



OFFICE OF THE CITY MANAGER

CITY HALL

10300 TORRE AVENUE • CUPERTINO, CA 95014-3255

TELEPHONE: (408) 777-3212 www.cupertino.org

TELEPHONE: (408) 777-7603 www.cupertino.org

CITY COUNCIL STAFF REPORT

Meeting: September 20, 2016

Subject

Update on regional minimum wage efforts and introduction of Ordinance establishing a citywide minimum wage.

Recommended Action

Receive an update on regional minimum wage efforts and conduct the first reading of Ordinance No. 16-2151: An Ordinance of the City of Cupertino to add Chapter 3.37 (Minimum Wage Ordinance) to Title 3 (Revenue and Finance) of the Cupertino Municipal Code to establish a citywide minimum wage.

Background

Last fall, an advisory team made up of representatives from the Cities Association of Santa Clara County, San Jose/Silicon Valley Chamber of Commerce, Working Partnerships, and the City of San Jose convened to explore a regional approach to increasing the minimum wage, including an analysis of regional economic impact of increasing the minimum wage to \$15 by 2019 in all cities in Santa Clara County.

The economic analysis indicated that an increase to the minimum wage would significantly increase average earnings for low-wage workers and their families with relatively minor impacts to businesses and consumers. Additionally, the employer survey showed that the majority of surveyed employers believe a minimum wage increase makes sense given the high cost of living in Silicon Valley and agree with a regional approach, but acknowledge that an increase will make it harder to start and grow local businesses. Specifically, the study and survey found:

- Average pay increase of \$3,200 (19.4% of annual earnings) for 250,000 workers (25% of workforce).
- Affected workers are household breadwinners, bringing home half of their family's income on average: 96% of workers who would receive pay increases are over 20 years old; 57% are over 30.
- Average payroll increases for employers of 1.0% across industries (9.6% for restaurants) countywide.

- Average price increase of 0.2% across industries (2.9% for restaurants) passed on to consumers with the majority of the increases absorbed through automation, improved productivity and reduced turnover.
- Net loss of 1,470 jobs by the end of 2019, corresponding to 0.1% of county employment.
- The majority (66%) of affected employers anticipate increasing prices for customers.
- They believe their employees will be more satisfied and productive with the wage increase (66%).
- Surprisingly, 76% of surveyed employers believe a minimum wage increase makes sense given the high cost of living in Silicon Valley and that doing so will reduce income inequality (65%).
- Most (61%) believe that a minimum wage increase will make it harder to start and grow local businesses.
- The vast majority (75%) agree with a regional approach at the county level.

On April 4, 2016, Governor Jerry Brown signed legislation (SB 3, Leno) which will raise California's minimum wage to \$15 per hour by 2022 starting in 2017. After January 1, 2023, future wage increases are tied to inflation. Under the new state law, the wage increase schedule may be temporarily suspended by the Governor during economic downturns. The law also maintains existing exemptions in the state's minimum wage law. It's important to note that the economic analysis did not factor in the state's new minimum wage law, which likely reduces the negative impacts of a regional increase.

On May 17, 2016, staff presented information on the regional analysis and the state's new minimum wage law to Council. Council directed staff to work with the Cupertino Chamber of Commerce to disseminate the economic analysis and county-wide survey results and focus outreach efforts on small business owners, including a survey on the impacts to their business of an increased minimum wage. Council also requested staff return after the Cities Association made a recommendation on a regional minimum wage.

Discussion

Regional Developments

The Board of Directors of the Cities Association voted to recommend the adoption of a minimum wage ordinance on June 9, 2016 shortly after issuing the final report of the economic analysis (Attachment B). Subsequently, a letter addressed to all Mayors and City Managers in Santa Clara County was sent on July 27, 2016 urging support of the regional minimum wage proposal along with a model ordinance for cities to bring to their Council for consideration (Attachment C). The letter was signed by Cupertino Councilmember Rod Sinks, Sunnyvale Councilmember Jim Griffith, and Palo Alto Councilmember Greg Scharff.

