

November 15, 2022



AGENDA ITEM SUMMARY

City Council

STAFF

Ginny Sawyer, Project and Policy Manager
DeAngelo Bowden, Sr. Specialist, Environmental Services
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SUBJECT

First Reading of Ordinance No. 140, 2022, Establishing a Fort Collins Minimum Wage and Associated Recordkeeping and Enforcement Provisions.

EXECUTIVE SUMMARY

The purpose of this item is to bring forth an ordinance setting a local minimum wage in compliance with HB19-1210.

STAFF RECOMMENDATION

Should Council move forward with adoption of a local minimum wage, staff recommends adopting the Ordinance on First Reading with option 2.

BACKGROUND / DISCUSSION

In 2019, the Colorado General Assembly passed House Bill 19-1210 allowing municipalities to adopt their own minimum wage. Following the passage of the bill, Council inquired regarding a plan to analyze the possibility of Fort Collins adopting a local minimum wage. The responding memo outlined a thorough plan and resources that were estimated at \$85K-110K and a 6-month process. The effort did not move forward at that time.

In 2021, following the Council election, "Raising the Minimum Wage" was identified as a Council priority and staff outlined a timeline to move forward. The initial RFP seeking both engagement and data analysis work did not garner any responses resulting in separate requests being reissued and a delay to the project.

Priorities

Following a mid-cycle check-in with Council, plans for extensive engagement were reconsidered. Much of the engagement with businesses, employees, and community groups was funneled through an on-line survey and the National Business Survey. To provide a number to react to when responding to survey questions, a \$15/hour minimum wage was utilized by the survey. The use of this number may have proved misleading as Council's direction following a September work session was in the \$18-\$19/hour range. Data analysis has shown the local living wage to be \$18.39 for a single adult and \$19.92 for 2 adults (both working) and 1 child.

Other engagement efforts included meetings and correspondence with community members, the Fort Collins Chamber, the Latino Chamber, local labor unions, outreach to health sector organizations, non-profits, and neighboring communities (through a meeting of regional elected officials and the Boulder County Consortium of Cities.)

The survey efforts did receive approximately 1500 responses and yet it has proven difficult to develop data-driven rationale to help identify a local minimum wage where benefits outweigh concerns and perceived or real unintended consequences. In an October memo update, staff attempted to identify ranges based on other communities with higher local wages and the wage as a percent of the living wage. This methodology offers a range of \$14.34 to \$17.79 for Fort Collins.

House Bill 19-1210 limits the number of municipalities that may establish a local minimum wage to 10-percent of all local governments in the state. Currently, only the City and County of Denver has implemented a local minimum wage law. The bill also states that any local wage adjustment must take effect on the same date as the statewide adjustment and that if a local government adopts a wage that is higher than the statewide minimum, the local government can only increase the wage each year by \$1.75 or 15%, whichever is higher until the local wage reaches the amount enacted by the local government.

The Ordinance brought forward includes two options. The first option (**Option 1**) was developed based on Council feedback in September which asked for a wage in the \$18-\$19 range within 3-4 years while offering a slower ramp in the first few years.

Year	CPI	State MW	Annual Salary		Increase	LMW	Annual Salary		Difference
			40hrs/wk & 2 holidays				40hrs/wk & 2 holidays		
2023	9%	\$13.65	\$28.2K		\$0.00	\$13.65	\$28.2K		\$0.00
2024	5%	\$14.33	\$29.6K		\$1.50	\$15.15	\$31.3K		\$0.82
2025	3%	\$14.76	\$30.5K		\$1.75	\$16.90	\$34.9K		\$2.14
2026	3%	\$15.21	\$31.4K		\$1.60	\$18.50	\$38.2K		\$3.29
2027	3%	\$15.66	\$32.3K		3%	\$19.06	\$39.3K		\$3.39
2028	3%	\$16.13	\$33.3K		3%	\$19.63	\$40.5K		\$3.50
2029	3%	\$16.62	\$34.3K		3%	\$20.22	\$41.7K		\$3.60
2030	3%	\$17.11	\$35.3K		3%	\$20.82	\$43.0K		\$3.71

The second option (**Option 2**) was developed following more resident and restaurant engagement and results in a slower ramp and an overall lesser wage in the time frame.

