



City of Culver City

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Staff Report

File #: 23-539, **Version:** 1

Item #: A-2.

CC - ACTION ITEM: (1) Consideration and Discussion of the Development of an Ordinance Setting the Minimum Wage Rate of \$16.04 in the City of Culver City; (2) (If Desired) Authorization to the City Manager to Hire a Consultant to Conduct an Economic Impact Study and/or Hire a Consultant as Project Manager; (3) **FOUR-FIFTHS VOTE REQUIREMENT:** Approval of a Budget Amendment up to the Amount of \$150,000 from the General Fund's Unassigned Fund Balance; (4) (If Desired) Appoint Two Council Members to the Ad Hoc Minimum Wage Subcommittee or, in the Alternative, Dissolve the Subcommittee; and (5) Direction to the City Manager as Deemed Appropriate

Meeting Date: January 23 , 2023

Contact Person/Dept.: Onyx Jones/City Manager's Office

Phone Number: 310-253-6000

Fiscal Impact: Yes ☐ No ☐

General Fund: Yes ☐ No ☐

Attachments: Yes ☒ No ☐

Commission Action Required: Yes ☐ No ☐ **Date:**
Commission Name:

Public Notification: (E-Mail) Meetings and Agendas - City Council (01/19/2023)

Department Approval: John M. Nachbar, City Manager (01/17/2023)

RECOMMENDATION

Staff recommends City Council (1) Consider and discuss the development of an ordinance setting the minimum wage rate of \$16.04 in the City of Culver City (2) (If Desired) Authorization to the City Manager to hire a consultant to conduct an economic impact study and/or hire a consultant as project manager; (3) **FOUR-FIFTHS VOTE REQUIREMENT:** Approval of a budget amendment up to the amount of \$150,000 from the General Fund's Unassigned Fund Balance; (4) appoint two Council Members to the Ad Hoc Minimum Wage Subcommittee or, in the alternative, vote to dissolve the Subcommittee; and (4) Direction to the City Manager as deemed appropriate.

BACKGROUND

A movement to increase minimum wage per hour has gained momentum in many places across the

country. With the federal minimum wage at \$7.25 an hour, many advocates of raising the minimum wage have focused on the enactment of state and local minimum wage laws. The State of California recently enacted legislation that has increased the minimum wage statewide to \$15.50 per hour in 2023; however, individual cities, especially in areas of the state with relatively higher costs of living have adopted local ordinances that establish a minimum wage greater than what was established by the state legislature.

The federal minimum wage is \$7.25 an hour, the State of California's minimum wage is \$15.50 and below are examples of minimum wage rates in a few metropolitan cities in California:

- Los Angeles (Approved in 2016) - Effective 07/01/22 - \$16.04/hr.
- Santa Monica (Approved in 2016) - Effective 07/01/22 - \$15.96/hr.
- Long Beach (Approved in 2017) - Effective 07/01/22 - Hotel Workers - \$16.73/hr.
- West Hollywood (Approved in 2021) - Effective 01/01/2023 - \$17.50/hr. for large businesses and \$17.00/hr. for small businesses
- Malibu (Approved in 2016) - Effective 07/01/2022 - \$15.96/hr.
- San Francisco (Approved in 2003) - Effective 07/01/22 - \$16.99/hr.
- San Jose (Approved in 2012) - Effective 01/01/2023 - \$17.00/hr.

Ad-Hoc Minimum Wage Subcommittee

On May 9, 2022 the City Council created the Ad Hoc Minimum Wage Subcommittee (Subcommittee), appointing Mayor Vera and Vice Mayor McMorris thereto. The purpose of the Subcommittee was to provide input, as needed, during staff's development of a draft ordinance, including the Subcommittee's consideration of numerous policy decision points regarding the content of the draft ordinance and recommendations to the full City Council.

During the January 9, 2023 agenda item to make appointments to the existing subcommittees, the Ad Hoc Minimum Wage Subcommittee was inadvertently omitted from the list. Staff recommends the City Council appoint two Council Members to the Ad Hoc Minimum Wage Subcommittee or, in the alternative, vote to dissolve the Subcommittee.

Create Community Engagement

In the May 9th Staff Report, staff also recommended that Council engage the community and stakeholder groups such as workers, employers, advocacy groups, and community members to further discuss this topic. These types of discussions would allow the City to educate, inform and provide answer questions directly to the stakeholders. Staff found that the City of Los Angeles, City of Santa Monica, and the City of West Hollywood all held stakeholder meeting to allow community stakeholders to have a voice during the process.

