

MEMORANDUM

DATE: May 7, 2019
TO: Christine Daniel, City Manager
FROM: Charles S. Bryant, Community Development Director
SUBJECT: **Business Conditions Survey Results**

RECOMMENDATION

Staff recommends that the City Council accept the attached 2018 report on Business Conditions pertaining to Labor Standards Implementation and Enforcement.

BACKGROUND

In 2015, in an effort to help working households achieve economic security and acknowledging the higher relative cost of living in the San Francisco Bay Area, the Emeryville City Council adopted Ordinance No. 15-004 implementing a local minimum wage, which is currently the highest established thus far in the nation at \$15.69 per hour for businesses with 56 or more employees (“Large Businesses”) and \$15 per hour for businesses with 55 or fewer employees (“Small Businesses”). These rates will increase on July 1, 2019 to \$16.30 per hour for both Large and Small Businesses (see Attachment 1). The “Minimum Wage, Paid Sick Leave and Other Employment Standards” Ordinance (the “MWO”, Emeryville Municipal Code Title 5, Chapter 37) became effective on July 2, 2015 and includes provisions relating to Paid Sick Leave (“PSL”) which increase the State minimum amounts of PSL required and expand eligible uses of PSL.

While many jurisdictions have and continue to establish local minimum wages and PSL requirements, the MWO generated questions, leading to a decision to study the impact of the MWO on businesses. The first such review was conducted in 2016. After receiving City Council feedback on staff’s general approach to this review, staff engaged Mills College Lokey School of Business (“Mills”) to conduct a Business Conditions Survey that formed the core of an impact analysis, which was presented to the Economic Development Advisory Committee (“EDAC”) on October 19, 2016 and to the City Council on November 15, 2016. A key finding of the 2016 report was that Emeryville’s economy remained strong since the adoption of the MWO, but that additional time was needed to develop a complete picture of the MWO’s impacts. The 2016 study found that the majority of businesses overall were either neutral or supportive on the MWO; however, the restaurant industry was found to have the most negative views of the MWO, with 64% expressing a negative opinion.

At approximately the same time as this information was being presented in late 2016, the City Council adopted the “Fair Workweek Employment Standards” Ordinance (Ordinance No. 16-007, the “Fair Workweek Ordinance”, codified as EMC Title 5, Chapter 39) which

regulates employee scheduling for certain types of retail and fast food businesses. The MWO, PSL and Fair Workweek ordinances, together with Measure C, a ballot initiative passed by the voters on November 8, 2005 establishing wage and employment standards for hotel businesses, are collectively referred to as the City's "Labor Standards". While discussing the 2016 MWO evaluation and the Fair Workweek Ordinance, the City Council expressed an interest in continuing evaluation of the Labor Standards. Additionally, the City's Economic Development Strategy, adopted by the City Council on October 17, 2017, includes "monitor the City's labor standards ordinances" as an action item. For these reasons, staff included the preparation of a follow-up business conditions survey in Mills' contract scope of work for performing outreach, education and monitoring in support of the City's Labor Standards. This memorandum provides an overview of the most recent Business Conditions Survey and presents additional relevant information derived from data sources available to the City. Mills' full report is attached (see Attachment 2).

DISCUSSION

Research Context

California leads the nation and Emeryville leads the state on minimum wage rates. As shown in Attachment 1 to this staff report, Emeryville's minimum wage exceeds minimums established in many cities across the nation. However, aside from the actual wage rate, there are other variations in cities' implementation of local minimum wage ordinances that are worth noting. Some examples relate to exempting nonprofits or other categories of business or establishing tiered rates for different sizes of businesses.

The establishment of local employment standards other than wage rates adds further complexity. For example, not all cities that have increased minimum wages have also increased PSL benefits, and very few have established employee scheduling standards. This complexity and variation in policies across cities can be seen as indicative of the fact that cities and researchers are still determining the effectiveness and impacts of various local interventions for businesses and workers.

Given the variety of wage rules, economic contexts, employee circumstances and societal factors in the cities that have adopted local minimum wages, it is clear that it will take some time to fully determine whether and how minimum wage increases are achieving policy objectives, and it is likely that the answers to these research questions will be as nuanced and complex as the circumstances the local ordinances seek to address.

