City of Santa Clara
The Center of What's Possible

AGENDA ITEM #: 7A.7

AGENDA REPORT

Date: September 22, 2015

To: City Manager for Council Action

From: City Attorney

Subject: Adoption of Ordinance No. 1943 Adding Chapter 3.20 ("Minimum Wage Ordinance") to Title 3 ("Revenue And Finance") of "The Code of the City of Santa Clara, California" to Require the Payment of a City-Wide Minimum Wage

EXECUTIVE SUMMARY

The California minimum wage is $9.00 per hour until January 1, 2016, when it will be increased to $10.00 per hour. Senate Bill 3 will establish the state minimum wage at $11.00 per hour in 2016, and $13.00 per hour in 2017, and then will automatically adjust based on California's Consumer Price Index for all Urban Consumers. Staff conducted research and found that within Santa Clara County, the cities of Sunnyvale, San Jose and Mountain View have all implemented virtually similar local minimum wage ordinances within the past two years. These cities adopted ordinances that require employers to pay a minimum wage above the state minimum wage requirement that adjusts each year on January 1, based on cost of living increases, if any, based on the region's Consumer Price Index. Ordinance No. 1943 was passed for the purpose of publication ("passed to print") on August 18, 2015. Pursuant to City Charter Sections 808 and 812, proposed Ordinance No. 1943 was published on September 2, 2015 and copies were posted in at least three public places.

ADVANTAGES AND DISADVANTAGES OF ISSUE

The advantage of adopting a minimum wage ordinance is that it will promote and support the quality of life in the local community. The minimum wage ordinance would provide consistency within the region as surrounding cities have passed virtually similar ordinances. The disadvantages, as expressed at local outreach meetings, include impacts to businesses related to salary and benefit costs and loss of incentive for entry level positions.

ECONOMIC/FISCAL IMPACT

This ordinance would create a minimum wage program similar to the surrounding cities. In order for the City to implement and administer the ordinance, consideration should be given for cost related to investigation of complaints and resolution. Like other cities that have adopted similar ordinances, the City of Santa Clara does not have the staff expertise or resources to handle investigation of complaints and resolution. Both Sunnyvale and Mountain View have contracted with the City of San Jose's Office of Equality Assurance to handle these services with contracts of up to $20,000 with the City of San Jose. The enforcement model is complaint-driven with fees only paid when a complaint is filed and investigated.

RECOMMENDATION

That the Council adopt Ordinance No. 1943, Adding Chapter 3.20 ("Minimum Wage Ordinance") to Title 3 ("Revenue and Finance") of "The Code of the City of Santa Clara, California" to require the payment of a City-Wide Minimum Wage of $11.00 per hour, effective January 1, 2016 to be adjusted annually based on the increase in the cost of living, if any, based on the region's Consumer Price Index (Urban Wage Earners and Clerical Workers, U.S. City Average for All Items).

Richard E. Nosky, Jr.
City Attorney

APPROVED:

Julio J. Fuentes
City Manager

Documents Related to this Report:
1) Ordinance No. 1943

ORDINANCE NO. 1943

AN ORDINANCE OF THE CITY OF SANTA CLARA, CALIFORNIA, ADDING CHAPTER 3.20 ("MINIMUM WAGE ORDINANCE") TO TITLE 3 ("REVENUE AND FINANCE") OF "THE CODE OF THE CITY OF SANTA CLARA, CALIFORNIA" TO REQUIRE THE PAYMENT OF A CITY-WIDE MINIMUM WAGE

BE IT ORDAINED BY THE CITY OF SANTA CLARA AS FOLLOWS:

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

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;

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

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 FURTHER ORDAINED BY THE CITY OF SANTA CLARA AS FOLLOWS:

SECTION 1: That a new Chapter 3.20 ("Minimum Wage Ordinance") is hereby added to Title 3 ("Revenue and Finance") of "The Code of the City of Santa Clara, California" ("SCCC") to read as follows:

"Chapter 3.20

MINIMUM WAGE ORDINANCE

Sections:

3.20.010 Title.
3.20.020 Authority.
3.20.030 Definitions.
3.20.040 Minimum wage.
3.20.050 Waiver through collective bargaining.
3.20.060 Notice, posting and payroll records.
3.20.070 Retaliation prohibited.
3.20.080 Implementation.
3.20.090 Enforcement.
3.20.100 Relationship to other requirements.
3.20.110 Application of minimum wage to welfare-to-work programs.
3.20.120 Fees.
3.20.130 Amendment by the City Council.