Conduct Economic Impact Study

Through research, staff found that the City of Los Angeles, the City of Santa Monica and the City of West Hollywood all conducted multiple studies to review the financial/economic impacts of the proposed minimum wage ordinances and to provide justification for some of the decision points that were included in each City's ordinance. The economic impact studies showed how the financial impacts of providing income gains to lower- income workers would affect price increases, impacts on employment, and/or the overall economic growth of the area. All three cities requested and received reports from various institutes/organizations such as The Institute for Research on Labor and Employment at UC Berkley, UCLA Economic Roundtable, and Beacon Economics. To synthesize the differing recommendations and projections in all three reports, the LA County Board of Supervisors commissioned a peer review analysis of the studies. The various studies were consistent in their estimate of total wage increases associated with the proposals and the number of individuals affected, but the studies differed in their estimates of employment and economic growth impacts.

Based on these varied results, should City Council decide to move forward with the minimum wage discussion, staff recommended engaging with more than one firm to conduct the economic impact study. Additionally, those reports should be reviewed by the minimum wage subcommittee, other relevant bodies like the Finance Advisory Committee, and an outside firm that could provide a peer review of the studies.

Staff Involvement and Outside Legal Counsel

Staff also recommended that a project manager be hired to oversee this project, including assisting staff in drafting the ordinance. Additionally, the City would need to engage specialized legal counsel to work with the City on labor law compliance specifically related to wage and hour law.

The AdHoc Minimum Wage Subcommittee met on August 18, 2022, to discuss increasing the City's minimum wage and the possible implications for residents, local employees, businesses and the community as a whole. The Subcommittee reviewed the minimum wage rates for 38 different cities within California and the steps that neighboring cities such as the City of Los Angeles and the City of Santa Monica had taken to implement their ordinances. Staff shared copies of the economic impact studies that were conducted by those neighboring cities. After discussing various aspects of the minimum wage ordinance, the Subcommittee Members requested that staff present two options to City Council for further direction:

Option 1: Advance the discussion of creating a minimum wage ordinance to address the immediate needs of minimum wage workers in the City, conduct community stakeholder meetings to receive input on the development of the ordinance. Based on information gathered from the stakeholder meetings, direct the Subcommittee, staff and the City Attorney's Office to bring a draft ordinance to the City Council for consideration within the next six months.

Option 2: Hire outside consultants to conduct an economic impact study on the local effects of increasing minimum wage in Culver City including its impacts on the residents, workers and local businesses. Conduct community stakeholder meetings to receive input on the development of the ordinance and bring a recommendation to City Council based on the information received from the economic impact study, the stakeholder meetings, the Subcommittee, staff and the City Attorney's Office.

During the September 1, 2022, City Council meeting, Council voted and instructed staff to schedule a Special Meeting that would allow Council to discuss in detail the implementation of a minimum wage ordinance that will raise the minimum wage in Culver City to \$16.04. The special meeting was postponed due to a lack of quorum to hold a special meeting during November and December 2022.

DISCUSSION

Based on Council's direction at the January 9, 2023 Council Meeting, staff is bringing this staff report to Council. The discussion section of this staff report has been divided into two parts. The first section includes straight forward decision points that Council would need to provide direction to staff on whether to include such provisions in the minimum wage ordinance. Each decision point is explained in detail and some decision points include examples from other neighboring cities.

Additionally, after the primary decision points, staff has included other optional provisions for City Council to consider that were found in minimum wage ordinances of neighboring cities.

Decision Points

1. Determine whether the minimum wage rate would apply differently to both small and large businesses. If yes:
 - Set parameters to define small business and large business;
 - Determine if there will be a lower minimum wage for small businesses;
 - Determine if the City will allow more time for small businesses to implement the minimum wage;
 - Example: The City of Santa Monica and the City of Los Angeles provided a 1-year grace period for small businesses (25 employees or less) to implement the new minimum wage rate. Additionally, small businesses paid a lower minimum wage rate during the first 5 years of the implementation period. The City of West Hollywood allowed employers to apply for a 1-year, 1-time deferral if implementing the minimum wage would cause the business to file for bankruptcy, shut down, reduce work force by 25%, or curtail employees' total hours by more than 30%.
 - Note: If Council desires to move forward with creating a separate rate for small businesses, it is advisable to provide findings/justification to support these decisions that would be added to the recitals in the ordinance.
2. Determine whether the minimum wage rate would vary based on type of businesses such as hotels, childcare providers, health care providers etc. If Council desires to move forward with creating a separate rate for different types of businesses, findings/justification will be needed to be added to the recitals of the ordinance to support these decisions.
3. Will non-profit agencies small and large be included? Many non-profit agencies in

Culver City rely on limited grant funding and donations to continue their operations. If an exemption is provided, an eligibility criterion will need to be established.

