



# Information Item

**Date: March 30, 2016**

To: Mayor and City Council  
From: Gigi Decavalles-Hughes, Finance Director  
Andy Agle, Housing and Economic Development Director  
Subject: Minimum Wage Working Group Recommendations

## **Introduction**

This report presents the Minimum Wage Working Group recommendations for amending Santa Monica's minimum wage law, which Council adopted on [January 12, 2016](#). Staff will present Council with a revised ordinance, incorporating these recommendations, on April 26, 2016.

## **Background**

Santa Monica's minimum wage law was developed through eight months of community, business, and labor engagement and discussion. Continuing this open and participatory process, Council directed the City Manager to form an ad hoc Minimum Wage Working Group (Working Group) to address technical issues Council members identified when they adopted the minimum wage ordinance on January 12, 2016. These issues include elements of the service charge and sick leave provision, discussion of the first time worker provision, approaches to education and enforcement, and alignment of Santa Monica minimum wage levels. Council directed that the Working Group discuss the identified issues and recommend modifications that would help to strengthen and clarify the ordinance. This report shares the Working Group's recommendations to provide the community, stakeholder groups, and Council with information regarding the policy direction of the revised ordinance.

## Discussion

Council authorized the City Manager to establish the Working Group: a small body representing Santa Monica business, labor, and community members. The City Manager appointed the following individuals:

### Voting Members

- Hunter Hall, Santa Monica Neighborhood Restaurant Coalition
- Stephen Sowards, Le Méridien Delfina Santa Monica Hotel
- Jeremy Blasi, Unite Here Local 11
- Sophia Cheng, Restaurant Opportunities Center
- Frank Gruber, Santa Monica resident (Chair)

### Ex-officio / Non-voting Members

- Jeff Klocke, Pacific Park
- Paloma Nicholas, Santa Monica High School Student
- Carl Hansen, Santa Monica Chamber of Commerce

In accordance with the Brown Act, staff posted Working Group agendas through the City Clerk's Office, and posted agendas, minutes, shared documents, meeting recordings, and public correspondence on a [Minimum Wage Working Group website](http://www.smgov.net/minimumwage), accessible from <http://www.smgov.net/minimumwage>.

The Working Group met on February 17, February 24, and February 29, 2016. The public was welcome to attend all meetings, and each meeting included public testimony. Estimated public attendance, in addition to Working Group members and staff, was as follows:

February 17: 2

February 24: 40

February 29: 25

Representatives from the City Attorney's Office, the Housing and Economic Development Department, and the Finance Department also attended each Working Group meeting. The City Manager attended the first meeting and introduced the group's purpose and role.

Working Group members discussed the issues that Council outlined for further discussion and resolution. The group considered information that stakeholders and Working Group members submitted regarding Council-identified issues for the group's consideration, resources recommended by various Working Group members, and information and clarifications requested from staff. Following discussion of the issues, members unanimously approved proposals to modify the City's minimum wage ordinance. The recommendations reflect a complete set of recommendations by the Working Group members, with representatives of business and labor seeking to reach common ground through prioritization of issues and give-and-take negotiations. The issue list with associated Working Group recommendations is included as Attachment A.

Staff will present an amended ordinance incorporating these recommendations for first reading on April 26, 2016.

On March 28, 2016, Governor Jerry Brown announced a proposal to increase the State minimum wage gradually to \$15 by 2022 for most businesses, with a one-year delay for businesses with 25 or fewer employees. This plan reaches \$15 per hour two years after Santa Monica, and on a slightly different wage schedule. The proposal also includes options to pause wage increases based on either economic or budget challenges. This initial proposal must go through State Legislature review and vote. Staff will continue to monitor the process, and will provide additional information as available, including any implications for Santa Monica's law, with the revised ordinance on April 26, 2016.

**Prepared By:** Stephanie Lazicki

## **Attachments**

- A. Minimum Wage Issue List and Recommendations

**Minimum Wage Working Group Meeting 2/29/2016**  
**Summary of Recommendations**

**Issue 1: Sick leave**Council Direction

- a. Review proposals for phasing in days (9 days / 5 days depending on size of business), or establishing 6 days for all businesses
- b. Consider logistics issues for businesses (i.e. use of accrued sick leave before ending employment)
- c. Ensure strong sick leave use protection (ROC recommendation)

Ordinance Recommendations:

## Phase in sick days as follows:

- January 1, 2017: 4 days (small businesses); 5 days (large businesses)
- January 1, 2018: 5 days (small businesses); 9 days (large businesses)
- Clarify that accrual of paid sick days begins upon the hire date but employees cannot use until the 90th day of employment (Section 4.62.025(a))
- Add language clarifying that accrual cap may be measured by calendar, fiscal, or date of hire year.
- Remove Section 4.62.025(g) to avoid confusion with the State sick leave law regulations for use of sick leave (note Section 4.62.025(c) provides that employees may use paid sick leave consistent with State sick leave laws). This provision ensures strong sick leave use protection for employees. Additional clarification may be required in the Ordinance.

