

SUBJECT: **AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF WEST HOLLYWOOD REGARDING A CITYWIDE MINIMUM WAGE**

PREPARED BY: **CITY MANAGER'S DEPARTMENT**
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STATEMENT ON THE SUBJECT:

The City Council will consider a proposed Ordinance that would establish a citywide minimum wage, and guaranteed leave provisions, with implementation schedules for hotel workers and all other employees in the City.

RECOMMENDATION:

Introduce on first reading Ordinance No. 21-_____ “AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF WEST HOLLYWOOD, CALIFORNIA, ADDING CHAPTER 5.130 MINIMUM WAGE AND ARTICLE 5 MINIMUM WAGE TO TITLE 5 (BUSINESS LICENSES, REGULATIONS AND PERMITS) OF THE WEST HOLLYWOOD MUNICIPAL CODE ESTABLISHING A CITY-WIDE MINIMUM WAGE.” (ATTACHMENT A)

BACKGROUND / ANALYSIS:

At its meeting of February 1, 2021, the City Council discussed agenda item 2.M. (Update Living Wage Ordinance and Applicability) and directed staff to report back on the following items:

- 1) As part of the City's annual review of the living wage adjustment, evaluate the calculation for the base living wage to determine if it should be increased to meet the intent and purpose of the policy.
- 2) Research establishing a requirement for the living wage to apply to development projects requesting a development agreement or public benefit agreement for workers involved in the construction of the projects and in the commercial businesses developed.
- 3) Review the minimum wage in West Hollywood, how the minimum wage relates to the living wage, and review how to apply both.

At the May 17, 2021, City Council meeting, staff presented the City Council with the

annual Consumer Price Index (CPI-W) increase to the City's living wage to take effect on July 1, 2021. This item is an annual recurring update to the Living Wage Rate, pursuant to the City's Municipal Code.

In addition to the direction provided on February 1, 2021, the City Council further directed staff to report back on a potential amendment on how the Living Wage Rate is calculated, as it relates to healthcare benefits, as there are currently two living wage rates in the City, one for individuals that receive healthcare benefits from their employer, and one for individuals that do not.

The City Council held a special study session on Tuesday, August 31, 2021, to further discuss potential changes to the City's living wage and minimum wage. During the study session, the City Council directed staff to draft an Ordinance establishing a citywide minimum wage and hotel worker minimum wage. The City Council's direction included the following items:

- 1) Establish a citywide minimum wage for small and large businesses.
- 2) Establish a citywide hotel worker minimum wage.
- 3) Include sick leave provisions in the citywide minimum wage.
- 4) Include provisions for transitional job programs, learners' programs, non-profits, collective bargaining exemption, and service charges.

At the October 18, 2021, City Council meeting, staff presented the City Council with a draft Ordinance for their consideration. The proposed Ordinance incorporated the City Council's direction from the August 31, 2021, special study session, which included the following:

- Citywide minimum wage schedule as follows:
 - Effective January 1, 2022, the City's minimum wage for large businesses (26 or more employees) would be \$15.00 per hour, and it would be \$14.00 per hour for small businesses (25 or fewer employees).
 - Effective July 1, 2022, the City's minimum wage for large businesses would be \$15.00 per hour, plus an increase equal to the percentage change in the annual Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI-W). Each subsequent year, the City's minimum wage for large businesses would increase by the percentage change in the annual CPI-W.
 - Effective January 1, 2023, the City's minimum wage for small businesses would be \$15.00 per hour.
 - Effective July 1, 2023, the City's minimum wage for small businesses would be \$15.00 per hour, plus an increase equal to the percentage change in the annual CPI-W.
- Citywide hotel worker minimum wage schedule as follows:
 - Effective January 1, 2022, the City's hotel worker minimum wage would be \$17.64 per hour.