- Type of non-profit organization vs charitable organization. It should be noted that not all non-profit organizations are classified by the IRS as charitable organizations.
 - Number of employees (i.e. In Santa Monica, certain nonprofit organizations with 26 or more employees were allowed to apply for the same minimum wage rate as small businesses.)
 - Wages of top executives (i.e. In Santa Monica, top executives cannot earn more than 5 times the hourly rate of their lowest wage earner.)
 - Funding sources of their total budget (i.e. In Santa Monica, certain nonprofits that are funded primarily by City, county, state, or federal grants or reimbursements were able to apply for a waiver to delay the minimum wage rate increase by one year.)
 - Note: If Council desires to move forward with these distinctions, the City will need to make findings/justification to support these decisions and it will be added to the recitals in the ordinance.
4. Will governmental entities and school districts operating in the City be exempt or included? (i.e., for example, the City of Los Angeles offers exemptions to state, federal, county, and city entities, including school districts.) As with other businesses that may be carved out, as discussed above, if Council desires to move forward, it is advisable to provide findings/justification to support these decisions that would be added to the recitals in the ordinance.
5. Will the minimum wage ordinance provide for annual increases and what factors would be used to determine how to calculate the annual increase? Most cities surveyed use consumer price index for urban wage earners and clerical workers (CPI-W). If Council chooses to use CPI-W as an index, a decision needs to be made as to whether there will be a minimum or maximum increase. If the CPI inflation factor is minimal in any one year, Council may feel the increase to the minimum wage may not keep up with the local economy or if the CPI goes up dramatically, that increase could be detrimental to small businesses.
- Example: The City of West Hollywood ordinance states, the minimum wage rate “shall increase each year based on the CPI-W, however, the increase shall be no less than 1% (minimum increase) and no more than 4% (maximum increase). In the event that there is a decrease or negative CPI-W, the minimum wage rate shall be increased by 1%.” Although the City of Los Angeles also implements their increase/decrease based on CPI-W, the ordinance does allow the CEO to make the final determination of the adjusted rate.
 - Note: Does Council want to adopt language that addresses when or if the State or Federal minimum wage exceeds the City’s minimum wage required under this ordinance?

6. Would the City consider offering a learners' wage for students? A learners' wage can be applied to employees during their first 160 hours of employment in occupations where they have no previous experience. They can be paid 85% of minimum wage during this period. Under state law, the ordinance cannot have a different wage for age 14-17 unless it is a learners' wage. This gives incentives for employers to provide opportunities to students who do not have previous work experience.
7. Will the ordinance be ongoing or set for a certain number of years? Of the cities that staff researched, none had an expiration date.
8. Does Council want to establish guidelines to address employees who enter and exit the City during their workday/workweek and how businesses will track those hours to apply the minimum wage factor?
 - Minimum number of hours worked?
 - How will the hours be tracked?
 - Example: West Hollywood, employees must work at least 2 hours in the city to qualify for the minimum wage rate.
9. Should the ordinance include language that requires the development of educational materials, including how that information will be distributed to businesses and how often.
 - The expense for developing and distributing this material would need to be included in the City's annual budget.
10. How should the Ordinance be enforced?

Option 1: Private Right of Action - Does Council want to allow for a private right of action where the employee has the right to file a civil lawsuit. If the minimum wage ordinance provides language to allow for a private right of action, nothing precludes individuals from also pursuing claims through the Labor Commission. This is a common provision in ordinances from other cities and was included in the City's hospital workers temporary hazard pay day ordinance, enacted by Council in 2021. In addition, the remedies offered in the ordinance for enforcement need not be exclusive, meaning the ordinance can provide a basis for an applicant or employee to file suit against an employer, in addition to other enforcement discussed below.

Option 2: Enforcement by the Los Angeles County Department of Consumer & Business Affairs. The City of Santa Monica partners with the LA County Department of Consumer & Business Affairs to enforce their ordinance, which is closely aligned with the County's minimum wage ordinance. Santa Monica also lacked a city department to provide enforcement. Representatives from the City of Santa Monica indicated that the County

does all the investigations, audits and issues citations. The County conducts monthly meetings with the City of Santa Monica and reviews the open cases. Using the County for enforcement would require a written agreement between the City and the County, at a cost to the City. Culver City would also have to handle the administrative citation appeals process and any criminal prosecution if warranted. The ordinance should provide an appeal process and the process should include deadlines and procedures for setting up and conducting a hearing.

Option 3: City Enforcement - If Council would like the City to enforce the minimum wage ordinance, the following would need to be considered:

- How will Culver City enforce the ordinance, audit businesses, and investigate any complaints?
 - Option 1: City Staff - City Manager would need to determine if any new positions would be required.
 - Option 2: Consultant - Hire an outside firm to complete a portion or all of these services.
- Administrative Fines and Penalties

Administrative fines and penalties will need to be developed for businesses that do not comply with the ordinance.
- The ordinance should include remedial action the businesses must take to repay any lost wages, benefits and penalties to their employees.
 - Will the City collect the funds and pay the employee
 - Will the employer be required to pay the employee directly
 - Will the City allow a payment plan for the businesses
 - Will the City file Civil Action against the employer on behalf of the employee
 - Will the City hire a collection agency to collect unpaid fines and penalties
- The ordinance should provide an appeals process
 - The appeals process should include deadlines, and procedures for setting up and conducting a hearing.

