that to the best of his or her knowledge and belief each signature to that section was the genuine signature of the person whose name it purports to be;

That after the proponent filed this petition I verified the required number of signatures by examining the records of registration in this county, current and in effect at the respective purportive dates of such of signing, to determine what number of qualified electors signed the petition, and from that examination I have determined the following facts regarding this petition:

- | | | |
|----|----------------------------------------------------------------|---------------|
| 1. | Number of unverified signatures filed by proponent (raw count) | <u>36,225</u> |
| 2. | Number of signatures verified | <u>27,757</u> |
| a. | Number of signatures found SUFFICIENT | <u>19,518</u> |
| b. | Number of signatures found NOT SUFFICIENT | <u>8,239</u> |
| 1. | NOT SUFFICIENT because DUPLICATE | <u>606</u> |

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal this 24th day of April, 2012.

(SEAL)

Barry Garner
Registrar of Voters

By: 
Deputy

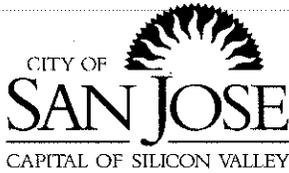


Petition Result Breakdown

JobC95 City of San Jose to Implement Minimum Wage Minimum Wage for the City of San Jose

Signatures Required	19161		
Raw Count	36,225		
Sample Size	36,225	<i>Percent of Sigs Checked</i>	<i>Percent of Sample Size</i>
Sigs Checked	27,757		
Sigs Not Checked	8,468		23.4 %
Sigs Valid	19,518	70.3 %	53.9 %
Sigs Invalid	8,239	29.7 %	22.7 %
Duplicated	606	2.0 %	1.7 %
Non-duplicate Invalids	7,633	27.0 %	21.1 %

RESULT ABBR	RESULT DESCRIPTION		
Approved	Approved	19,518	70.3 %
NotReg	Not Registered	5,508	19.8 %
OutOfDist	Out of District	787	2.8 %
Duplicate	Signed more than once	606	2.2 %
RegLate	Registered Late	62	0.2 %
RegDiffAdd	Registered at a Different Address	1,031	3.7 %
CantIdentify	Cannot Identify	192	0.7 %
MultAdd	More than One Address Given	2	0.0 %
NoResAdd	No Residence Address Given	9	0.0 %
NoSig	No Signature	3	0.0 %
PrintedSig	Printed Signature	1	0.0 %
SigNoMatch	Signatures Don't Match	38	0.1 %



Memorandum

TO: MAYOR AND CITY COUNCIL

FROM: Councilmember Sam Liccardo

SUBJECT: CERTIFICATE OF SUFFICIENCY
OF MINIMUM WAGE
INITIATIVE

DATE: April 30, 2012

APPROVED:

4-30-12

RECOMMENDATIONS:

Adopt staff recommendations, with the following modifications:

- 1) In the report mandated under California Elections Code §9215, include within the staff analysis:
 - a. an assessment of the measure's likely effect on the incomes, standard of living, and employment of San José's low-income residents;
 - b. an assessment, based on the economic literature, on the employment and business impacts of minimum wage increases specifically within municipalities.
- 2) Direct the City Manager to analyze an alternative proposal that the Council could adopt on the same date, which might:
 - a. Phase in the minimum wage increase over time, to reach the \$10/hour level with in an extended period (i.e., 2 or 3 years);
 - b. Exempt very small businesses, and /or businesses in which employees generally rely on tips or commissions for a large percentage of their income. Consider how small businesses might qualify for that exemption by demonstrating—perhaps through an affirmative requirement to submit income tax returns or other documentation—revenues beneath a specific threshold;
 - c. Exempt employees under the age of 18;
 - d. Allow for a "complaint-driven" enforcement mechanism that would relieve businesses of affirmative reporting obligations, and minimize the cost of enforcement to the City.

BACKGROUND

We should commend the noble efforts of San Jose State University students, working with Professor Scott Myers-Lipton, in seeking to lift the sagging incomes of thousands of San José's working poor. Through the Great Recession, the Bureau of Labor Statistics reports a large surge in workers making only a minimum wage salary—an annual income of less than \$17,000 under California's \$8/hour minimum, and less in many other states--from 1.7 million in 2007 to 4.3 million in 2010. Although this modest recovery has softened that trend, it remains the case that thousands of San José residents work multiple jobs without a salary that can provide themselves with basic levels of housing, food, transportation, and health care--let alone providing for their families.