Year	CPI	State Minimum Wage	Annual Salary 40hrs/wk & 2 holidays	Increase	LMW	Annual Salary 40hrs/wk & 2 holidays	Difference
2023	9%	\$13.65	\$28.2K	\$0.00	\$13.65	\$28.2K	\$0.00
2024	5%	\$14.33	\$29.6K	\$1.00	\$14.65	\$30.2K	\$0.32
2025	3%	\$14.76	\$30.5K	\$1.00	\$15.65	\$32.3K	\$0.89
2026	3%	\$15.21	\$31.4K	\$1.00	\$16.65	\$34.4K	\$1.44
2027	3%	\$15.66	\$32.3K	3%	\$17.15	\$35.4K	\$1.49
2028	3%	\$16.13	\$33.3K	3%	\$17.66	\$36.5K	\$1.53
2029	3%	\$16.62	\$34.3K	3%	\$18.19	\$37.6K	\$1.58
2030	3%	\$17.11	\$35.3K	3%	\$18.74	\$38.7K	\$1.63

Each option includes an eventual CPI annual adjustment with a 2% floor (to avoid a wage decrease) and a 5% ceiling (to provide some consistency for employers.)

Staff has confirmed that any wage related complaints can be accepted and investigated by the Colorado Department of Labor and Employment.

CITY FINANCIAL IMPACTS

Regardless of Council action on this Ordinance, the City has committed to paying \$15/hour minimum for all jobs starting in 2023. This is reflected in the Recommended Budget. Should the local minimum wage increase above \$15/hour, the City will experience financial impacts in both starting pay and job compression.

BOARD / COMMISSION / COMMITTEE RECOMMENDATION

The Economic Advisory Board discussed this topic in August and provided a memo to Council with their input which included support for a higher wage with concerns to consider.

PUBLIC OUTREACH

Outreach efforts have been discussed above.

Specific meetings and correspondence include:

- BIPOC representatives
- CSU teaching assistant
- CSU community engagement and the Collegian
- Larimer County Economic and Workforce Development

- NoCo Health Sector Partnerships (Care Synergy, UCHealth, & others)
- Downtown Development Authority Hospitality and Retailer groups
- Labor Groups: FOP, PFA, Colorado ALF-CIO, PSD
- Larimer County United Way
- Local restaurant groups

Emails that were not received by all Councilmembers have been included in an attachment

ATTACHMENTS

1. Ordinance for Consideration
2. Economic Advisory Board Memorandum
3. Written Public Comment
4. Presentation

COPY

ORDINANCE NO. 140, 2022
OF THE COUNCIL OF THE CITY OF FORT COLLINS
ESTABLISHING A FORT COLLINS MINIMUM WAGE AND ASSOCIATED
RECORDKEEPING AND ENFORCEMENT PROVISIONS

WHEREAS, despite a statewide minimum wage rate, many working Fort Collins residents struggle to afford the basic necessities of life; and

WHEREAS, the health and welfare of all Fort Collins residents is benefited and advanced when workers are paid a wage that enables them to earn a livable wage and establish self-sufficiency; and

WHEREAS, the City of Fort Collins seeks to confront the issue of wage inequity and cost of living affordability in the community; and

WHEREAS, during the 2019 legislative session, the Colorado General Assembly enacted House Bill 19-1210, which empowered local governments to establish a jurisdiction-wide minimum wage in accordance with certain requirements and restrictions mandated by state law; and

WHEREAS, the Colorado General Assembly found that, while state minimum wage laws can set a useful floor for workers and businesses, local governments should be able to listen to their residents and enact local minimum wage laws that better address their unique needs; and

WHEREAS, the City has consulted with surrounding local governments and engaged with community stakeholders, including workers, chambers of commerce, small and large businesses, businesses that employ tipped workers, labor unions and numerous community groups; and

WHEREAS, the City Council believes it is in the best interest of the people of Fort Collins to enact a higher local minimum wage to ensure that people within the jurisdiction are paid sufficient wages to afford the basic necessities of life; and

WHEREAS, the City Council believes the higher local minimum wage should reach **[insert selected option]** per hour by the year 2026 and thereafter be adjusted annually for inflation.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF FORT COLLINS as follows:

Section 1. That the City Council hereby makes and adopts the determinations and findings contained in the recitals set forth above.

Section 2. That Chapter 13 of the Code of the City of Fort Collins is hereby amended to add a new Article III, entitled Fort Collins Minimum Wage, which reads in its entirety as follows:

ARTICLE III
FORT COLLINS MINIMUM WAGE

Sec. 13-26. Definitions.