- Effective July 1, 2022, the City's hotel worker minimum wage would be \$17.64 plus an increase equal to the percentage change in the annual CPI-W. Each subsequent year, the City's hotel minimum wage would increase by the percentage change in the annual CPI-W.
- Sick leave provisions as follows:
 - 72 hours of compensated sick leave for employees of large businesses and 40 hours of compensated sick leave for employees of small businesses.
 - 96 hours of compensated leave time for sickness, vacation, or personal necessity, and an additional 80 hours of uncompensated sick leave for all hotel workers.
- Provision for the distribution of service charges as follows:
 - Amounts collected as service charges would be paid to employees and hotel workers equitably and according to the services that are or appear to be related to the description of the amounts given by and employer or hotel employer to the customers.
- Provision for transitional employers as follows:
 - Transitional employers that provide supportive services and transitional jobs for the hardest to employ may pay each employee in a transitional job an hourly wage that is below the established minimum wage during the first 18 months of the employee's work in the transitional job.

The City Council discussed the proposed Ordinance and directed staff to return with a revised ordinance to include the following:

- 1) Effective January 1, 2022, a citywide hotel worker minimum wage of \$17.64 per hour, to be adjusted each July 1 by the annual CPI-W adjustment.
- 2) Effective July 1, 2022, a citywide minimum wage of \$17.64 per hour for all businesses plus an increase equal to the percentage change in the annual CPI-W, and to be adjusted each subsequent July 1 by the annual CPI-W adjustment.
- 3) All employees to be provided with 96 hours of compensated leave time for sickness, vacation, or personal necessity, and an additional 80 hours of uncompensated sick leave.
- 4) All other provisions included in the proposed ordinance to remain as written.

Per the City Council's direction, the revised Ordinance is summarized below:

Minimum Wage Payment Requirements

Based on a living wage calculator developed by the Massachusetts Institute of Technology, the appropriate living wage for a single person with no children in LA County would be \$19.35. The MIT Department of Urban Studies and Planning publishes a Living Wage Calculator which estimates the cost of living in communities throughout the country based on typical expenses, family size, and adult employment (i.e., whether one or two adults are employed). The MIT calculator is an expansive market-based approach that includes a family's estimated minimum food, childcare, health insurance, housing,

transportation, other necessities, and civic engagement costs. Table 1, below, shows typical expenses for one adult without children. The living wage is perhaps better defined as a minimum wage covering necessary costs for persons living in the United States¹. This is the minimum wage a single individual would need to earn in LA County to provide for their basic needs and not be overly burdened in any one expense category. It should be noted that this is a calculation of the baseline living wage for a single individual in LA County as a whole and does not include individuals that may have a dependent (a child) or those that live in higher cost areas of the County, such as West Hollywood. Both of these variables would increase annual expenses for an individual, which would then require a higher hourly living wage (above \$19.35). For example, in the table below the annual housing cost used in the calculation is \$15,348, which is equal to \$1,279 per month, however, the average monthly cost of rental housing in West Hollywood is \$1,664 (2019 Census American Community Survey). The average amount of \$1,664 accounts for all renters in the City, including some that have lived in rent stabilized apartments for many years, by comparison market rate one-bedroom apartments in the City typically start between \$1,800-\$2,000 per month and increase from there. This data indicates that the MIT living wage calculator provides a lower estimate (for the entire County) than would likely be the applicable for West Hollywood, based on higher housing and other costs.

Table 1. Yearly Typical Expenses for One Adult, No Child, in LA County

Expense	Yearly Amount
Food	\$3,792
Child Care	\$0
Medical	\$2,545
Housing	\$15,348
Transportation	\$4,900
Civic	\$1,811
Other	\$2,794
Annual taxes	\$9,054
Required annual income before taxes	\$40,244

¹ Living Wage Calculator User's Guide/Technical Notes 2020-2021 Update. The Department of Urban Studies and Planning at Massachusetts Institute of Technology, 2021, <https://livingwage.mit.edu/>. Accessed 26 Oct. 2021.