All but two cities in Santa Clara County are considering the regional minimum wage proposal. As shown in the chart below, Mountain View and Sunnyvale have already passed ordinance that increase their local minimum wage to \$15 by 2018. Six cities are taking the model ordinance for Council consideration in the next few months, while five others are still in the outreach phase. The Town of Los Altos Hills considered the recommendation in July but determined that it was not applicable due to the absence of commercial/industrial zones. The City of Gilroy is not considering the recommendation and will continue to follow the state schedule, which increases the minimum wage to \$15 by 2022. The City of Morgan Hill considered the model ordinance on August 24th and will explore returning to Council at a future date.

Jurisdiction	Current Min. Wage	Response to Regional Approach/Next Steps
Campbell	\$10.00	Council consideration on October 4, 2016
Cupertino	\$10.00	Council consideration on September 20, 2016
Gilroy	\$10.00	Declined to consider
Los Altos	\$10.00	Second reading on September 27, 2016
Los Altos Hills	\$10.00	Council determined that it was not applicable due to the absence of commercial/industrial zones on July 21, 2016
Los Gatos	\$10.00	Mayor scheduling study session
Milpitas	\$10.00	Outreach efforts continuing through October
Monte Sereno	\$10.00	Council to consider in September or October
Morgan Hill	\$10.00	Council considered on August 24 th , future reconsideration TBD
Mountain View	\$11.00	Adopted increase to \$15 by 2018
Palo Alto	\$11.00	Council consideration on September 26, 2016
San Jose	\$10.30	Council consideration TBD
Santa Clara	\$11.00	Council consideration TBD
Saratoga	\$10.00	Council consideration in November
Sunnyvale	\$11.00	Adopted increase to \$15 by 2018

Business Stakeholder and Community Input

Staff made significant efforts to obtain feedback from business stakeholders through the following opportunities: employer survey in partnership with Cupertino Chamber of Commerce, several presentations at Chamber of Commerce Legislative Action Committee, three business outreach meetings, and an online community poll.

Per Council direction, staff conducted the employer survey in partnership with the Cupertino Chamber of Commerce to better target the business community. The survey questions were largely based on the countywide employer survey presented to Council in May (see attachment A). It was released in late June and closed on July 30th. The survey link was sent multiple times through the Chamber’s list-serve and City’s economic development business contacts. In addition, the City mailed a postcard to every business license holder in Cupertino (2,342)

requesting their participation with several ways to access the survey: surveymonkey web address, wagewatch page, or QR code.

Simultaneously, staff created the www.cupertino.org/wagewatch webpage with information on the regional proposal as well as the City's efforts to study the issue and engage the business community. Staff also presented information at the Chamber of Commerce Legislative Action Committee and hosted three business outreach meetings to present information and gather feedback during the months of June, July, and August. Staff consulted with the Chamber and the California Restaurant Association to ensure that the dates and times of the business outreach meetings would be convenient for their members. Lastly, staff engaged Cupertino residents with a short three question poll on Nextdoor and Facebook.

Despite the efforts of staff and the Cupertino Chamber of Commerce, the City received only 26 responses to the employer survey. With limited resources, staff relied on businesses opting to take the online survey, while the countywide survey was conducted by an applied research firm that conducted a phone survey using a random sampling methodology. This opt-in methodology can lead to participation bias and/or non-response bias, in which certain demographic groups chose to participate or not to participate resulting in skewed data. More concerning was our response rate of about 1%, which results in a margin of error of approximately 18% for most questions.

