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MEMORANDUM OF LAW

DATE: September 21, 2018
TO: Gail Granewich, City Treasurer
FROM: City Attorney
SUBJECT: Minimum Wage Rate Increase for Calendar Year 2019

INTRODUCTION

You have asked this Office to provide an analysis of the City of San Diego Earned Sick Leave and Minimum Wage Ordinance (Ordinance) as it relates to the increase in the City of San Diego (City) minimum wage rate for calendar year 2019.

The Ordinance, which is set forth in San Diego Municipal Code (Municipal Code or SDMC) sections 39.0101-39.0116, requires employers to provide specified paid sick leave and a minimum wage to employees working within the geographic boundaries of the City.

The City Council (Council) first adopted the Ordinance in August 2014. The Ordinance was then subject to a referendum. The voters approved the Ordinance in June 2016, and the Ordinance went into effect on July 11, 2016. In August 2016, the Council amended the Ordinance to designate the Office of the City Treasurer as the enforcement office and to provide enforcement provisions and further clarification. The amendments went into effect on September 2, 2016.

The Ordinance initially set the minimum wage within the City at \$10.50 per hour starting July 11, 2016. SDMC § 39.0107(b). The Ordinance included a scheduled increase to the City minimum wage to \$11.50 per hour, effective January 1, 2017. *Id.*

In 2016, when the Ordinance went into effect, the minimum wage in California was \$10.00 per hour. Cal. Lab. Code § 1182.12. On January 1, 2017, the state minimum wage continued to be \$10.00 per hour for employers with 25 or fewer employees, but increased to \$10.50 per hour for employers with 26 or more employees. *Id.* On January 1, 2018, the state minimum wage increased to \$10.50 per hour for employers with 25 or fewer employees and to \$11.00 per hour for employers with 26 or more employees. *Id.* The federal minimum wage continues to be \$7.25 per hour effective July 24, 2009. 29 U.S.C. § 206(a)(1).

Starting January 1, 2019, the City minimum wage will increase again based on the Consumer Price Index (CPI) or the federal or state minimum wage, whichever is higher. SDMC § 39.0107(b)(3)-(b)(4). As of January 1, 2019, the state minimum wage will increase to \$11.00 per hour for employers with 25 or fewer employees and to \$12.00 per hour for employers with 26 or more employees. Cal. Lab. Code § 1182.12(b). Attachment 1 to this memorandum provides a comparison of the City and California minimum wage rates since January 1, 2015.

As this Office has previously analyzed, the Ordinance was adopted in accordance with the City's constitutional police powers and is generally not preempted because both state and federal law permit local agencies to enforce more stringent labor laws. City Att'y ML-2016-16 (October 18, 2016).

QUESTION PRESENTED

Under the Ordinance, if the increase in the CPI results in a City minimum wage rate for 2019 that is less than the state's minimum wage for employers with 26 or more employees (\$12.00), but more than the state's minimum wage for employers with 25 or fewer employees (\$11.00), as of January 1, 2019, will the City minimum wage increase to the state's higher \$12.00 per hour rate or will the City minimum wage become tiered with two rates like the state's based on an employer's number of employees?

SHORT ANSWER

Based on the language and intent of the Ordinance, the City minimum wage will increase to the state's higher minimum wage rate of \$12.00 per hour as of January 1, 2019.

ANALYSIS

I. RULES OF STATUTORY CONSTRUCTION APPLY TO INTERPRET THE ORDINANCE

In this case, we have been asked to provide a legal interpretation of the Ordinance. We therefore turn to the rules of statutory construction.

"An ordinance is a local law which is adopted with all the legal formality of a statute." *San Diego City Firefighters, Local 145 v. Bd. of Admin. of San Diego City Employees' Ret. Sys.*, 206 Cal. App. 4th 594, 607 (2012). Courts interpret ordinances by the same rules applicable to statutes. *People ex rel. Kennedy v. Beaumont Investment, Ltd.*, 111 Cal. App. 4th 102, 113 (2003).