Other Options to Consider in an Ordinance:

Exemptions for transitional employers

Does Council want to adopt a limited exemption for transitional employers? The minimum wage

ordinances of Santa Monica and Los Angeles each contain a provision for a transitional employer program. Transitional employers are defined as nonprofits that have been certified by the City and “provide supportive services and transitional jobs for the hardest to employ.” “Hardest to employ” is defined to mean those “persons who have been out of the workforce for an extended period of time and who face considerable barriers when trying to enter the mainstream workforce.” Such employers are provided a reprieve from providing the City’s higher minimum wage to a particular employee for the first 18 months of the employee’s work in the transitional job. Participants include unhoused individuals, individuals with addictions, and at-risk youth. The City of Los Angeles Transitional Employer program is tied to its local business preference program. If City Council is interested in this type of program, staff can be directed to research how the City of Los Angeles implemented this program, and how it is maintained. City of Santa Monica staff was not aware of any non-profits being certified for the Santa Monica program.

Supersession by Collective Bargaining Agreement

Several ordinances from other cities, including Santa Monica, include a provision stating that the provisions of the minimum wage ordinance may be waived in a bona fide collective bargaining agreement, but only if the waiver is explicitly set forth in such agreement in clear and unambiguous terms. Unilateral implementation of terms and conditions of employment by either party to a collective bargaining relationship shall not constitute or be permitted as a waiver of all or any part of the provisions of the ordinance.

Other general provisions

In addition to the provisions that City Council determines to include in a proposed ordinance, standard provisions would be included, such as annual reporting, retaliatory action prohibited by the employer, authority to enact administrative regulations, duty to cooperate with City authorized investigations, and that employers must pay the higher minimum wage if state or federal minimum wage is scheduled to exceed the City’s minimum wage. Staff will go over these provisions with the Subcommittee before the ordinance is brought forward to the full Council if Council directs the Subcommittee to continue to work with staff on this project.

FISCAL ANALYSIS

The total fiscal impact will vary based on City Council’s recommendations.

COST CONSIDERATIONS

Economic impact studies can cost up to approximately \$75,000, depending on the number of studies conducted, scope of services, and level of community outreach involved. Staff is also proposing to hire a specialized consultant who can serve as the project leader and assist with development of the ordinance at an estimated cost of \$50,000.

The implementation of a minimum wage ordinance will require the development of both an initial and annual budget to cover cost of development of a webpage on the City’s website as a resource page and annual marketing cost to inform the public of the annual updates to the minimum wage. If City

Council chooses to contract with the Los Angeles County Department of Consumer & Business Affairs to enforce the minimum wage ordinance, staff will need to contact the County to get a quote for the annual cost.

Should Council choose for the City to enforce the ordinance, the following annual costs should also be considered:

1. Employees/consultants needed to implement and manage the program and a call center for incoming questions, complaints, etc.
2. The cost of a hotline where employees or residents could file an anonymous complaint and report any businesses that are violating the ordinance.
3. An investigator to investigate the complaints and a hearing officer and/or appeals board when a business does not agree with the investigator's findings.
4. An audit firm to audit companies on an annual basis or to audit firms that are not in compliance with the ordinance.

In addition, the City Attorney's Office will need to consult with specialized legal counsel, with an expertise in labor laws specifically related to minimum wage, during the course of this project at an estimated cost of between \$10,000 to \$25,000, depending on the complexity of the ordinance.

Finally, it should also be noted that an increase of minimum wage for City Hall employees could create compaction issues, which would require the City to look at all salary tables for possible adjustments.

ATTACHMENTS

1. City of Los Angeles Minimum Wage Ordinance
2. City of Santa Monica Minimum Wage Ordinance
3. City of West Hollywood Minimum Wage Ordinance

MOTIONS

That the City Council:

1. Consider and discuss the development of an Ordinance setting the minimum wage rate of \$16.04 in the City of Culver City;
2. Appoint Two City Council Members to the Ad Hoc Minimum Wage Subcommittee or in the alternative, dissolve the Subcommittee;
3. (If desired) Authorize staff to hire a consultant to conduct an economic impact study and/or hire a specialized consultant as Project Manager;

4. Approve of budget amendment up to the amount of \$150,000 from the General Fund's unassigned Fund Balance **(four fifths vote required)**; and
5. Provide direction to the City Manager as deemed appropriate.