With this limitation in mind, staff has prepared an updated study of the impacts of Emeryville's Labor Standards using several information sources. These include: (1) basic information on the incidence of noncompliance, (2) measurements of self-reported business responses to the City's Labor Standards ordinances, and (3) information regarding Emeryville restaurant businesses, since these types of businesses were found in the 2016 Business Conditions Survey to be the most impacted. A discussion of each of these components follows.

Noncompliance and Complaint Investigations

The table below summarizes data regarding inquiries and complaint resolution activity since 2015 for all Labor Standards including: MWO, PSL, Measure C, and the Fair Workweek Ordinance. Notably, this table does not include individual comment letters and emails that were received from businesses or informal complaints resolved by staff's informal mediation between employer and employee:

	2015	2016	2017	2018
Inquiries	13	52	140 (10-15 per month)	120
Formal Complaints	5	4	3	7
Closed Cases	7	1	3	0
Pending Cases	N/A	N/A	N/A	7

Two of the seven formal cases in 2018 were not complaint driven, but rather initiated due to review of documents submitted to the City. The remaining five were complaint-driven.

The increase in the number of inquiries in 2016 could suggest that it took some time to get businesses up to speed on implementing the MWO. The sharp increase in inquiries in 2017 is due to the adoption of the Fair Workweek Ordinance, which took effect on July 1, 2017; and the continued high rate of inquiries in 2018 reflects a substantial increase regarding the provisions of PSL in addition to inquiries regarding Fair Workweek Ordinance implementation. Overall, most of the complaints originated from employees who work in retail chain stores, making that business type the largest source of complaints thus far, with a small percentage of complaints from employees in the restaurant industry.

Business Conditions Survey

As noted above, staff engaged Mills to conduct a survey of businesses to find out how the City's Labor Standards have affected employment, business location, and prices among many other factors that affect business operations (see Attachment 2). Mills completed a similar survey for the City in 2016, focusing on the MWO; consequently, Mills was able to leverage their prior work effort. The survey instrument for this edition of the report included many of the same questions as the 2016 edition, in order to potentially measure changes in factors over time. Additionally, new survey questions were added regarding the Fair Workweek Ordinance, which was not yet in effect during the 2016 survey period. Mills included specific analyses of retail and food businesses, since these types of businesses were found in the 2016 survey to be the most impacted.

From June to August 2018, Mills researchers contacted over 300 Emeryville businesses to request their participation in the survey and achieved a response rate of approximately 30%. This is approximately 10% lower than the response rate to the 2016 survey. The

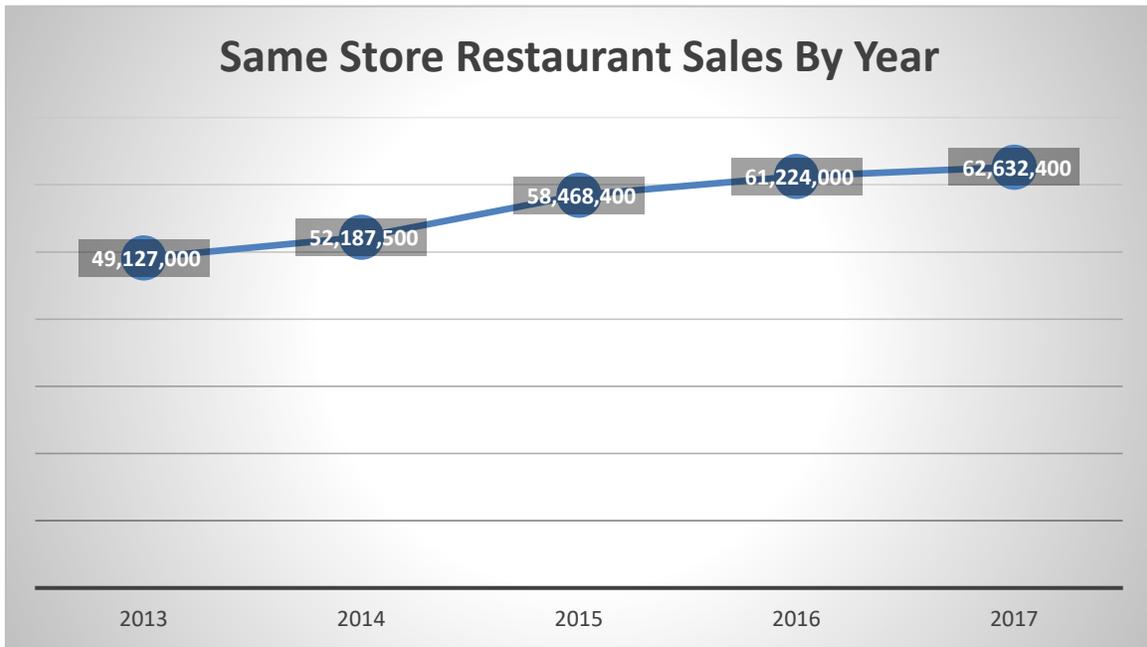
industries with the highest response rates were Retail Trade (31%) followed by Food Services, Restaurant, Café and Bar (26%). While 18 industries are represented in the survey, similar to the 2016 survey results, the Retail Trade and Food Services industries make up a greater proportion of surveys completed in 2018 results than in 2016. Consequently, the results of this survey are more heavily weighted toward those industries. Notably, these industries typically employ more minimum wage workers than other industries, and the Fair Workweek Ordinance only applies to certain businesses in these categories.