**Issue 2: Education and Enforcement**Council Direction

- a. Ensure enforcement provisions for grievances adequately protect workers
- b. Ensure record keeping requirements apply to all areas of ordinance
- c. Review the penalty accrual provisions (e.g. daily vs. by pay period); review San Francisco waiver provision
- d. Suggest best practices for outreach to employees and employers

Ordinance Recommendations:

- Reduce the rebuttable presumption period from 180 to 90 days (Section 4.62.070(a)).
- Further clarify unlawful practices in Section 4.62.060(b): "It shall be unlawful for an Employer to **directly** fund the wages and benefits required..." to further clarify the enforcement provisions.
- In civil penalties, provide for fines of "up to" \$100 (Section 4.62.110(a)).
- In civil penalties, change language so that "Penalties to be paid under this subdivision MAY be trebled."(4.62.110(b))

Other Recommendations:

- City to review the Ordinance in one year, similar to actions taken for some other new ordinances, to assess need for further adjustments.
- City to research San Francisco education and enforcement practices, including working with community based organizations, and follow these recommendations. City to work with State and other regional partners where possible.

**Issue 3: Other**Council Direction

- a. Align various wage rates (general minimum wage, hotel wage, City living wage; tie to LA hotels) over time
- b. Potential to incorporate public hearing or worker testimony into hotel hardship process, without requiring hotel to share private financial information

Ordinance Recommendations:

- Align the Santa Monica hotel wage to the Los Angeles hotel wage on July 1, 2017. Align Santa Monica's living wage for City contractors with hotel wages on July 1, 2018.
- Include a provision to notify employees of any hotel hardship waiver application, to afford the opportunity for employees to be heard in the existing administrative hearing process.

**Issue 4: Service Charge/ Surcharges**Council Direction

- a. Consider differentiating between hotel and non-hotel in service charges, especially in 4.62.040(2)(a) (banquets and catering)
- b. Consider Alternative 2 (Unite Here recommendation)
- c. Ensure strong transparency for employers and consumers (make sure customers are aware of any service charges / surcharges before purchasing meal / hotel accommodation)
- d. Add supervisor definition to statute

Ordinance Recommendations:

- Specify that the provisions in 4.62.040(2)(A-C) for banquets / catering, portorage, and room service, apply to hotels only and change "wait on guests" to "work" in 4.62.040(2)(A).
- Include "healthcare surcharge" and "benefits surcharge" in the service charge definition and use.
- Remove regulations for other surcharges.
- Add directions for use of healthcare surcharges to 4.62.040(a)(1) to ensure related revenue is transparent to employees and under employees' control.
- Replace "wages" with "wages or other compensation required by this chapter" in the description of how to distribute service charges (Section 4.62.040(a))

Other Recommendations:

- City Attorney to develop language, based on Working Group member Jeremy Blasi's proposal discussed during the meeting, which would meet the group's stated goal of ensuring any health care or benefit surcharge revenue is transparent to the worker and under his or her control, while attempting to accommodate existing health care plans that meet employees' needs.
- The City Attorney would meet with Jeremy Blasi to review language and ensure that it is consistent with the Working Group discussion and agreement.
- Within first year, City to solicit feedback on how employers and employees are using healthcare/benefit surcharges in order to assess the need for additional changes.

**Issue 5: Seasonal / First Time Workers**

Council Direction

- a. Review potential impacts on youth employment
- b. Review potential for increased job turnover
- c. If no seasonal exemption, consider impacts to the businesses and City's goal for Pier affordability

Ordinance Recommendations

- Decrease the hours in the exemption to match the State learner provision: 85% of the minimum wage for 160 hours. The exemption would align with the State and Emeryville, and is not age specific (Section 4.62.015(e)).

Other Recommendations

- City to work with the State Division of Labor Standards Enforcement to seek a formal opinion letter in order to clarify "similar or related experience". If this research yields insufficient information, staff could promulgate administrative regulations clarifying use of the provision.
- City to include information related to this topic in frequently asked questions or similar guide to accompany the minimum wage ordinance.
- There is not sufficient data to draw any reliable conclusions about the ordinance provision's impact on youth employment, job turnover, or pier affordability. The issues should be monitored going forward.