For purposes of this Article, the following definitions shall apply:

“*Aggrieved party*” shall mean a worker or other person who suffers tangible or intangible harm due to an employer or other person’s violation of this Article;

“*Employ, employed, or employed by*” shall mean to suffer or permit to work;

“*Employer*” shall mean any corporation, proprietorship, partnership, nonprofit, joint venture, association, individual, limited liability company, business trust, or any person or group of persons, and any of the foregoing acting directly or indirectly in the interest of an employer in relation to a worker, and any successor thereof;

“*Food and beverage worker*” shall mean a worker for any employer that prepares and offers for sale food or beverages for consumption either on or off an employer’s physical premises;

“*Successor*” shall mean any person to whom an employer quitting, selling out, exchanging, or disposing of a business sells or otherwise conveys in bulk and not in the ordinary course of the employer’s business, a major part of employer’s property, whether real or personal, tangible or intangible, of the employer’s business;

“*Tips*” shall mean a verifiable sum presented directly and customarily by customers as a gift or gratuity in recognition of some service performed for customers by the person receiving the tip;

“*Unemancipated minor*” shall mean a person less than eighteen (18) years of age who does not maintain sole or primary responsibility for their own support, is not married or domiciled separately from their parents or guardian, and is unable to show that his or her well-being is substantially dependent on being gainfully employed;

“*Work*” shall mean any services performed on behalf of or for the benefit of an employer whether on an hourly, piecework, commission, time, task, or other basis but shall not include services performed as an independent contractor; and

“*Worker*” shall mean a person performing work, and includes, but is not limited to: full time employees, part-time employees, temporary workers, agents, and any other person or

entity performing work on behalf of or for the benefit of an employer. This definition shall not apply to work performed by independent contractors while acting solely in such capacity or by persons providing volunteer services that are uncompensated except for reimbursement of expenses such as meals, parking or transportation.

Sec. 13-27. Fort Collins minimum wage.

Every employer in Fort Collins shall ensure its workers are paid not less than the “Fort Collins Minimum Wage” as calculated in § 13-28, subject to the terms of this Article.

Sec. 13-28. Minimum wage calculation.

(a) The Fort Collins Minimum Wage, exclusive of fringe benefits and any other deductions or credits, except as described herein, shall be calculated as follows:

Option 1:

(1) Beginning January 1, 2024: Fifteen dollars and fifteen cents (\$15.15) per hour;

(2) Beginning January 1, 2025: Sixteen dollars and ninety cents (\$16.90) per hour;

(3) Beginning January 1, 2026: Eighteen dollars and fifty cents (\$18.50) per hour;

(4) Beginning January 1, 2027, and annually thereafter, the Fort Collins Minimum Wage rate shall increase by an amount corresponding to the increase in the Consumer Price Index (Urban Wage Earners and Clerical Workers, Denver-Aurora-Lakewood), or its successor index as published by the U.S. Bureau of Labor Statistics or its successor agency, (“CPI”) by an amount corresponding to the increase in CPI observed between the first half of the year two (2) years prior and the first half of the year prior to the effective date of the increase, as calculated by the Financial Officer; provided however that such increase shall be not less than two percent (2%) and not more than five percent (5%).

Option 2:

(1) Beginning January 1, 2024: Fourteen dollars and sixty-five cents (\$14.65) per hour;

(2) Beginning January 1, 2025: Fifteen dollars and sixty-five cents (\$15.65) per hour;

(3) Beginning January 1, 2026: Sixteen dollars and sixty-five cents (\$16.65) per hour;

(4) Beginning January 1, 2027, and annually thereafter, the Fort Collins Minimum Wage rate shall increase by an amount corresponding to the increase in the Consumer Price Index (Urban Wage Earners and Clerical Workers, Denver-Aurora-Lakewood), or its successor index as published by the U.S. Bureau of Labor Statistics or its successor agency, ("CPI") by an amount corresponding to the increase in CPI observed between the first half of the year two (2) years prior and the first half of the year prior to the effective date of the increase, as calculated by the Financial Officer; provided however that such increase shall be not less than two percent (2%) and not more than five percent (5%).

(b) Tips regularly and actually received by a food and beverage worker may be applied to an employer's obligation to pay such food and beverage worker the Fort Collins Minimum Wage. However, no more than three dollars and two cents (\$3.02) per hour in tip income ("tip credit") may be used to partially offset payment of the Fort Collins Minimum Wage.

