



CITY HALL
LOS ANGELES, CALIFORNIA 90012

April 30, 2015

Honorable Mike Feuer
City Attorney
City Hall East
200 N. Main Street, 8th Floor
Los Angeles, CA 90012

RE: Council File No. 14-1371, 14-1371-S2

Dear City Attorney Feuer:

Like you, we believe in raising the minimum wage because no one working full-time should live in poverty. We stand with the city leadership and agree that our responsibility to our constituents is to see that all people have the right to a respectable quality of life. That is why we take this discussion on raising the minimum wage very seriously and agree it must lead to a thoughtful and balanced policy that will help, not hurt, the very individuals we seek to benefit.

We value the input received at the four hearings held throughout this great city by our colleagues on the Council's Economic Development committee. At these hearings, members of the public made clear that Los Angeles is in need of higher wages, more affordable housing and better opportunities for those who live and work here. Of those who attended was a strong presence of restaurant owners and operators who also voiced their position for a fair and equitable minimum wage policy. Their request was for the City Council to take into consideration the economic factors that affect businesses in terms of employment retention, hiring, growth, and costs. We agree we must balance the needs of employees and employers so that businesses can thrive without workers losing their jobs.

One way of reaching this goal is to consider the total taxable compensation model, like that of the recently approved minimum wage law in Seattle. In California, per Labor Code Section 351, gratuities are strictly the property of the employees, mainly front-of-house servers and bartenders, and cannot be collected by the employer. In addition, employers cannot use tips as credit to meet the state minimum wage. Meanwhile, the employers are required by the Internal Revenue Service to report and pay taxes on tips collected by the

front-of-house employees in addition to costs related to workers' compensation, payroll taxes, and other mandated expenses. This is the single-most repeated concern raised by this particular business sector that also employs 1 out of 10 workers in Los Angeles. In a letter submitted by law firm GlaserWeil (dated April 10, 2015), thorough examination is presented of how a local municipality can legally use its police powers to set a higher minimum wage from that of the state's minimum wage so long as it is done in a more "stringent manner" than the state. In reference to Labor Code Section 351, the letter states, "It was not adopted with municipal wage ordinances in mind and there is no reason to use it to artificially set barriers to limit the police powers of the City." The proposals to raise LA's minimum wage to \$13.25 and \$15.25 are higher than that of the current state minimum wage law.

This is worth looking into by the city's legal counsel. It would be a fair way for the back-of-house employees to receive a higher minimum wage, while allowing the restaurant owners/operators to manage increases and maintain their staffing levels and hours. This is NOT a sub-minimum wage. Rather, this is about helping the very people this policy was intended for and sustaining employment in an already uncertain environment for our local family and minority-owned restaurants. It is imperative that we keep all of our workers employed, while also supporting the growth of this industry.

Of course, as we raise the minimum wage we must also accept the responsibility to enforce the new ordinance. It is important to ensure we have effective enforcement mechanisms in place, including applicable consequences and anti-retaliation protection of workers to prevent wage theft once the new minimum wage law is in effect. The state's Division of Labor Standards Enforcement's (DLSE) Bureau of Field Enforcement currently does not enforce local minimum wage laws if they are higher than that of the state minimum wage (Los Angeles Rising A City That Works for Everyone, p. 100). Whether the City creates a new office to manage complaints and impose penalties on offenders, or whether the City partners with an outside agency, this piece is crucial to protect our workers and our local economy. Much like the City's Tobacco Enforcement Program, it could be suggested that such an office be created under the auspices of the City Attorney.

Given the importance of this policy to all Councilmembers as well as to the general public, we respectfully request your legal opinion as a public document based on the city's ability to exert its police powers with regards to total taxable compensation, to better inform the discourse on raising the minimum wage. It is our hope that careful analysis be taken to safeguard the jobs and wages of our workers today and in the future.

Sincerely,



MITCH O'FARRELL
Councilmember, Thirteenth District



BOB BLUMENFIELD
Councilmember, Third District

CC: Honorable Mayor Eric Garcetti
Honorable City Councilmembers