The employer survey respondents were made up largely of businesses in service sectors with a heavy reliance on low-wage workers when compared to Cupertino's business community overall, an indicator of participation bias. According to the City's draft 2016 Economic Development Strategic Plan, nearly 50% of employers in Cupertino are in the technical and professional sector compared to only 36% of survey respondents. Respondents reported that over half of their employees are currently paid less than \$15 per hour, equivalent to \$31,200 annually. However, the vast majority of workers employed in Cupertino are highly skilled and compensated with median annual earnings of \$81,000 and over 70% earning more than \$35,000 annually.¹ Respondents were more demographically similar to the Cupertino business community in terms of size with 73% of respondents reported having less than 10 employees compared to 80% of Cupertino businesses overall.² Additionally, most respondents had well-established businesses with over 80% having owned a business in Cupertino for over 5 years.

Given that survey responders disproportionately rely on low-wage employees, it is not surprising that our local employer survey showed more negative impacts to employers when compared to the regional employer survey. A majority of respondents reported that they would be very likely or somewhat likely to (1) reduce the total number of employees they employ and (2) reduce employee hours. The vast majority of responders indicated that they would need to increase prices to pay for increased wages. Most would not consider moving their business to another community with a lower minimum wage but three respondents would consider closing

¹ City of Cupertino General Plan Amendment: Market Study, BAE Urban Economics (February 2014)

² City of Cupertino Economic Development Strategic Plan: Background Report, Revised Draft (January 2016)

their business. A third of respondents believe that a minimum wage makes sense for our community given our high cost of living with the majority disagreeing with the statement.

Our business outreach forums were attended by small groups of Cupertino businesses, allowing us to engage in meaningful dialogue with businesses most likely to be affected by a minimum wage increase in a focus group-like setting. In total, about 20 local business owners and managers attended, representing the restaurant, hotel, recreation, education, healthcare and professional services industries. In all forums, representatives expressed concerns about implementing a \$15.00 per hour minimum wage by 2019 and spoke of the detrimental effect it may have on their businesses. Many stated small businesses have narrow profit margins and are impacted by other corresponding increases such as the payroll tax, Workers' Compensation insurance, and paid sick leave. Many attendees expressed concern about raising prices for customers to account for higher wages with a small number wondering whether they can stay in business.

Attendees offered suggestions for Council to consider if moving forward with a minimum wage increase:

- Exemption for new and temporary seasonal employees, targeting summer jobs for teens.
- Exclude tipped employees from the ordinance, as many tipped employees may already make substantially more than the minimum wage rate.
- Look into policies to provide small businesses with relief for increasing commercial rents.

Results from the community poll were starkly different from the feedback we received from the business community. Using social media, we polled our residents to get a pulse on their sentiments regarding an increase to the minimum wage. With over 150 responses, 74% agree or somewhat agree that an increase in the minimum wage makes sense for our community, given the high cost of living. A majority would be willing to pay up to 3% more for goods and services to help reduce income inequality. Lastly, 72% agree or somewhat agree that it would be better to have the same increase in the minimum wage throughout the County than to have different rates in different cities. Similar to our business survey, social media polls are not necessarily statistically accurate because of participation bias.

Recommendation

Staff recommends Council consider the model ordinance recommended by the Cities Association of Santa Clara County, which gradually increases the minimum wage to \$15.00 per hour by 2019. Considerable outreach was also done in Cupertino to solicit community and business input. Opinions differ significantly on this issue. There is no community-wide consensus in Cupertino on an approach or the impacts of raising the minimum wage.

While an increase in the minimum wage will certainly impact some of Cupertino's businesses, the regional economic analysis shows that the benefits outweigh the costs, that this proposal targets the neediest families in our region with an increase in the average annual income of

19.4% for 250,000 workers with an almost net-zero loss of employment in the 10-county region and a slight increase in average prices of 0.2%. While the price increase at restaurants is estimated to be 3.1%, our community poll indicates that there may be tolerance for this type of price increase in Cupertino. Based on this and the regional approach agreed upon by Santa Clara County city representatives on June 9, 2016, staff has brought the Cities Association model ordinance. The proposed minimum wage ordinance increases the minimum wage as follows:

