

Order 24-15/16

Postponed indefinitely (dead) 9-0 on 7/20/2015

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**CITY OF PORTLAND
IN THE CITY COUNCIL**

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**ORDER ENACTING CITIZEN INITIATIVE
AMENDMENT TO PORTLAND CITY CODE
CHAPTER 33 RE: AN ORDINANCE TOWARD A LIVING WAGE**

**BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF PORTLAND, MAINE
IN CITY COUNCIL ASSEMBLED AS FOLLOWS:**

1. That the Portland City Code is hereby amended by adding a section, to be numbered Chapter 33, Articles I to VIII, which said Articles read as follows:

Chapter 33 AN ORDINANCE TOWARD A LIVING WAGE

- Art. I. Purpose**
- Art. II. Definitions**
- Art. III. Minimum Wage**
- Art. IV. Notice, Posting and Records**
- Art. V. Enforcement and Violations**
- Art. VI. Relationship To Other Requirements**
- Art. VII. Severability Clause**
- Art. VIII. Effective Date**

ARTICLE I. Purpose.

WHEREAS, the City of Portland is a home-rule unit of government under the Maine Constitution and 30-A M.R.S. §3001 and, as such, may exercise any power and perform any function in order to protect health, safety and welfare of the citizens of the City; and

WHEREAS, promoting the welfare of the City's citizens and those who work within the City's borders is an endeavor that plainly meets this criterion; and

WHEREAS, small, locally owned businesses are essential to a thriving economy because they keep assets within the community and offer opportunities for citizens to become entrepreneurs; and

WHEREAS, people living at or near poverty cannot regularly patronize businesses because they do not have sufficient disposable income or assets; and

WHEREAS, an estimated 20,000 workers in the State of Maine work for minimum wage, and a substantial number of Maine's minimum wage workers are among the City of Portland's 65,000 wage and salary earners; and

WHEREAS, more than 50 percent of Portland public school students live in families that cannot afford to provide lunches for their children without subsidies; and

WHEREAS, rising housing costs, including an increase in the median home price from \$125,200 in 2000 to \$238,400 in 2012 and a similar increase in the costs of renting, are pushing low wage workers out of the City; and

WHEREAS, an increase in wages will better permit citizens to participate in the economy; and

WHEREAS, after years of inaction by the United States Congress and Maine Legislature it is time for municipalities to do what they can to lift families out of poverty and stimulate the economy by raising the minimum wage; and

WHEREAS, the income of large businesses nationally has been sufficient to support salaries of CEOs that average 774 times as much as minimum wage earners, establishing that on average larger businesses are better able to afford the cost of more quickly increasing worker wages; and

WHEREAS, phasing in the wage increase over time will allow all businesses to increase wages as their revenue from increased citizen support increases; and

WHEREAS, changes to wages of City employees cannot be made through the citizen initiative process and so City employees must, regretfully, be left out of this ordinance;

NOW, THEREFORE, to promote the health, safety and welfare of its citizens and businesses, the City Council of the City of Portland, Maine hereby establishes the following minimum wage ordinance applicable to all Employers and Employees within the City of Portland.

ARTICLE II Definitions.

Unless the context otherwise indicates, the following words shall have the following meanings.

City: City of Portland.

City limits: The physical boundaries of the City.

Employee: Any person who performs work for an Employer for monetary compensation within the City limits. "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 exempted from the definition of Employee under 26 M.R.S. §663(3) of Chapter 7, Employment Practices. Employees include but are not limited to Tipped Employees.

Employer: Any individual, group of individuals, partnership, association, corporation, business trust, or any other entity or group of persons or entities who employs or exercises control over the wages, hours, or working conditions of any Employee.

Franchise: A written agreement by which an individual or any other entity or group of persons or entities is granted the right to engage in the business of offering, selling, or distributing goods or services under a marketing plan prescribed or suggested in substantial part by the grantor or its affiliate, and by which the operation of the business is substantially associated with a trademark, service mark, trade name, advertising, or other commercial symbol, and by which the person pays, agrees to pay, or is required to pay, directly or indirectly, a franchise fee.

Franchisee: An individual or any other entity or group of persons or entities to whom a Franchise is offered or granted.

Franchisor: An individual or any other entity or group of persons or entities who grants a Franchise to someone else.

Schedule A Employer: Any Employer that employs more than 500 Employees in the United States, regardless of where those Employees are employed in the United States, or is a Franchisee associated with a Franchisor or a network of Franchises with Franchisees that employ more than 500 Employees in the United States, regardless of where those Employees are employed in the United States.

Schedule B Employer: Any Employer that is not a Schedule A Employer.

Minimum Wage: The minimum hourly rate of monetary compensation that an Employer shall legally pay an Employee for work within the City.

Schedule A Minimum Wage: The Minimum Wage for Schedule A Employers.

Schedule B Minimum Wage: The Minimum Wage for Schedule B Employers.

Tip: A sum presented by a customer as a gift or gratuity in recognition of some service performed by the Employee.