The report mandated by Elections Code §9215 sets out important areas of exploration, such as the measure's impact "on the community's ability to attract and retain business and employment," and its fiscal impact. It seems critical as well to provide the Council with at least a brief overview of the very expansive academic literature on the impacts of minimum wage increases on the working poor.

The question in my mind—and likely in the mind of many others—is "how will this measure affect the working (or willing-to-work) poor?" For those "on the bubble" of job opportunity-- commonly referred to as the "last hired and first fired"—some will remain "shut out" of a job market in which employers view any hiring decision with a 25% higher price tag. Some may see their hours cut. Still others will remain fully employed, and see their standard of living measurably improved. How many people fall into each category appears far from clear.

Before we jump head-first into a policy that will impose substantial costs on some employers, we should acknowledge a few realities about our current economic situation. While unemployment hovers just under 9% within the County, it undoubtedly exceeds that rate within San José. Many of our unemployed consist of young adults job-hunting in the depths of the Great Recession, and have struggled to get a foot within the door ever since. Creating additional obstacles to their hiring—and to the hiring of many other residents—does little to enable them to pull out of their financial and personal tailspin. As we hope to see the employment and economic picture improve in the coming years, it seems appropriate to match the timing of minimum wage increases with some projected pace of recovery of the fortunes of those small businesses—the taquerias, laundry services, warehouses, nail salons, and restaurants--most likely to provide employment opportunities to workers lacking better skills and education.

The academic literature appears mixed on the impacts of minimum wage increases on employment. Although little negative impact appears across broad geographic areas—such as when the federal or state law mandates a wage increase—unique questions emerge around municipal minimum wage increases. Cf., Schmitt and Rosnick, "The Wage and Employment Impact of Minimum Wage Laws on Three Cities," Center for Economic Policy Research, March 2011 (<http://www.cepr.net/documents/publications/min-wage-2011-03.pdf>) Those few cities that have implemented minimum wage increases within their borders—e.g., San Francisco, Santa Fe, and Washington D.C.—often present unique cases that don't easily compare with a city in San José's position.

San José's job-challenged status distinguishes it from jobs-rich cities like San Francisco and Washington D.C.. Unlike Santa Fe, San José sits surrounded by far more affluent suburbs like Mountain View, Santa Clara, Sunnyvale, and Palo Alto, all of which boast far higher jobs-to-employed residents ratios. Indeed, San José is the only major city in the U.S. with fewer daytime occupants than nighttime residents. Employers who face decisions about where to hire, expand, or move can readily do so by locating a mile or two in any direction, beyond San José's borders, to reduce their labor costs.

However we choose to move forward, we should do so with our eyes open to unintended consequences that may await us.



Memorandum

TO: HONORABLE MAYOR AND
CITY COUNCIL

FROM: Councilmember
Donald Rocha

SUBJECT: MINIMUM WAGE INITIATIVE

DATE: April 30, 2012

Approved

Don Rocha
PH

Date

4-30-12

RECOMMENDATION

Pull item 2.11 from the consent calendar and provide the following staff direction:

1. Direct the City Manager, with the assistance of City departments, as appropriate, to address the following issues in the report on the minimum wage ordinance prepared in accordance with California Elections Code Section 9212:
 - a. Provide a breakdown of the demographic characteristics of low-wage workers who may be affected by the ordinance, including, where possible, the categories of ethnicity, gender and age.
 - b. Provide information on the ability of workers earning the current California minimum wage rate to afford necessities such as food and housing.
 - c. Review the potential economic benefits of establishing a minimum wage in addition to reviewing potential drawbacks. Consider drawing on San Francisco's minimum wage ordinance as a real-world example, and provide the Council with any studies or analyses of the San Francisco experience that may provide useful context.
2. Seek input on this issue from the Human Rights Commission, Senior Commission and Youth Commission, as their commission meeting schedules permit.

ANALYSIS

The minimum wage ordinance presents the Council with a complex policy issue. Luckily, before making a decision on this issue, we have the opportunity to seek input from staff. The intent of my direction is to ensure that important information will be included in the report, and that both the benefits and drawbacks of the ordinance are fully analyzed.