The \$17.64 is a wage that is currently paid to hotel workers in both Los Angeles and Santa Monica and the original proposal was intended to create regional consistency for hotel workers. However, while the City Council was discussing the original proposal, the Council determined that if this wage was regionally appropriate for hotel workers given the significantly high cost of living in this region, all workers (not just hotel workers) must make a wage that someone can live on, as was shown previously. In other words, if the minimum wage is appropriate for hotel workers, it is also appropriate for all workers in the city. West Hollywood is a high wage city. Most employees in West Hollywood are already earning at or above the proposed \$17.64 minimum wage. In the staff report for the study

session on August 31, 2021, staff included a table with data from the State Economic Development Department that showed the average wages in West Hollywood (2020 data) in all but two industry sectors were already at or above the rate of \$17.64 per hour. Thus, an increase to the minimum wage rate in West Hollywood help a smaller subsection of the labor force in the City, which are paid less than the majority of other workers in the City. Increasing the minimum wage will only help to raise West Hollywood employees out of poverty and get them closer to a living wage that supports their ability to live and work in the region.

Per the City Council's direction, the revised Ordinance establishes a citywide minimum wage at \$17.64 as follows:

- Effective January 1, 2022, the City's minimum wage for all hotel workers will be \$17.64 per hour.
- Effective July 1, 2022, the City's minimum wage for all workers will be \$17.64 plus an increase equal to the percentage change in the annual CPI-W. Each subsequent year, the City's minimum wage will increase each July 1 by the percentage change in the annual CPI-W.

Alternative:

As currently proposed in the revised ordinance, effective July 1, 2022, large businesses will be required to pay a minimum additional \$2.64 per hour and small businesses will be required to pay a minimum additional \$3.64 per hour (per the State's minimum wage schedule, on January 1, 2022, large businesses are required to pay \$15.00 per hour and small businesses are required to pay \$14.00 per hour). This equates to a minimum 18% and 26% base wage increase for large and small businesses. The percentage of base wages will further increase by the percentage change in the annual CPI-W that will go into effect on July 1, 2022.

Since the October 18, 2021 City Council Meeting, businesses have expressed their concern regarding the proposed citywide minimum wage and how increased wages to employees will affect business survival. Businesses have explained to city staff that increased wages affect other expenses of a business including workers' compensation insurance premiums which is partly calculated from a business's payroll.

Additionally, businesses site concerns over market competition from surrounding cities. They have indicated that some businesses may not be able to absorb an increase to the minimum wage and would likely have those costs passed down to their customers by increasing costs of services and goods. Some businesses have also expressed desires to relocate and/or not expand their businesses in West Hollywood as surrounding cities would have lower payroll expenses due to wages.

If the City Council desires to further discuss the implementation schedule of the new citywide minimum wage, the City Council may consider a phased approach for the wage increases that businesses will need to comply with. The phased approach could apply to different-sized businesses, business of different types, and/or non-profits; similar to the State's wage schedule that included a one-year phase in for small businesses. In case the City Council choses to further discuss an implementation schedule for non-hotel businesses at a future meeting, attached to this staff report is an alternative Ordinance

(ATTACHMENT B) that allows the minimum wage and leave provisions for hotel workers to go into effect on January 1, 2022. Regardless of the City Council's decision, the non-hotel business will remain on the State's minimum wage schedule on January 1, 2022.

Leave/Time-Off Provisions

Per the City Council's direction, the revised Ordinance includes leave/time-off provisions as follows:

- All Employers shall provide at least ninety-six (96) compensated hours off per year for sick leave, vacation, or personal necessity to full time employees to be made available at the employee's request.
- All Employers shall also permit full time employees to take at least eighty (80) additional hours per year of uncompensated time off to be used for sick leave for the illness of the employee or a member of his or her immediate family where the employee has exhausted their compensated time off for that year.
- All Employers shall provide a part time compensated time off in increments proportional to that accrued by someone who works forty (40) hours a week.

In addition to the revisions listed above, on October 18, 2021, the City Council also directed staff to further research the feasibility of unlimited uncompensated leave time for employees and report back at a later date.

