

CITY of ALBUQUERQUE TWENTIETH COUNCIL

2012 JUN 12 PM 1:57

COUNCIL BILL NO. _____ ENACTMENT NO. _____

SPONSORED BY:

RECEIVED
ALBUQUERQUE CITY CLERK

1 PROPOSAL AND SPECIAL ELECTION RESOLUTION
2 ADOPTING A PROPOSITION TO BE SUBMITTED TO THE VOTERS AT A
3 SPECIAL ELECTION TO APPROVE OR DISAPPROVE OF THE PROPOSED
4 AMENDED ORDINANCE.

5 BE IT RESOLVED BY THE COUNCIL, THE GOVERNING BODY OF THE CITY OF
6 ALBUQUERQUE:

7 Section 1. That the City Clerk is instructed to place the following summary
8 of the proposal on the ballot for a special election, and the qualified voters of
9 the City of Albuquerque shall be permitted to vote "for" or "against" the
10 following proposition:

11 PROPOSITION
12 PROPOSING TO AMEND ALBUQUERQUE'S 2006 MINIMUM WAGE
13 ORDINANCE TO RAISE THE MINIMUM WAGE IN THE CITY FROM THE
14 CURRENT RATE OF \$7.50 TO \$8.50 PER HOUR STARTING IN 2013, AND TO
15 ADJUST THE MINIMUM WAGE EACH YEAR AFTER THAT TO KEEP UP WITH
16 THE RISING COST OF LIVING. THE ORDINANCE WILL ALSO REQUIRE THAT,
17 STARTING IN 2013, EMPLOYERS OF TIPPED EMPLOYEES LIKE WAITRESSES
18 AND WAITERS BE PAID AT LEAST 45% OF THE MINIMUM WAGE IN CASH
19 WAGES FROM THEIR EMPLOYERS, AND THAT STARTING IN 2014, TIPPED
20 EMPLOYEES BE PAID AT LEAST 60% OF THE MINIMUM WAGE IN CASH
21 WAGES FROM THEIR EMPLOYERS, WITH THE REST OF THE MINIMUM WAGE
22 PROVIDED IN EITHER TIPS OR CASH WAGES. CURRENTLY TIPPED
23 EMPLOYEES ARE ALLOWED TO BE PAID MOSTLY WITH TIPS. THE
24 MEASURE WILL CONTINUE THE CURRENT ORDINANCE'S PROVISION
25 ALLOWING EMPLOYERS THAT PROVIDE CERTAIN HEALTH CARE OR CHILD
26 CARE BENEFITS TO PAY \$1.00 LESS THAN THE MINIMUM WAGE.

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The City Clerk shall cause the full text of the Proposition that follows to be published for four consecutive weeks in English and Spanish, the last publication to be not more than two weeks prior to the election at which time said Proposition shall be submitted to the electors of the City for their approval or rejection; and shall further provide notice of the content and purpose of the Proposition in both English and Spanish to inform electors about the amendments in the time and manner provided by law. This resolution for special election shall be published once a week for four consecutive weeks with the first publication between fifty and sixty days before the election. The publication of this special election resolution shall contain the summary of the proposition set forth herein but shall not contain the full text of the proposition. The full text of the Proposed Ordinance that follows shall appear on the ballot.

“ORDINANCE (full text)

Establishing The Albuquerque Minimum Wage Ordinance; Setting Minimum Wages For Employees; Creating Exemptions; Establishing Procedures For Enforcement.

BE IT ORDAINED BY THE COUNCIL, THE GOVERNING BODY OF THE CITY OF ALBUQUERQUE:

Section 1. SHORT TITLE. This ordinance may be cited as "The Albuquerque Minimum Wage Ordinance."

Section 2. DEFINITIONS.

CITY. The City of Albuquerque.

EMPLOYER. Any person, partnership, association, corporation, business trust, legal representative, or any other entity, or group of persons or entities, including corporate officers or executives, who is required to have a business license or business registration from the City of Albuquerque and who directly or indirectly or through an agent or any other person including, but not limited to, through a subsidiary or through the services of a temporary services agency, a staffing agency, a building services contractor, or any similar entity, employs or exercises control over the wages, hours or working conditions of any Employee. "Employer" shall include the City of Albuquerque.