Overall, Mills' findings indicate that retail businesses have been relatively resilient thus far in implementing the City's Labor Standards, but the restaurant industry continues to be impacted. For this reason, staff utilized information sources available to the City to present additional data points specific to the restaurant industry, as further discussed below. For the purposes of this discussion, "restaurants" include both full service and quick service eating establishments.

Restaurant Industry: Taxable Sales

By using sales tax receipts data, staff was able to determine the change in taxable sales reported to the State for Emeryville restaurants. For most restaurants, taxable sales are an appropriate proxy for gross revenue. In order to show the trend in sales over time, staff analyzed sales tax receipts for restaurant and fast food operations that were in business continuously from the first quarter of 2013 through the fourth quarter of 2017 (the last full year for which data is available). Businesses that were not open prior to 2013 or after the end of 2017 were excluded. This is a variation of the concept of "same store sales", which is often used to evaluate retail outlet performance while excluding new store starts. Additionally, businesses with obviously suspicious data (e.g. large negative numbers, or multiple quarters with no tax reporting) were excluded from the data set, since sales tax data sometimes includes reporting and accounting errors. Net of these exclusions, 41 restaurants were operating from 2013 to 2017 and included in the analysis.

The results indicate 27% growth in sales over the period 2013 to 2017 and are shown in the following chart:



Note that area inflation also contributes to the growth trend. Additionally, taxable sales/gross revenue is not a measure of profitability, since this does not account for business costs.

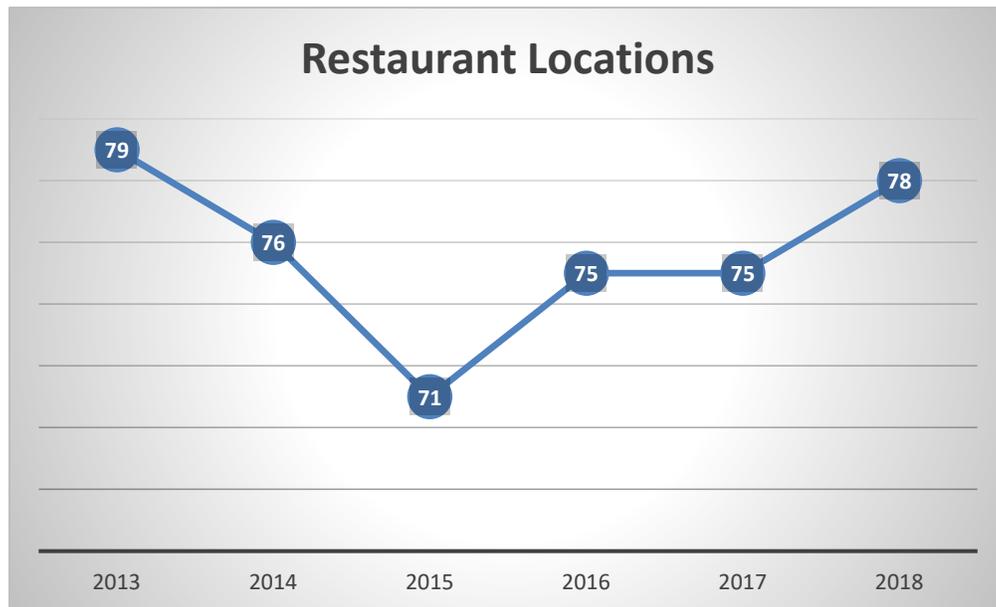
The analysis indicates that restaurant revenue growth has continued, albeit at a slower pace since 2015 when the MWO was adopted.