"The fundamental rule of statutory construction is to ascertain the intent of the legislative body in order to effectuate the purpose of the law." *Valley Vista Services, Inc. v. City of Monterey Park*, 118 Cal. App. 4th 881, 888 (2004). "Because the statutory language is generally the most reliable indicator of legislative intent, [courts] first examine the words themselves, giving them their usual and ordinary meaning and construing them in context." *Ramirez v. City of Gardena*, 422 P.3d 1022, 1025 (2018) (quoting *Esberg v. Union Oil Co.*, 28 Cal. 4th 262, 268 (2002)).

“The words must be construed in context and in light of the nature and obvious purpose of the statute where they appear.” *Valley Vista Services*, 118 Cal. App. 4th at 888. The statute “must be given a reasonable and common sense interpretation consistent with the legislative body’s apparent purpose and intention.” *Id.* “Statutes should be interpreted with reference to the whole system of law of which they are a part, and sections relating to the same subject must be read together and harmonized.” *Id.* at 889; *see also City of Huntington Beach v. Bd. of Admin. of Public Employees’ Ret. Sys.*, 4 Cal. 4th 462, 468 (1992).

If there is no ambiguity, the plain meaning of the statutory language governs. *Day v. City of Fontana*, 25 Cal. 4th 268, 272 (2001). If there is ambiguity, however, courts will seek to “decipher the purpose” of the statute and “may consider the ostensible objects to be achieved by the statute, the statutory scheme of which the statute is a part, the evils to be remedied, public policy, the legislative history, and the wider historical circumstances of the enactment.” *AB Cellular LA, LLC v. City of Los Angeles*, 150 Cal. App. 4th 747, 758-759 (2007).

II. THE LANGUAGE OF THE ORDINANCE PROVIDES FOR ONLY ONE MINIMUM WAGE RATE APPLICABLE TO ALL EMPLOYERS

In the Ordinance, Municipal Code section 39.0107 describes the minimum wage applicable to employees who work within the City:

§39.0107 Minimum Wage

- (a) *Employers* must pay *Employees* no less than the *Minimum Wage* set forth in this section for each hour worked within the geographic boundaries of the *City*.
- (b) The *Minimum Wage* is an hourly rate defined as follows:
 - (1) Starting July 11, 2016, the *Minimum Wage* is \$10.50.
 - (2) Starting January 1, 2017, the *Minimum Wage* is \$11.50.
 - (3) Starting January 1, 2019, and each year thereafter, the *Minimum Wage* increases 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 is 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* will be announced by the *City* by October 1 of each year, and will become effective as the new *Minimum Wage* on January 1 of the succeeding year. The adjusted *Minimum Wage* will be noticed and posted as set forth in this Division.

- (4) In the event that the federal or California minimum wage is increased above the level of the *Minimum Wage* in force under this section, the *Minimum Wage* under this section will be increased to match the higher federal or California wage, effective on the same date as the increase in the federal or California minimum wage takes effect.

Municipal Code section 39.0104 of the Ordinance defines *Employer* to mean “any person or persons, as defined in California Labor Code section 18, who exercises control over the wages, hours, or working conditions of any *Employee*, or suffers or permits the *Employee* to work, or engages the *Employee*.” SDMC § 39.0104. “Person” is defined in California Labor Code section 18 as “any person, association, organization, partnership, business trust, limited liability company, or corporation.” Cal. Lab. Code § 18.

Employee, under the Ordinance, means “any person who: (a) In one or more calendar weeks of the year performs at least two hours of work within the geographic boundaries of the *City* for an *Employer*; and (b) Qualifies as an employee entitled to payment of a minimum wage from any employer under the California minimum wage law, as set forth in the California Labor Code and wage orders published by the California Industrial Welfare Commission or the State of California Division of Labor Standards Enforcement, or is a participant in a State of California Welfare-to-Work Program.” SDMC § 39.0104.

The Ordinance defines *Minimum Wage* as “an hourly minimum rate to be paid to *Employees*, as defined in section 39.0107 of this Division.” SDMC § 39.0104.