3.20.010 Title.

This chapter shall be known as the minimum wage chapter of the City of Santa Clara.

3.20.020 Authority.

This Chapter is adopted pursuant to the powers vested in the City of Santa Clara 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.

3.20.030 Definitions.

The following terms shall have the following meanings:

(a) "City" shall mean City of Santa Clara 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.

(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 Chapter 3.40 SCCC or maintains a 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 Santa Clara.

(e) "Minimum Wage" shall have the meaning set forth in SCCC 3.20.040.

(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.

3.20.040 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 Santa Clara. 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) The Minimum Wage shall be an hourly rate of eleven dollars ($11.00). To prevent inflation from eroding its value, beginning on October 1, 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 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.

3.20.050 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.

3.20.060 Notice, posting and payroll records.

(a) By January 1 of each year, the City shall publish and make available to Employers a bulletin announcing the adjusted Minimum Wage rate for the upcoming year, which shall take effect on January 1. In conjunction with this bulletin, the City shall by January 1, 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 Office 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.

3.20.070 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. Protection of this Chapter shall apply to any person who mistakenly, but in good faith, alleges noncompliance with this Chapter.

3.20.080 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 have a policy that the City 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.

3.20.090 Enforcement.

(a) Where prompt compliance is not forthcoming, the City shall take any appropriate enforcement action to secure compliance. All remedies in the SCCC 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 1.10 of the SCCC 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 Council may modify the fine amount by Resolution.

(2) Alternatively, the City may initiate a proceeding under Chapter 1.05 of the SCCC 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 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 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 attorney's fees.

3.20.100 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.

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

The Minimum Wage established pursuant to SCCC 3.20.040(b) 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.

3.20.120 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.

3.20.130 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: CEQA – Exemption. The City Council finds, pursuant to Title 14 of the California Code of Regulations, Section 15031(b)(3), that this ordinance is exempt from the requirements of the California Environmental Quality Act (CEQA) in that it is not a project which has the potential for causing a significant effect on the environment.

SECTION 3: Savings clause. The changes provided for in this ordinance shall not affect any offense or act committed or done or any penalty or forfeiture incurred or any right established or accruing before the effective date of this ordinance; nor shall it affect any prosecution, suit or proceeding pending or any judgment rendered prior to the effective date of this ordinance. All fee schedules shall remain in force until superseded by the fee schedules adopted by the City Council.

SECTION 3: Constitutionality, severability. If any section, subsection, sentence, clause, phrase, or word of this ordinance is for any reason held by a court of competent jurisdiction to be unconstitutional or invalid for any reason, such decision shall not affect the validity of the remaining portions of the ordinance. The City Council hereby declares that it would have passed this ordinance and each section, subsection, sentence, clause, phrase, and word thereof,

irrespective of the fact that any one or more section(s), subsection(s), sentence(s), clause(s), phrase(s), or word(s) be declared invalid.

SECTION 4: Effective date. This ordinance shall take effect thirty (30) days after its final adoption; however, prior to its final adoption it shall be published in accordance with the requirements of Section 808 and 812 of "The Charter of the City of Santa Clara, California."

PASSED FOR THE PURPOSE OF PUBLICATION this 18th day of August 2015, by the following vote:

AYES:	COUNCILORS:	Caserta, Gillmor, Kolstad and O'Neill and Mayor Matthews
NOES:	COUNCILORS:	Davis
ABSENT:	COUNCILORS:	Marsalli
ABSTAINED:	COUNCILORS:	None

ATTEST: _____
ROD DIRIDON, JR.
CITY CLERK
CITY OF SANTA CLARA

Attachments incorporated by reference: None.