The upward trend in sales is consistent with the Business Condition Survey finding that 76% of restaurants have increased prices over the last year. However the survey responses indicate that 48% of restaurants report a decline in revenues of 5% or more and an additional 21% report a more modest decline of 1% to 5%, suggesting the potential for further flattening or reversing of this growth trend in 2018, since 68% of surveyed restaurants indicate revenues declined between 2017 and 2018.

This anticipated revenue decrease could be due in part to the MWO if prices were raised to cover increased labor costs and this increase has resulted in a decline in total sales due to the price sensitivity of consumers for restaurant purchases (i.e. “price elasticity of demand”). It is also possible that the anticipated revenue declines are due to increased competition from other restaurants, consumer trends, decreases in consumer’s purchasing power or a combination of all of these factors.

Restaurant Industry: Openings/Closings

An additional relevant data point regarding restaurants concerns whether the total number of restaurant locations in the City has increased, decreased or stayed the same over time.



As shown by the preceding chart, the number of restaurant locations in the City has fluctuated between 2013 and 2018, with a low point in 2015. With the MWO enacted in 2015 and the Fair Workweek Ordinance adopted in 2016, the total number of restaurant businesses has increased since the adoption of these labor standards. However, the renovation of the Public Market food hall contributes to most of this fluctuation: in 2013, 14 of the restaurants reporting sales were in the Public Market, in 2015, the number of Public Market restaurants in the dataset fell to six, and in 2018, this figure rebounds slightly, to nine.

Regarding the slowing revenue growth rate for “same store” restaurants that have operated between 2013 and 2017, it must be considered that increased competition for restaurant consumers may be a contributing factor, in part due to new restaurants at the Public Market since 2015.

FISCAL IMPACT

None.

STAFF COMMUNICATION WITH THE PUBLIC

The 2018 survey report was presented to the EDAC on January 19, 2019. At that meeting the EDAC requested that staff provide the qualitative data generated by the survey and that the discussion be continued to a special meeting of the EDAC in February. A special meeting of the EDAC was scheduled for February 21, 2019; however, a quorum was not obtained and consequently no meeting was held. The item was held over to the next regular meeting on March 20, 2019, when the EDAC held a robust discussion on the report, noting the strain on restaurants and that the types of assistance requested by

businesses align with the City's adopted Economic Development Strategy. The EDAC did not take any specific action regarding the report.

CONCLUSION

In summary, the City's Labor Standards continue to elicit mixed reactions, the restaurant industry continues to show dissatisfaction with the regulations, and the survey results suggest this dissatisfaction is increasing. However, the data indicate that other factors may also be contributing to business conditions for restaurants. Surveyed restaurants showed strong support for marketing and other activities included as priority actions in the Economic Development Strategy, and continued implementation of the strategy may help alleviate some of the concerns expressed in the survey results.

PREPARED BY: April Shabazz, Management Analyst

REVIEWED BY: Chadrick Smalley, Economic Development and Housing Manager

**APPROVED AND FORWARDED TO THE
CITY COUNCIL OF THE CITY OF EMERYVILLE:**



Christine Daniel, City Manager

ATTACHMENTS

- Inventory of Local Minimum Wage Ordinances
- Business Conditions Survey Report