The Ordinance does not differentiate among employers or indicate any intent to do so based on an employer’s number of employees. The Ordinance makes no reference to employee numbers or employer size. All employers, of any size, with employees working within the *City* are subject to the same minimum wage, earned sick leave, and other requirements of the Ordinance. SDMC §§ 39.0104-39.0111. Further, the Ordinance consistently refers to a single minimum wage rate and does not envision a multi-tiered rate.

In interpreting a statute, no additions or alterations to the statutory language should be made to accomplish a purpose that does not appear on the face of the statute or from its legislative history. *Valley Vista Services, supra*, 118 Cal. App. 4th at 889.

Thus, as of January 1, 2019, regardless of the state's two-tier system with two minimum wage rates dependent on employer size, based on the language of the Ordinance, the City will have only one minimum wage rate applicable to all employers of all sizes.

III. THE LANGUAGE OF THE ORDINANCE CALLS FOR ADOPTION OF THE HIGHEST MINIMUM WAGE RATE

Municipal Code section 39.0107 of the Ordinance states that starting January 1, 2019, and each year after that, the City minimum wage will increase in accordance with the prior year's increase in the cost of living as measured by the CPI. SDMC § 39.0107(b)(3). However, the Ordinance specifies that if either the federal or California minimum wage is increased above the City minimum wage in force under the Ordinance, the City minimum wage "will be increased to match the higher federal or California wage, effective on the same date as the increase in the federal or California minimum wage takes effect." SDMC § 39.0107(b)(4). Hence, the language of the Ordinance indicates the intent to adopt the highest minimum wage rate, as between the federal, state, or CPI-adjusted City rates, as the City's minimum wage.

Moreover, given the Ordinance's stated definitions of *Minimum Wage* and *Employer* (SDMC §§ 39.0104 & 39.0107), the Ordinance does not provide for imposing two minimum wage rates based on number of employees. If one were to apply the Ordinance, therefore, so as to create two City minimum wage rates based on California's two-tier system related to employer size, it would improperly accomplish a purpose that does not appear on the face of the Ordinance or from its legislative history. See *Valley Vista Services, supra*, 118 Cal. App. 4th at 889.

If statutory language permits more than one reasonable interpretation, courts will "select the construction that comports most closely with the apparent intent of the Legislature, with a view to promoting rather than defeating the general purpose of the statute." *Day, supra*, 25 Cal. 4th at 272.

Accordingly, if the state's \$12.00 per hour minimum wage rate is the highest minimum wage set to go into effect on January 1, 2019, when comparing the federal rate, state rates, and City's adjusted rate based on the CPI, then the City's minimum wage will be increased to \$12.00 per hour also at that time to match the highest rate.

IV. THE STATED PURPOSE AND INTENT, AND THE HISTORICAL MINIMUM WAGE RATES UNDER THE ORDINANCE, SUPPORT THE INTERPRETATION THAT THE ORDINANCE CALLS FOR ADOPTION OF THE HIGHEST SINGLE MINIMUM WAGE RATE

If there is ambiguity in statutory language, courts may consider the ostensible objects to be achieved, the statutory scheme, the evils to be remedied, public policy, and legislative history in an effort to determine the purpose and intent of the statute. *AB Cellular LA, LLC, supra*, 150 Cal. App. 4th at 758-759.

"Where the Legislature expressly declares its intent, [courts] must accept that declaration" and interpret the statute in accord with its legislative intent. *United Health Centers*

of San Joaquin Valley, Inc. v. Superior Court, 229 Cal. App. 4th 63, 80 (2014). Moreover, “courts may turn to the legislative history behind even unambiguous statutes when it confirms or bolsters their interpretation.” *Id.* at 79.

Here, the Council expressly declared the purpose and intent of the Ordinance as it pertains to the City’s minimum wage in Municipal Code section 39.0101:

§39.0101 Purpose and Intent

This Division ensures that employees who work in the *City* receive a livable minimum wage and the right to take earned, paid sick leave to ensure a decent and healthy life for themselves and their families. By enabling more employees to support and care for their families through their own efforts and with less need for financial assistance from the government, and by protecting the rights of employees to care for their health and the health of their family members, the *City* can safeguard the general welfare, health, safety and prosperity of all San Diegans.

