

Submitted by: Johnathan F. Austin

Recommended by: Johnathan F. Austin

Ordinance No: \_\_\_\_\_

*AN ORDINANCE RELATING TO MINIMUM WAGE TO BE PAID TO EMPLOYEES BY EMPLOYERS IN THE CITY OF BIRMINGHAM ALABAMA*

WHEREAS, Poverty in the city of Birmingham is a problem that affects the general health and welfare of its citizens, it is incumbent upon the city to take legislative steps to help lift working families out of poverty, decrease income inequality, and boost our economy; and

WHEREAS, at least 15 cities across the United States have increased their local minimum wage and many other cities have proposed increases; and

WHEREAS, the State of Alabama provides cities with broad authority to regulate matters implicating the city's police power, to provide for the safety, preserve the health, promote prosperity, and improve the morals, order and comfort and convenience of the inhabitants so long as such regulations are not inconsistent with the laws of the state;

WHEREAS, a minimum wage increase would reduce labor turnover, improve organizational efficiency, increase worker purchasing power in our local economy, and reduce reliance on social services; therefore

BE IT ORDAINED BY THE BIRMINGHAM CITY COUNCIL AS FOLLOWS:

**SECTION I:** New Ordinance Establishing Minimum Wage for Employers to Pay Employees in the Birmingham

**SECTION II: BIRMINGHAM MINIMUM WAGE RATES**

A) Definitions.

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

- 1) "Employ" means to suffer or permit to work.
- 2) "Employer"- means any individual, partnership, association, corporation, business

trust, or any person or group of persons acting directly or indirectly in the interest of an employer in relation to an employee, and shall include the City of Birmingham and its departments, divisions, and agencies, but shall not include any other governmental entity which includes, for purposes of this Ordinance, any other unit of local government, the state government, and the government of the United States

3) "Employee" means any individual employed by an Employer and who performs at least twenty hours of work within a calendar year while physically present within the geographic boundaries of the city of Birmingham for an Employer.

4) "Wage" means any fixed regular payment made on a regular basis, typically on an hourly, daily or weekly basis, made by an employer to an employee for work or services.

5) "Minimum wage" includes all Wages, Commissions, Piece-Rate, and Bonuses received by the employee and shall be governed by the rates set forth in Section II(B)(ii) of this ordinance.

6) "Piece-Rate" means a price paid per unit of work.

7) "Tip" means a verifiable sum to be presented by a customer as a gift or gratuity in recognition of some service performed for the customer by the employee receiving the tip.

8) "Tipped Employee" means an Employee engaged in an occupation in which the Employee customarily and regularly receives more than \$30 per month in Tips,

9) "Effective Date" shall have the meaning set forth in Section V of this ordinance.

### **Wage Rates**

(i) Employers shall pay Employees no less than the applicable minimum wage rate provided for in this chapter for each hour worked within the geographic boundaries of the city of Birmingham.

(ii) The minimum wage rate shall be an hourly rate as follows:

(a) Beginning on July 01, 2016, \$8.50 per hour;

(b) Beginning on July 01, 2017, \$10.10 per hour;

(c) On July 01, 2018, and on each July 1 of each successive year thereafter; or in the alternative on the first day of the fiscal year, should such date change from its existing date of July 1<sup>st</sup>; the minimum wage rate from the previous year shall be increased by the increase, if any, in the cost of living. The increase in the cost of living shall be measured by the percentage increase, if any, as of July of the previous year over the level as of

July of the year preceding that of the Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI-W) for the Southeast region, 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 Mayor shall designate an official within the City government to announce the adjusted rates by October 15, 2016, and each October 15 of each successive year thereafter, which shall be published in a bulletin announcing the adjusted rate for the upcoming year. If the federal minimum wage as prescribed by 29 U.S.C. sec 206(a)(1) is increased in excess of the minimum wage then in effect under this section, the minimum wage then in effect under this section shall be increased to the same amount as the federal minimum wage, effective on the same date as the increase in the federal minimum wage and shall be increased in accordance with this section thereafter.