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EMPLOYEE. Any person who performs work for an Employer for monetary compensation for at least two (2) hours in a given week within the municipal limits of the City. "Employee" shall include persons who perform work for an Employer on a full-time, part-time, seasonal, or temporary basis. Employee shall not include any person who is excluded from the definition of employee under NMSA §§ 50-4-21(c)(3)-(5), (7) of the New Mexico Minimum Wage Act, except that persons employed by the City of Albuquerque are employees.

"Employee" shall not include interns working for an Employer for academic credit in connection with a course of study at an accredited school, college or university or employees working for an accredited school, college or university pursuant to a work-study program while attending that school, college or university. "Employee" shall not include any person who has received a certificate from the state labor commissioner pursuant to § 50-4-23 NMSA 1978 or § 50-4-21(C)(12) NMSA 1978.

MINIMUM WAGE, MINIMUM WAGE RATE. The minimum hourly rates of monetary compensation for work as specified in this ordinance.

TIP. A sum presented by a customer as a gift or gratuity in recognition of some service performed for the customer. "Tip" shall include only tips actually received by an Employee as money belonging to him or her. Where Employees practice tip pooling or splitting, as where wait staff give a portion of their tips to bus persons, both the actual amounts retained by the waiters or waitresses and those given the bus persons shall be considered "Tips" of the individual Employee who retains them. A compulsory charge for service imposed on a customer by an Employer's establishment shall not be considered a "Tip" unless it is distributed by the Employer to its Employees.

TIPPED EMPLOYEE. Any Employee engaged in an occupation in which he or she customarily and regularly receives Tips from customers.

TIPPED MINIMUM WAGE. The minimum cash wage that a Tipped Employee must receive from his or her Employer, as provided under Section 3(A).

Section 3. MINIMUM WAGE.

(A) Minimum Wage Payment Required. Except as provided herein, Employers shall pay all Employees no less than the Minimum Wage for each

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hour worked within the municipal limits of the City. Tips or commissions received and retained by a Tipped Employee may an employee shall be counted as wages and credited towards partial satisfaction of the minimum wage. Provided, however, that the cash wage paid to a Tipped Employee by his or her Employer shall be no less than the Tipped Minimum Wage, which, beginning January 1, 2013, shall be 45% of the Minimum Wage, and beginning January 1, 2014 and each year thereafter, shall be 60% of the Minimum Wage. An Employer may credit tips as part of the wages of a Tipped Employee only if the Employer informs the Tipped Employee in advance in writing, pays the Tipped Employee a cash wage equal to or greater than the Tipped Minimum Wage, and is able to establish by the Tipped Employee's declaration for Federal Insurance Contributions Act (FICA) purposes or by its records of charged tips that the total of the tips received by the Tipped Employee and the cash wages paid by the Employer is equal to or greater than the Minimum Wage. The tips received by a Tipped Employee become the property of the Tipped Employee and may not be shared with the Employer. This subsection shall not be construed to prohibit the pooling of tips among Employees who customarily and regularly receive tips.

(B) Minimum Wage Rate. Beginning January 1, 2007, the Minimum Wage for Employees shall be an hourly rate of \$6.75. Beginning January 1, 2008, the Minimum Wage for Employees shall be an hourly rate of \$7.15. Beginning January 1, 2009, the Minimum Wage for Employees shall be an hourly rate of \$7.50. Beginning January 1, 2013, the Minimum Wage for Employees shall be an hourly rate of \$8.50. For employers who provide healthcare and/or childcare benefits to an employee during any pay period for which the employer pays an amount for those healthcare benefits equal to or in excess of an annualized cost of \$2500.00, beginning January 1, 2007, the Minimum Wage for that employee shall be an hourly rate of \$5.75, in addition to the healthcare benefits and/or childcare benefits, beginning January 1, 2008, the Minimum Wage for that employee shall be an hourly rate of \$6.15, in addition to the healthcare and/or childcare benefits, and beginning January 1, 2009, the Minimum Wage for that employee shall be an hourly rate of \$6.50, in addition to the healthcare and/or childcare benefits, and beginning January 1, 2013 and

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1 each year thereafter, the Minimum Wage for that employee shall be an hourly
2 rate of \$1.00 less than the current Minimum Wage otherwise applicable to
3 employees who do not receive such benefits.

