



MEETING

DATE: September 24, 2019

TO: City Council

FROM: Adam McGill, Acting City Manager
Michael L. Antwine II, Assistant City Manger
Bryan Lopez, Management Analyst II
Laura McDowall, Management Analyst II

**SUBJECT: CONSIDERATION, DISCUSSION AND POSSIBLE ACTION TO
INTRODUCE AN ORDINANCE ACCELERATING THE STATE OF
CALIFORNIA SCHEDULE INCREASING THE MINIMUM WAGE IN
THE CITY OF NOVATO**

REQUEST

Consider, discuss and possibly introduce an ordinance accelerating the State of California schedule increasing the minimum wage in the City of Novato and finding that the introduction and adoption of the ordinance is exempt under CEQA Guidelines section 15061(b)(3).

DISCUSSION

Senate Bill 3 (Leno) calls for a gradual increase in the State of California minimum wage until it reaches \$15/hour for all employees by January 1, 2023. At the City Council meeting of January 15, 2019 Councilmember Eklund proposed, and received unanimous support for, a future agenda item to conduct a work study session regarding accelerating the minimum wage increase citywide. Staff returned to Council on March 26, 2019, and was given direction on the future work study session.

On July 23, 2019, the City Council discussed the proposed minimum wage acceleration in a work-study session and provided direction to staff. Staff returned to the City Council on August 27, 2019 with a draft ordinance and several wage acceleration and policy options for the Council to consider. The City Council came to consensus on a proposed minimum wage increase acceleration schedule. Under the proposed schedule, businesses would reach a \$15/hour minimum wage on a phased schedule depending on size:

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| Employers (very large) with 100 employees or more would reach a minimum wage of \$15/hour on July 1, 2020 |
| Employers (large) with 26-99 employees would reach a minimum wage of \$15/hour on January 1, 2021 |
| Employers (small) with 1-25 employees would reach a minimum wage of \$15/hour on January 1, 2022 |

The full wage and implementation schedule is shown on *Attachment 1*.

The City partners with HdL Companies to provide business license services. HdL's records show the following breakdown of business in Novato, which includes home occupation businesses:

Employee Counts	Number of Businesses
0 Employees	1,756
1 – 25 Employees	1,304
26 – 99 Employees	76
100 + Employees	14

The draft ordinance provides that once a minimum wage of \$15/ hour is reached, the minimum wage for all employers, regardless of size, will be adjusted annually based on CPI-W for the San Francisco-Oakland-Hayward Consolidated Metropolitan Statistical Area (or its successor index) or 3.5%, whichever is less.

The draft ordinance includes a provision that if an employer pays at least \$1.00 per hour per employee towards an employee medical benefits plan, the employer may pay the employee the minimum wage less the lesser of \$1.00 or the difference between and the State's minimum wage.

ENFORCEMENT

Pursuant to City Council direction on August 27, 2019, the proposed draft ordinance includes two options for enforcement for the City Council to choose:

Enforcement Option 1

- Civil action can be brought by a private party against an Employer or any person who has allegedly violated the ordinance.
- An aggrieved person is entitled to all remedies available including, but not limited to, back pay with interest, an additional sum as a civil penalty in the amount of one hundred dollars (\$100.00) for each day the violation occurred and reasonable attorney's fees, witness fees and expenses.
- If an employee is found to have been unlawfully retaliated against, s/he will be entitled to triple the wages lost due to the violation.
- No criminal penalties shall attach for any violation.

Enforcement Option 2

- The city and any aggrieved person may seek remedies for a period of three (3) years prior to the date the claim is filed with the city or the court.
- The city and any aggrieved person may bring civil action against any employer who has allegedly violated the ordinance.
- Allows suspected violations to be reported to the city and provides that the city may seek informal resolution of the complaint of violation.