Effective Date	Proposed Schedule	State Schedule	
		More than 25 EE	25 of less EE
January 1, 2017	\$12.00	\$10.50	\$10.00
January 1, 2018	\$13.50	\$11.00	\$10.50
January 1, 2019	\$15.00	\$12.00	\$11.00
January 1, 2020	\$15.35*	\$13.00	\$12.00
January 1, 2021	\$15.65*	\$14.00	\$13.00
January 1, 2022	\$16.00*	\$15.00	\$14.00
January 1, 2022	\$16.40*	\$15.30**	\$15.00

*Estimate based on historical CPI-W in Bay Area Statistical Area of 2.2%

**Estimate based on historical CPI-W in the U.S. of 1.7%

As shown in the chart above, after 2019, the minimum wage would increase each January 1st by the Bay Area Consumer Price Index-Wages, not to exceed 5%. All increases would be rounded to the nearest five cents. During the ramp-up phase, an “off-ramp” trigger would allow Council to delay these scheduled increases under certain economic conditions related to an increase in unemployment and/or a decrease in sales tax receipts.

No exemptions, other than for collective bargaining agreements, are recommended in the Cities Association model ordinance. However, there are a number of alternative approaches to this issue that Council could consider based on feedback from our business community:

- Learner Exemptions: Learners (regardless of age) may be paid not less than 85% of the minimum wage rounded to the nearest nickel during their first 160 hours of employment in occupations in which they have no previous similar or related experience. This exemption is included in the state’s minimum wage law.
- Exemption for employees receiving discretionary tips. These employees would be paid at the state minimum wage.

If enacted, the City of Cupertino will need to implement mechanisms to enforce its minimum wage ordinance. Several cities with existing minimum wage ordinances in Santa Clara County have contracted with the City of San Jose for enforcement services through a complaint-driven model. The City of San Jose is open to entering into similar agreements with other cities in the region. Staff recommends exploring this option.

Sustainability Impact

No impact.

Fiscal Impact

If a regional minimum wage is enacted, City costs are anticipated to increase by roughly \$480,000 over the course of three years related to increases for part-time employees, contractual services, and new enforcement mechanisms to ensure compliance with the new law.

First, the City would need to amend its salary schedule for part-time employees to comply with the new minimum wage schedule, resulting in a budget impact of approximately \$75,000 in FY 16-17 and \$95,000 in each of the following fiscal years, for a total of \$265,000 over three years.

Contract costs for crossing guard and janitorial services are also expected to increase as these contractors rely heavily on low-wage workers. Based on staff estimates, the cost for crossing guard services will increase by \$25,000 in FY 2016-17 with a total estimated increase of \$75,000 over the next three years of the ramp up period. Janitorial services are likely to increase about 30% (roughly \$200,000) during the ramp up phase.

Lastly, costs related to enforcement are estimated to be minimal based on the experience from nearby cities who have implemented local minimum wage ordinances. A budget adjustment of \$5,000 would be requested at mid-year to account for enforcement-related costs.

Prepared by: Jaqui Guzmán, Assistant to the City Manager

Approved for Submission by: David Brandt, City Manager

Attachments:

A – Draft Minimum Wage Ordinance

B – Economic Analysis

C – Letter from Santa Clara County Cities Association (July 27, 2016)

ORDINANCE NO.

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF CUPERTINO TO ADD CHAPTER 3.37 (MINIMUM WAGE ORDINANCE) TO TITLE 3 (REVENUE AND FINANCE) OF THE CUPERTINO MUNICIPAL CODE TO INCREASE THE 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 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; and

WHEREAS, key findings of a regional minimum wage study and survey performed by the Institute for Research on Labor and Employment at UC Berkeley and BW Research showed that increasing the minimum wage to \$15.00 an hour by 2019 in Santa Clara County would:

- Increase earnings for 250,000 workers
- Raise average annual earnings of affected workers by 19.4 percent, or \$3,200.00 (in 2014 dollars)
- Slightly increase average prices in Santa Clara County by 0.2% over three years
- Have a net effect on employment that is slightly negative at the county level (1,450 jobs) and close to zero at a 10 county regional level;

WHEREAS, the Cities Association of Santa Clara County recommends a regional minimum wage increase to \$15.00 by 2019 as an effort to create an even playing field that mitigates the impacts to local economies, provides equity to our shared economy, and implements regional consistency across the county.

NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF CUPERTINO DOES ORDAIN AS FOLLOWS:

3.37 Minimum Wage.

3.37.010 Title.

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

3.37.020 Authority.

This chapter is adopted pursuant to the powers vested in the City of Cupertino under the laws and Constitution of the state of California, including, 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 Code.

3.37.030 Definitions.

The following words and phrases, whenever used in the chapter, shall be construed as defined in this section:

(a) “City” shall mean the City of Cupertino, California or any agency designated by the City to administer the terms of 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, or is a participant in a welfare-to-work Program.

(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 or maintains a business facility in the city.

(d) “Governmental agencies” shall include federal agencies, state agencies, school districts and auxiliary organizations as defined under Education Code Sections 72670(c) and 89901. “Governmental agency” does not include the City of Cupertino.

(e) “Minimum wage” shall have the meaning set forth in Section 3.37.040 of this chapter.

(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.

3.37.040 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 of Cupertino. Governmental agencies are exempt from the minimum wage requirements under the principle of governmental immunity when the work performed is related to the agency's governmental function.

(b) Effective January 1, 2017, the Minimum Wage shall be an hourly rate of twelve dollars (\$12.00). On January 1, 2018, the minimum wage shall be an hourly rate of thirteen dollars and fifty cents (\$13.50). On January 1, 2019, the minimum wage shall be an hourly rate of fifteen dollars (\$15.00), except when these scheduled increases are temporarily suspended under subdivision (f). To prevent inflation from eroding its value, beginning on January 1, 2020, and each January 1st thereafter, the Minimum Wage shall increase by an amount corresponding to the increase, if any, in the cost of living, not to exceed 5%. 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 Bay Area Consumer Price Index (Urban Wage Earners and Clerical Workers, San Francisco-Oakland-San Jose, CA 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 (\$.05) cents. 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 1st of the following year.

(c) Commissions or guaranteed gratuities, not including discretionary tips, may be counted toward payment of the minimum wage when the commissions or guaranteed gratuities are earned and paid together with other compensation paid to an employee and are equal to or greater than the current minimum wage. For each pay period, employers shall pay the employee an amount that equals or exceeds the current hourly minimum wage.

(d) The employer may offset a portion of the minimum wage for housing and meal costs only if the offsets are the same as those available under the California Minimum Wage Law. The offsets shall only be recognized if there is a prior voluntary agreement between the employer and the employee.

(e) 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.

(f) On or before September 1, 2017, and on or before every September 1 thereafter until the minimum wage is fifteen dollars (\$15.00) per hour, to ensure that economic conditions can

support a minimum wage increase, the City Manager or designee shall annually make a determination and certify to the City Council whether each condition below is met:

(A) Total nonfarm employment for California, seasonally adjusted, decreased over the three-month period from April to June, inclusive, prior to the September 1 determination. This calculation shall compare seasonally adjusted total nonfarm employment in June to seasonally adjusted total nonfarm employment in March, as reported by the Employment Development Department.

(B) Total nonfarm employment for California, seasonally adjusted, decreased over the six-month period from January to June, inclusive, prior to the September 1 determination. This calculation shall compare seasonally adjusted total nonfarm employment in June to seasonally adjusted total nonfarm employment in December, as reported by the Employment Development Department.