4 (C) Annual Cost of Living Adjustment. Beginning on January 1, 2014
5 and annually on each January 1 thereafter, the Minimum Wage shall be
6 adjusted based on the increase, if any, in the cost of living, and rounded to the
7 nearest multiple of five cents. The increase in the cost of living shall be
8 calculated based on the percentage increase, if any, as of August of the
9 immediately preceding year over the level as of August of the previous year of
10 the Consumer Price Index (All Urban Wage Earners and Clerical Workers, U.S.
11 City Average for All Items) or its successor index as published by the U.S.
12 Department of Labor or its successor agency. The adjusted Tipped Minimum
13 Wage shall be calculated based on the adjusted Minimum Wage, and rounded
14 to the nearest multiple of five cents. The City shall publish the adjusted
15 Minimum Wage and the adjusted Tipped Minimum Wage for the forthcoming
16 year on its Internet home page by October 15 of each year, and they shall
17 become effective on January 1 of the forthcoming year.

18 **Section 4. NOTICE, POSTING AND RECORDS.**

19 **(A) Notice to Employees.** Every Employer shall post in a conspicuous
20 place at any workplace or job site where any Employee works a notice
21 published each year by the City Attorney informing Employees of the current
22 Minimum Wage rates and of their rights under this ordinance. Every Employer
23 shall post such notices in English and Spanish.

24 **(B) Records.** Employers shall maintain payroll records showing the hours
25 worked daily by and the wages paid to all Employees. Employers shall retain
26 payroll records pertaining to Employees for a period of three years. When the
27 Employer uses tips to meet the Minimum Wage for an Employee, the Employer
28 must have a Tip declaration signed by the Tipped Employee for each pay
29 period.

30 **Section 5. IMPLEMENTATION AND ENFORCEMENT.**

31 **(A) Rulemaking.** The City shall have the authority to coordinate
32 implementation and enforcement of this ordinance and may promulgate
33 appropriate guidelines or rules for such purposes. Any guidelines or rules

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1 promulgated by the City shall have the force and effect of law and may be
2 relied on by Employers, Employees, and other parties to determine their rights
3 and responsibilities under this ordinance. Any such guidelines or rules may
4 establish procedures for ensuring fair, efficient and cost-effective
5 implementation of this ordinance, including supplementary procedures for
6 helping to inform Employees of their rights under this ordinance and for
7 monitoring Employer compliance with this ordinance.

8 (B) Civil Enforcement. Any Employee receiving less than the wage to
9 which the Employee is entitled under this ordinance may bring a civil action in
10 a court of competent jurisdiction and, upon prevailing, shall recover the
11 balance of the wages owed, including interest thereon, and an additional
12 amount equal to twice the wages owed, and any other appropriate legal or
13 equitable relief. Any Employee who has suffered discrimination in any manner
14 or had adverse action taken against that Employee in retaliation for exercising
15 rights protected under this ordinance may bring a civil action in a court of
16 competent jurisdiction and, upon prevailing, shall recover actual damages
17 plus reinstatement in the case of discharge. In any case where an Employee
18 has been discharged in retaliation for exercising rights under this ordinance,
19 the period of violation extends from the day of discharge until the day the
20 Employee is reinstated, the day the Employee agrees to waive reinstatement
21 or, in the case of an Employee who may not be rehired, from the day of
22 discharge until the day legal judgment is final. The requirements of this
23 ordinance may also be enforced by the City Attorney. In such case, unpaid
24 wages and actual damages recovered shall be payable to the individual
25 Employee as to whom the violation occurred. A plaintiff prevailing in an
26 action to enforce this ordinance shall be entitled to recover his or her costs
27 and expenses of suit and reasonable attorney's fees.

28 Section 6. RELATIONSHIP TO OTHER REQUIREMENTS. This ordinance
29 provides for payment of Minimum Wage rates and shall not be construed to
30 preempt or otherwise limit or affect the applicability of any other law,
31 regulation, requirement, policy or standard that provides for payment of
32 higher or supplemental wages, benefits, or protections. Nothing contained in

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this ordinance prohibits an Employer from paying more than the Minimum Wage rates established under this ordinance.

Section 7. SEVERABILITY CLAUSE. If any section, paragraph, sentence, clause, word or phrase of this ordinance is for any reason held to be invalid or unenforceable by any court of competent jurisdiction, such decision shall not affect the validity of the remaining provisions of this ordinance. The Council hereby declares that it would have passed this ordinance and each section, paragraph, sentence, clause, word or phrase thereof irrespective of any provision being declared unconstitutional or otherwise invalid.

Section 8. COMPILATION. This ordinance shall be incorporated in and made part of the Revised Ordinances of Albuquerque, New Mexico, 1994.

Section 9. EFFECTIVE DATE. This ordinance shall take effect five days after publication by title and general summary.

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