(c) Employers may pay wages for work performed equal to the then-current Fort Collins Minimum Wage reduced on an hourly basis by up to fifteen percent (15%) when compensating unemancipated minor workers for work performed.

Sec. 13-29. Exclusions.

(a) The Fort Collins Minimum Wage shall not apply to work that:

- (1) is not performed physically within the geographic boundaries of the City;
- (2) is performed by a worker totaling less than four (4) hours in any given week for a particular employer within the geographic boundaries of the City; or
- (3) occurs in the City solely for the purpose of traveling through Fort Collins from a point of origin outside of the City to a destination outside of Fort Collins, with no employment-related or commercial stops in the City except for refueling or the worker's personal meals or errands.

Sec. 13-30. Recordkeeping Requirements & Inspection.

(a) All employers shall retain payroll records for each worker sufficient to document and verify work performed by and wages paid to each worker for a period of at least three (3) years after the end of the last calendar year of employment.

(b) Each worker or former worker shall be entitled to and obtain a true copy of the records required to be retained in subsection (a) of this section, regarding said worker, at a reasonable time during normal business hours.

(c) For purposes of adjudicating a claim under §13-31, should an employer not maintain or retain adequate records documenting the manner and amount of wages paid for work performed pursuant to this Article, there shall be a presumption, rebuttable by clear and convincing evidence, that the employer violated this Article for the periods and for each worker for whom adequate records were not retained or access to such records was not timely provided.

Sec. 13-31. Private right of action.

(a) The City Council enacts this section pursuant to Colorado Revised Statutes § 8-6-101(3)(b), which authorizes the City to create a private right of action to enforce the Fort Collins Minimum Wage.

(b) Within three (3) years of an alleged violation of this Article, any aggrieved party may bring a civil action in Colorado district or county court, as appropriate, against an employer alleged to have violated this Article, and, upon prevailing, shall be entitled to such legal and equitable relief as may be appropriate to fully remedy the violation including, without limitation:

(1) The payment of any wages unlawfully withheld and any unpaid overtime based on those wages, including amounts that accrued after the filing of the civil action;

(2) Interest on unpaid wages and overtime compensation at a rate of twelve percent (12%) per annum from the date such wages were first due;

(3) The payment of an additional sum as a penalty in the amount of one hundred dollars (\$100.00) to each worker whose rights under this Article were violated for each day that the violation occurred or continued;

(4) Reinstatement of employment, if applicable;

(5) Other appropriate injunctive relief; and

(6) An award of reasonable attorney fees and costs.

Sec. 13-32. Violations.

Any employer who knowingly pays a worker less than the Fort Collins Minimum Wage who is entitled to the Fort Collins Minimum Wage as required by this Article commits a civil infraction and is subject to the penalty provisions of § 1-15(f). Penalties under this Section are in addition to any remedy issued under § 13-31.

Sec. 13-33. Application of this Article to prevailing wage and contract minimum wage.

Nothing in this Article shall be deemed to lessen any obligations of employers to comply with the Code concerning payment of prevailing wage and/or the contract minimum wage to workers. Should a prevailing wage or contract minimum wage requirement be greater than the Fort Collins Minimum Wage requirement, the greater wage rate shall be paid. If the Fort Collins Minimum Wage requires payment of a higher wage rate than an applicable prevailing wage or contract minimum wage requirement for work, when applicable, the Fort Collins Minimum Wage shall be paid to any worker for such work.

Sec. 13-34. Relation to other minimum wage laws.

If a higher minimum wage rate is established by applicable state or federal law or rules than the Fort Collins Minimum Wage, employers shall be bound to the higher minimum wage.

Sec. 13-35. Recommended changes to the Fort Collins Minimum Wage.

The City Manager shall regularly monitor the Fort Collins Minimum Wage and its purchasing power, the Colorado statewide minimum wage, the federal minimum wage, and state and federal minimum wage laws. The City Manager shall annually bring to the City Council recommendations regarding any desirable or legally required changes to the Fort Collins Minimum Wage.

Introduced, considered favorably on first reading and ordered published this 15th day of November, A.D. 2022, and to be presented for final passage on the 6th day of December, A.D. 2022.

Mayor

ATTEST:

City Clerk

Passed and adopted on final reading this 6th day of December, A.D. 2022.

Mayor

ATTEST:

City Clerk