(C) California state retail sales and use tax cash receipts from a 3.9375-percent tax rate for the July 1 to June 30, inclusive, period ending one month prior to the September 1 determination is less than retail sales and use tax cash receipts from a 3.9375-percent tax rate for the July 1 to June 30, inclusive, period ending 14 months prior to the September 1 determination. The calculation for the condition specified in this subparagraph shall be made by the City Manager or designee using data posted online by the State Board of Equalization, following the procedure specified in paragraph (1) of subdivision (c) of Section 1182.12 of the California Labor Code as follows:

(i) The State Board of Equalization shall publish by the 10th of each month on its Internet Web site the total retail sales (sales before adjustments) for the prior month derived from their daily retail sales and use tax reports.

(ii) The State Board of Equalization shall publish by the 10th of each month on its Internet Web site the monthly factor required to convert the prior month's retail sales and use tax total from all tax rates to a retail sales and use tax total from a 3.9375-percent tax rate.

(iii) The Department of Finance shall multiply the monthly total from clause (i) by the monthly factor from clause (ii) for each month.

(iv) The Department of Finance shall sum the monthly totals calculated in clause (iii) to calculate the 12-month July 1 to June 30, inclusive, totals needed for the comparison in this subparagraph.

(g) If, for any year, the condition in either subparagraph (A) or (B) of paragraph (f) is met, and if the condition in subparagraph (C) of paragraph (f) is met, the City Council may, on or before October 1 of that year, make a determination to temporarily suspend the minimum wage increase scheduled for the following year.

(h) If the City Council makes a determination to temporarily suspend the scheduled minimum wage increases for the following year, all dates specified in paragraph (b) that are subsequent to the October 1 determination date shall be postponed by an additional year.

3.37.050 Waiver through collective bargaining.

All or any portion of the applicable requirements of this Chapter shall not apply to Employees covered by a bona fide collective bargaining agreement to the extent that such requirements are expressly waived in the collective bargaining agreement in clear and unambiguous terms.

3.37.060 Notice, posting and payroll records.

(a) By November 1st or as soon as practicable thereafter 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 1st. In conjunction with this bulletin, the City shall by November 1st, or as soon as practicable thereafter of each year, publish and make available to employers, in the top three languages spoken in the city based on the latest available census information for 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 City informing employees of the current minimum wage rate and of their rights under this chapter. Every employer shall post such notices in the top three languages spoken in the city based on the latest available census information for the city 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 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.

3.37.070 Retaliation prohibited.

(a) It is 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.

3.37.080 Implementation.

(a) Guidelines. The City 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 shall be responsible for investigating any possible violations of this chapter by an employer or other person. The City 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, and shall take no more than one year to resolve any matter, before initiating an enforcement action. The failure of the City to meet these timelines within one year shall not be grounds for closure or dismissal of the complaint.

3.37.090 Enforcement.

(a) Where prompt compliance is not forthcoming, the City shall take any appropriate enforcement action to secure compliance. All remedies in the Cupertino Municipal Code (“the code”) are considered cumulative and the use of one or more remedies by the City shall not bar the use of any other remedy for the purpose of enforcing these provisions.

(1) The City may issue an administrative citation pursuant to Chapter 3.37 of the code with a fine of not more than fifty dollars (\$50.00) for each day or portion thereof and for each employee or person as to whom the violation occurred or continued. The City Council may modify the fine amount by resolution.

(2) Alternatively, the City may initiate a proceeding under Chapter 3.37 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 fifty dollars (\$50.00) 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 a 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 fifty dollars (\$50.00) 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 subsection (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 attorney's fees.

3.37.100 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.

3.37.110 Application of minimum wage to welfare-to-work programs.

The minimum wage established pursuant to Section 3.80.040(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.

3.37.120 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.

3.37.130 CEQA Exemption.

The City Council finds, pursuant to Title 14 of the California Code of Regulations, Section 15378(b)(2), that this ordinance is exempt from the requirements of the California Environmental Quality Act (CEQA) in that the adoption of an ordinance of general policy and procedure does not constitute a project within the meaning of CEQA.

3.37.140 Constitutionality; Severability.

If any section, subsection, sentence, clause or phrase of this ordinance is for any reason held to be invalid, such decision or decisions shall not affect the validity of the remaining portions of