Employers may consider tips as part of the wages of tipped employees, but such a tip credit may not exceed 50% of the minimum wage rate established pursuant to this Ordinance. Employers shall pay tipped employees a direct cash wage of not less than 50 percent of the minimum wage rate established pursuant to this Ordinance, provided that the combination of the cash wage paid directly by the Employer and tips received by the Tipped Employee totals no less than the minimum wage rate, with the difference being made up by the Employer. An employer who elects to use the tip credit must inform the affected employee in advance and must be able to show that the employee receives at least the minimum wage rate specified pursuant to this Ordinance when direct wages and tips are combined. The tips received by an Employee become the property of the Employee and may not be shared with the Employer, except that this provision does not preclude a valid tip pooling or sharing arrangement among employees who customarily and regularly receive tips.

### **SECTION III: ENFORCEMENT AND REMEDIES**

Any employer that fails to pay the minimum wage required under this chapter shall be required to pay the employee the unpaid wages together with an additional two times that amount as liquidated damages.

Any Employee who is paid less than the minimum wage established under this Ordinance may bring a civil cause of action against his/her Employer for the full amount of wages due from the Employer in any court of competent jurisdiction and, upon prevailing, shall be awarded any appropriate legal or equitable relief, including: unpaid wages and an additional two times that amount as liquidated damages; reinstatement; actual damages; civil penalties; and reasonable attorneys' fees and costs. An employee need not exhaust administrative remedies before bringing an action nor shall an investigation of an employer by the department or other law enforcement officer bar a person from bringing an action.

In addition to the civil remedies provided directly above, any Employer found to have violated any of the minimum wage provisions shall be subject to a civil penalty not to exceed \$100 per day, per Employee who fails to receive the minimum wage as set forth

in this chapter. If a civil penalty is imposed pursuant to this section, a citation shall be issued which describes the violation which has occurred and states the penalty for the violation. If, within fifteen (15) working days from the receipt of the citation, the affected party fails to pay the penalty imposed, the City of Birmingham shall initiate a civil action to collect the penalty. The civil action shall be taken in the court which has jurisdiction over the location in which the violation occurred.

Any Employer found to have violated any of the minimum wage provisions may be required to reimburse the City of Birmingham for any costs associated with its investigation of, and enforcement measures against, the Employer.

It shall be unlawful for an Employer or any other party to discriminate in any manner or take adverse action against any person in retaliation for exercising rights protected under this Chapter. Rights protected under this Chapter include, but are not limited to: the right to file a complaint or inform any person about any party's alleged noncompliance with this Chapter; and the right to inform any person of his or her potential rights under this Chapter and to assist him or her in asserting such rights. Protections of this Chapter shall apply to any person who mistakenly, but in good faith, alleges noncompliance with this Chapter. Taking adverse action against a person within ninety (90) days of the person's exercise of rights protected under this Chapter shall raise a rebuttable presumption of having done so in retaliation for the exercise of such rights.

The Legal Department or other city agency as designated by the Mayor are authorized to promulgate rules and regulations regarding the interpretation, application and enforcement of the ordinance and are authorized to receive any complaint regarding a possible or suspected violation of this Ordinance and further authorized to take appropriate steps to enforce this Ordinance including, regardless of whether there is a complaint, investigating any possible or suspected violation of this Ordinance.

In addition, where violations of this Chapter have been found by any judicial or administrative proceeding and where such violations have not been cured through compliance with the order/decision of the governmental entity determining same, City agencies or departments may, after notice and an opportunity for a hearing, revoke or suspend any registration certificates, permits or licenses held or requested by the Employer until such time as the violations of this Chapter are remedied.

#### **SECTION IV: Severability**

If any subsection, sentence, clause or phrase of this article is for any reason held to be invalid or unconstitutional by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this ordinance. The City Council hereby declares that it would have adopted this section, and each and every subsection, sentence, clause and phrase thereof not declared invalid or unconstitutional, without regard to whether any portion of the ordinance would be subsequently declared invalid or unconstitutional.

**SECTION V: EFFECTIVE DATE**

This Ordinance is hereby adopted this 18<sup>th</sup> day of August 2015.