INITIATIVE MEASURE TO BE SUBMITTED DIRECTLY TO THE VOTERS

The City Attorney of San José has prepared the following Title and Summary of the chief purpose and points of the proposed measure:

AN INITIATIVE ORDINANCE SEEKING TO IMPLEMENT AND ENFORCE THE PAYMENT OF A MINIMUM WAGE IN THE CITY OF SAN JOSE

This measure proposes to require the Office of Equality Assurance (the Office”) or other office designated by the City Council of the City of San José (the “City”) to establish guidelines for the monitoring, investigation, and enforcement of a minimum wage in the City of San José. Under the measure, an employee is any person who has performed at least two (2) hours of work for the employer or is entitled to the California state minimum wage. The measure would define an employer as any person that employs or exercises direct or indirect control over wages, hours or working conditions of any employee, and either is subject to the payment of the tax imposed under Chapter 4.76 of the San José Municipal Code or maintains a facility in San José. The measure proposes that the employer be required to pay the employee(s) a minimum wage of ten dollars (\$10) per hour, and that this rate increase each year by the Consumer Price Index beginning January 1, 2014. The measure proposes to limit the number of hours certain welfare-to-work programs could require a program participant to work equal to the value of all cash benefits received divided by the minimum wage. The measure would require that each year the Office make available to employers a bulletin of the minimum wage requirement and amount in various languages for posting at the workplace. This measure would authorize the Office to issue administrative fines and penalties for noncompliance; or a civil action to be brought in a court of law by any person harmed, any person on behalf of the public, or the City. The measure provides that the remedies available in a court of law would include civil penalties, back wages, interest, reinstatement, reasonable attorneys' fees and costs, and administrative costs of enforcement. Pursuant to this measure, the employer's permits or licenses or applications for the same may be revoked or suspended pending compliance with the minimum wage requirement if consistent with state and federal law. The proposed measure would not preempt any federal law respecting an express waiver of all or any portion of the minimum wage requirement in a collective bargaining agreement. This measure if enacted may be amended by the City Council without a vote of the people provided the changes do not decrease the proposed measure's substantive requirement or scope.

**NOTICE TO THE PUBLIC: THIS PETITION MAY BE CIRCULATED BY A PAID SIGNATURE GATHERER OR VOLUNTEER. YOU HAVE THE RIGHT TO ASK.
SAN JOSE CITY REGISTERED VOTERS ONLY**

LEGAL TEXT OF MINIMUM WAGE ORDINANCE

AN INITIATIVE ORDINANCE OF THE CITY OF SAN JOSE
AMENDING TITLE 4 OF THE SAN JOSE MUNICIPAL CODE TO
REQUIRE THE PAYMENT OF A CITY-WIDE MINIMUM WAGE

WHEREAS families and workers need to earn a living wage, and public policies which help achieve that goal are beneficial; and

WHEREAS 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; and

WHEREAS a minimum wage will enable a worker to meet basic needs and avoid economic hardship; and

WHEREAS 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; and

WHEREAS prompt and efficient enforcement of this Chapter will provide workers with economic security and the assurance that their rights will be respected.

NOW THEREFORE, BE IT ORDAINED, BY THE PEOPLE OF THE CITY OF SAN JOSE:

SECTION 1. Title 4 of the San Jose Municipal Code is hereby amended to add a new Chapter to be numbered, entitled and to read as follows:

CHAPTER 4.100 **Minimum Wage Ordinance**

4.100.010 TITLE.

This ordinance shall be known as the "Minimum Wage Ordinance."

4.100.020 AUTHORITY.

This Chapter is adopted pursuant to the powers vested in the City of San Jose under the laws and Constitution of the State of California, but not limited to, the police powers vested in the City pursuant to Article XI, Section 7 of the California Constitution and Section 1205(b) of the California Labor Law.

4.100.030 DEFINITIONS.

The following terms shall have the following meanings:

A. "City" shall mean City of San Jose.

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.

2. Qualifies as an employee entitled to payment of a minimum wage from any employer under the California minimum wage law, as provided under Section 1197 of the California Labor Code and wage orders published by the California Industrial Welfare Commission, or is a participant in a Welfare-to-Work Program.

C. "Employer" shall mean any person, including corporate officers or executives, as defined in Section 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 Business License Tax Chapter 4.76 of the Municipal Code or maintains a facility in the City.