- Declares that violations are public nuisances in accordance with Chapter 1-6 of the City of Novato Municipal Code, and subject to enforcement in accordance with Chapter 1-6.12, and Administrative Citation and Penalty Chapter 1-7.
- Violators are subject to suspension or revocation of their business license in accordance with Chapter 8, Section 8-1 of the City of Novato Municipal Code.
- An aggrieved person is entitled to all remedies available including but not limited to back pay with interest, an additional sum as a civil penalty in the amount of one hundred dollars (\$100.00) for each day, or a portion thereof, that the violation occurred and reasonable attorney's fees, witness fees and costs of litigation
- If an employee is found to have been unlawfully retaliated against, s/he will be entitled to triple the wages lost due to the violation

The State of California Labor Commissioner's Office, also known as the Division of Labor Standards Enforcement (DLSE), provides robust enforcement of labor laws, including local minimum wage ordinances. No additional steps from the City are required for enforcement; if the DLSE receives a claim of a violation, the DLSE will compute the amount of unpaid regular and/or overtime wages using the local minimum wage rate established by the applicable local ordinance. If a wage claim is filed with the DSLE, the DSLE will notify the claimant and the employer by mail. In most cases, the DSLE will schedule a settlement conference where the DSLE will determine whether the claim has a legal basis to proceed and allow the claimant and employer the opportunity to discuss settlement of the claim. If the claim has a legal basis to proceed and is not settled during the conference, the claim will move on to a hearing. During the hearing, the claimant and the employer will testify under oath and submit evidence about the claim. After the hearing, a letter is sent explaining the hearing officer's decision and the amount that the employer must pay, if any. Both the employer and the claimant have the right to file an appeal with the Superior Court if s/he do not agree with the decision.

Due to limited resources, staff recommends that the City Council choose Enforcement Option 1 and allow all complaints of violations (i) be prosecuted privately by the aggrieved person or (ii), at the aggrieved person's option, be processed through the DLSE at no cost to the City.

PUBLIC OUTREACH

Staff has conducted outreach to the community and stakeholders using the City's Website and social media, including email subscribers. Staff has met with representatives of the North Bay Labor Council and local business owners through the Downtown Novato Business Association and the Chamber of Commerce.

On August 30, 2019, staff published the proposed minimum wage increase acceleration schedule and draft ordinance for review on the City's website, created a Minimum Wage webpage on the City's website, novato.org/minimumwage, and created an online survey at novato.org/opennovato to gather feedback from the community. The webpage, proposed ordinance, acceleration schedule

and survey were promoted through the City's social media channels and e-notified to all City of Novato email subscribers.

The survey had received 220 responses as of 4:56pm on September 18, 2019, as shown in *Attachment 2*. Members of the community have also provided the City Council feedback on the proposed minimum wage acceleration schedule and draft ordinance via email and social media. Correspondence and messages received from August 28, 2019 to September 18, 2019 are included as *Attachment 3*. Additional correspondence and responses to the survey will continue to be

compiled until 4pm on September 24, 2019, and will be provided to the City Council and available to the public for review at the City Council meeting.

The Economic Development Advisory Commission discussed the possibility of an accelerated minimum wage increase schedule at its meeting of Thursday, August 22, 2019, and approved a recommendation that the City Council keep with the state mandated scale and not accelerate wages.

FISCAL IMPACT

The City of Novato falls under the Very Large business category and would be subject to a minimum wage of \$15/hour on July 1, 2020. Between July 1, 2020 and December 31, 2020, the proposed minimum wage increase acceleration schedule would increase City of Novato operation costs approximately \$11,144 above the State of California's current required schedule. Beginning January 1, 2021, the cost increases above the State of California's required schedule will vary subject to the current CPI-W of the San Francisco- Oakland- Hayward Metropolitan Statistical Area.

There is competing research on the various impacts to the local economy resulting from the imposition of minimum wages above those set by state or federal laws. Staff is unable to predict what impacts will occur in Novato.

STRATEGIC PLAN ALIGNMENT

This issue is not currently identified in the City's adopted Strategic Plan.

RECOMMENDATION

Whether to introduce the ordinance accelerating the State of California schedule increasing the minimum wage in the City of Novato is a policy decision of the City Council.

If it is the pleasure of the Council to introduce the ordinance, Staff recommends the City Council introduce the ordinance with Enforcement Option 1 for Section 2-30.8.

ALTERNATIVES

1. Introduce the ordinance increasing the minimum wage and finding that the introduction and adoption of the ordinance are exempt under CEQA Guidelines section 15061(b)(3)
2. Do not introduce the ordinance; remain on the State of California's schedule
3. Provide staff direction for specific modifications to the ordinance.

ATTACHMENTS

1. Proposed Minimum Wage Increase Acceleration Table
2. Survey results as of 9/18/19
3. Correspondence and Messages Received 8/29/19 -9/18/19
4. Draft Ordinance