Service Charges

The proposed Ordinance includes a provision for service charges as follows:

- Service charges are defined as any separately-designated amount charged and collected by an Employer from customers, that is for service by Employees, or is described in such a way that customers might reasonably believe that the amount is for those services or is otherwise to be paid or payable directly to Employees, including those charges designated on receipts, invoices, or billing statements under the term "service charge," "table charge," "porterage charge," "automatic gratuity charge," "healthcare surcharge," "benefits surcharge," or similar language. Service Charge does not include a tip or gratuity as defined under State or federal law.
- Employers shall distribute all Service Charges in their entirety to the Employee(s) who performed services for the customers from whom the Service Charges are collected. No part of these amounts may be paid to Employees whose primary role is supervisory or managerial. No Employer or agent thereof shall deduct any amount from wages or other compensation required by this chapter due an Employee on account of a Service Charge, or require an Employee to credit the amount of a Service Charge, in whole or in part, against and as a part of the wages or other compensation required by this chapter due the Employee.

Transitional Employers

The proposed Ordinance includes a provision that allows transitional employers that provide supportive services and transitional jobs for the hardest to employ. The Ordinance allows a transitional employer to pay each employee in a transitional job an hourly wage

that is below the minimum wage set forth in the Ordinance, during the first 18 months of the employee's work in the transitional job.

Upon approval of the proposed Ordinance, the City shall establish a procedure to determine whether an employer may be certified as a transitional employer. The procedure will include the following criteria:

- The Employer's nonprofit corporate status;
- The profile of program participants (e.g., homeless individuals, individuals with addictions, at-risk youth);
- The components of the Employer's Transitional Job program, including Supportive Services, designed to help program participants transition towards unsubsidized competitive employment; and
- Any other criteria as may be developed in the administrative regulations adopted consistent with the approved Ordinance.

Waiver

The proposed Ordinance authorizes the City Manager to grant a waiver from the minimum wage rate if an Employer can demonstrate to the City Manager that compliance with this chapter would force the Employer, in order to avoid bankruptcy or a shutdown of the Employer's business, to reduce its workforce by more than twenty percent (20%) or curtail its Employees' total hours by more than thirty percent (30%). If the waiver is granted, the Employer shall pay the state minimum wage for the waiver period, not to exceed one year.

Supersession by Collective Bargaining Agreement

The proposed Ordinance also includes a supersession provision which states that certain provisions of the Ordinance may be waived pursuant to a bona fide collective bargaining agreement, but only if the waiver is expressly set forth in clear and unambiguous written terms. Neither party to a collective bargaining relationship may waive or supersede any provision of the proposed ordinance by means of unilaterally imposed terms and conditions of employment.

Remedies and Enforcement

The proposed Ordinance includes enforcement clauses that allow City enforcement officers or City designees to monitor and enforce compliance with the requirements of the proposed Ordinance.

Violations of the any provisions of the proposed Ordinance are subject to the City's administrative penalty procedure.

Next Steps

Upon adoption of the proposed Ordinance, staff will return with a resolution establishing the location index for the CPI-W outlined in the proposed ordinance and a new fee schedule for the administrative citations that will be required as part of the enforcement process.

Staff will also return to the City Council with their research on unlimited unpaid leave for

employees.

CONFORMANCE WITH VISION 2020 AND THE GOALS OF THE WEST HOLLYWOOD GENERAL PLAN:

This item is consistent with the Primary Strategic Goal(s) (PSG) and/or Ongoing Strategic Program(s) (OSP) of:

- OSP-1: Adaptability to Future Change.

In addition, this item is compliant with the following goal(s) of the West Hollywood General Plan:

- G-2: Maintain transparency and integrity in West Hollywood's decision-making process.
- ED-4: Monitor and evaluate economic conditions affecting the City's economic climate.

EVALUATION PROCESSES:

N/A

ENVIRONMENTAL SUSTAINABILITY AND HEALTH:

N/A

COMMUNITY ENGAGEMENT:

Upon adoption of an ordinance, the City will conduct outreach to all relevant stakeholders, including West Hollywood workers and businesses, regarding a citywide minimum wage and guaranteed leave provisions.

OFFICE OF PRIMARY RESPONSIBILITY:

CITY MANAGER'S DEPARTMENT / CITY ATTORNEY

FISCAL IMPACT:

None at this time.

ATTACHMENT:

ATTACHMENT A – Draft Ordinance 21-__

ATTACHMENT B – Draft Ordinance 21-__