...

It is also the purpose in enacting this Division to ensure that employees working in the *City* earn wages that ensure a decent and healthy life for themselves and their families. When employers do not pay a livable wage, the surrounding community and taxpayers bear costs in the form of increased demand for taxpayer-funded services, including homeless shelters. Jobs paying a decent wage will ensure a more stable workforce for the *City*, increase consumer income, decrease poverty, and invigorate neighborhood business.

The Ordinance seeks to “ensure” that employees working in the City earn a decent and livable wage, implying that applicable federal or state minimum wage rates may not provide such a wage for workers in the City. Moreover, the Ordinance’s stated purpose – to enable more employees to support their families through their own efforts and with less need for financial assistance, and to provide wages that ensure a decent and healthy life for employees and their families, ensure a more stable workforce, increase consumer income, decrease poverty, and invigorate neighborhood business – indicates the Council’s intent to maximize the minimum wage for employees working in the City in an effort to achieve those financial goals.

Additionally, when the Council first adopted the Ordinance in 2014, the Ordinance would have increased the City minimum wage to \$9.75 on January 1, 2015 (San Diego Ordinance O-20390), when the minimum wage in California was \$9.00. In July 2016, when the Ordinance first went into effect, setting the minimum wage within the City at \$10.50 per hour, the minimum wage in California was \$10.00 per hour. On January 1, 2017, the City minimum wage increased to \$11.50 per hour under the Ordinance, while the state minimum wage continued to be \$10.00 per hour for employers with 25 or fewer employees, but increased to \$10.50 per hour for

employers with 26 or more employees. *See* Attachment 1. In other words, the City has historically had a single minimum wage rate, regardless of the state's two-tier rate system, and that City minimum wage rate has at all times been at least \$0.50 to \$1.50 more than the state's rate for employers with 25 or fewer employees and \$0.50 to \$1.00 more than the state's rate for employers with 26 or more employees.

Thus, the Council's stated purpose and intent in the Ordinance, in combination with the historical minimum wage rates under the Ordinance, further support the interpretation that the Ordinance seeks to maximize wages within the City by adopting the highest of the federal, state, and adjusted City minimum wage rates set to go into effect and that it provides for only one minimum wage rate applicable to all employers with employees working within the City.

CONCLUSION

In sum, if the increase in the CPI results in a City minimum wage rate for 2019 that is less than the state's minimum wage for employers with 26 or more employees (\$12.00), but more than the state's minimum wage for employers with 25 or fewer employees (\$11.00), the City minimum wage will increase to the state's higher minimum wage rate of \$12.00 per hour, effective January 1, 2019, and the one rate will apply to employers of all sizes.

MARA W. ELLIOTT, CITY ATTORNEY

By /s/Kristin M. J. Zlotnik

Kristin M. J. Zlotnik
Deputy City Attorney

KMJZ:cw
ML-2018-6
Doc. No. 1832140

Attachment 1: Comparison of City and State Minimum Wage Rates

cc: Honorable Mayor and Councilmembers
Andrea Tevlin, Independent Budget Analyst
Kris Michell, Chief Operating Officer
Stacey LoMedico, Assistant Chief Operating Officer
Ron Villa, Acting Assistant Chief Operating Officer

COMPARISON OF CITY AND STATE MINIMUM WAGE RATES

Effective Date	City of San Diego Minimum Wage	California Minimum Wage
January 1, 2015	\$9.75 (per SD Ordinance O-20390, but not implemented)	\$9.00 (All Employers)
July 11, 2016 (effective date of Ordinance)	\$10.50	\$10.00 (All Employers)
January 1, 2017	\$11.50	\$10.00 (Employers with 25 or fewer employees) \$10.50 (Employers with 26 or more employees)
January 1, 2018	\$11.50	\$10.50 (Employers with 25 or fewer employees) \$11.00 (Employers with 26 or more employees)
January 1, 2019	\$12.00	\$11.00 (Employers with 25 or fewer employees) \$12.00 (Employers with 26 or more employees)