D. "Minimum Wage" shall have the meaning set forth in Section 4.100.040 of this Chapter.

E. "Office" shall mean the Office of Equality Assurance or such other City department or office as the Council shall by resolution designate.

F. "Welfare-to-Work Program" shall mean the CalWORKS Program, County Adult Assistance Program (CAAP) which includes the Personal Assisted Employment Services (PAES) Program, and General Assistance Program, and any successor programs that are substantially similar to them.

4.100.040 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.

B. The Minimum Wage shall be an hourly rate of ten dollars (\$10). To prevent inflation from eroding its value, beginning on January 1, 2014, and each year thereafter, the Minimum Wage shall increase by an amount corresponding to the prior year's increase, if any, in the cost of living. 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 over the level as of August of the previous year of the Consumer Price Index (Urban Wage Earners and Clerical Workers, U.S. City Average for All Items) 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. The adjusted minimum wage shall be announced by October 1 of each year, and shall become effective as the new minimum wage on January 1.

C. 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 Section 200) of Division 2 of the California Labor Code, to the date immediately preceding the date the wages are paid in full.

4.100.050 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.

4.100.060 NOTICE, POSTING AND PAYROLL RECORDS.

A. By December 1 of each year, the Office 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. In conjunction with this bulletin, the Office shall by December 1 of each year publish and make available to Employers, in all languages spoken by more than five percent of the work force in the City, 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.

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 Office 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 percent of the Employees at the work-place 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 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.

4.100.070 RETALIATION PROHIBITED.

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.

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.

4.100.080 IMPLEMENTATION

A. Guidelines. The Office 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 Office 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 Office in writing any suspected violation of this Chapter. The Office 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 Office 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 Office notifies an Employer that the Office is investigating a complaint, the Office shall require the Employer to post or otherwise notify its Employees that the Office is conducting an investigation, using a form provided by the City.

C. Investigation. The Office shall be responsible for investigating any possible violations of this Chapter by an Employer or other person. The Office 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 Office shall make every effort to resolve complaints informally, in a timely manner, and shall have a policy that the Office shall take no more than one year to resolve any matter, before initiating an enforcement action. The failure of the Office to meet these timelines within one year shall not be grounds for closure or dismissal of the complaint.

4.100.090 ENFORCEMENT

A. Where prompt compliance is not forthcoming, the Office shall take any appropriate enforcement action to secure compliance.

1. The Office may issues an Administrative Citation pursuant to Chapter 1.15 of the Code with a fine of not more than \$50 for each day or portion thereof and for each Employee or person as to whom the violation occurred or continued.
2. Alternatively, the Office may initiate a proceeding under Chapter 1.14 of the Code by issuing a 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 \$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, the payment of back wages unlawfully withheld, and the payment of an additional sum as a civil penalty in the amount of \$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 Section 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

Section 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 attorneys fees.

F. Posted Notice

If a repeated violation of this Chapter has been finally determined, the Office may require the Employer to post public notice of the Employer's failure to comply in a form determined by the City.

4.100.100 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.

4.100.110 APPLICATION OF MINIMUM WAGE TO WELFARE-TO-WORK PROGRAMS.

The Minimum Wage established pursuant to Section 4(b) of this Chapter shall apply to the Welfare-to-Work programs under which persons must perform work in exchange for receipt of benefits. Participants in Welfare-to-Work Programs shall not, during a given benefits period, be required to work more than a number of hours equal to the value of all cash benefits received during that period, divided by the Minimum Wage.

4.100.120 FEES

Nothing herein shall preclude the City Council from imposing a cost recovery fee on all Employers to pay the cost of administering this Chapter.

4.100.130 AMENDMENT BY THE CITY COUNCIL.

This Chapter may be amended by the City Council without a vote of the people as regards the implementation or enforcement thereof, in order to achieve the purposes of this Chapter, but not with regard to lessening the substantive requirements of the Chapter or its scope of coverage.

SECTION 2. Effective Date.

This ordinance shall become effective on the ninetieth (90) day after it is certified. This ordinance is intended to have prospective effect only.

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SECTION 3. Severability.

If any part or provision of this ordinance, or the application of this ordinance to any person or circumstance, is held invalid, the remainder of this ordinance, including the application of such part or provisions to other persons or circumstances, shall not be affected by such a holding and shall continue in full force and effect. To this end, the provisions of this ordinance are severable.