Tipped Employee: Any Employee engaged in an occupation in which he or she customarily and regularly receives more than \$30.00 a month in Tips from customers.

The BLS: The Bureau of Labor Statistics in the United State Department of Labor.

The CPI: With respect to a year, the average, for the twelve months in that year, of the unadjusted, U.S. City Average, Consumer Price Index for All Urban Consumers, for all items, using the 1982-1984 index base period, Series ID CUUR0000SA0, as reported by the BLS.

Article III. Minimum Wage.

(a) Minimum wage payment required:

(i) Except as provided herein, all Employers, including Schedule A Employers and Schedule B Employers, shall pay all Employees no less than the Schedule A Minimum Wage or Schedule B Minimum Wage, respectively, established by this ordinance for each hour worked within the City Limits.

(ii) Except as provided herein, all Employers, including Schedule A Employers and Schedule B Employers, whose principal place of business is in the City Limits, shall pay all Employees who work primarily or substantially within the City Limits no less than the Schedule A Minimum Wage or Schedule B Minimum Wage, respectively, established by this

ordinance for each hour worked, regardless of where that hour is worked.

(iii) The City, considered as an Employer, shall be exempt from the requirements described in subsections (a) (i) and (a) (ii). Nothing in this ordinance shall be deemed to place requirements on, change, or affect the amounts the City pays its Employees. Notwithstanding City of Portland Code of Ordinances Chapter 9 §9-46, it is expressly provided that this subsection, (a) (iii), may be amended or repealed by the City Council at any time by any appropriate process.

(b) Tipped Employees:

(i) An Employer may consider tips as part of the wages of a Tipped Employee toward satisfaction of the Minimum Wage established by this ordinance, but such a tip credit may not exceed the maximum amount allowed as a tip credit by 26 M.R.S. §664(2).

(ii) An Employer who elects to use the tip credit described in subsection (b) (i) must inform the affected Tipped Employee in advance and must be able to show that the Tipped Employee receives at least the minimum hourly wage established by this ordinance when his or her direct wages and the tip credit are combined.

(iii) Upon a satisfactory showing by the Tipped Employee or Tipped Employee's representative that the actual tips received were less than the tip credit described in subsection (b) (i), the Employer shall increase the direct wages of the Tipped Employee by the difference.

(iv) This section may not be construed to prohibit an employer from establishing a valid tip pooling arrangement among Employees that is consistent with the federal Fair Labor Standards Act and regulations made pursuant to that Act.

(c) Minimum Wage rate:

(i) Beginning on July 1, 2016, the Schedule A Minimum Wage shall be established as \$12.00 per hour;

(ii) Beginning on July 1, 2016, the Schedule B Minimum Wage shall be established as \$10.00 per hour;

(iii) Beginning on July 1, 2017, the Schedule A Minimum Wage shall be raised to \$15.00 per hour;

(iv) Beginning on July 1, 2017, the Schedule B Minimum Wage shall be raised to \$12.00 per hour;

(v) Beginning on July 1, 2018, the Schedule B Minimum Wage shall be raised to \$13.50 per hour;

(vi) Beginning on July 1, 2019, the Minimum Wage paid by all Employers, including Schedule A Employers and Schedule B Employers, to all Employees, shall be \$15.00 per hour.

(vii) Beginning on every first day of July following July 1, 2019, and every first day of July thereafter, the Minimum Wage for all Employees shall be set to the product of \$15.00 per hour and the CPI for the previous calendar year, divided by the CPI for 2014, unless such change would result in a decrease in the Minimum Wage, in which case the Minimum Wage shall not change. For example, the BLS reports that the CPI for 2014 was 236.736; if the CPI for 2019 is 245.555, then beginning on July 1, 2020, the Minimum Wage shall be set as \$15.56 per hour, unless it was previously higher, in which case it shall not change.

(d) Overtime.

(i) The Minimum Wage set out in this ordinance is subject to the overtime compensation provisions in 26 M.R.S. §664(3).

(e) Collective Bargaining Agreements.

(i) Nothing in this ordinance shall be deemed to interfere with, impede, or in any way diminish the right of all Employees to bargain collectively with their Employers in order to establish wages or other conditions of work in excess of the applicable minimum standards of this ordinance.

(f) Retaliation Prohibited.

(i) It shall be unlawful for any Employer to discriminate in any manner or take any adverse action against any Employee in retaliation for exercising any right under this ordinance.

ARTICLE IV. Notice, Posting and Records.

(a) Notice to Employees. Every employer shall post, in a conspicuous place at any workplace or job site where any Employee works, a notice to be provided by the City informing Employees of the City's current Minimum Wage rates, as well as a copy of this ordinance.

(b) Records. Employers shall maintain payroll records showing hours worked daily by and the wages paid to all Employees. Employers shall retain such payroll records pertaining to all Employees for a period of at least three (3) years after an Employee has left employment.

(c) Access. The City shall have access to any and all Employer payroll records subject to this ordinance during business hours to investigate whether or not an Employer has violated any of the provisions of this chapter.

(d) Paycheck Notice. Every Employer shall provide with the first paycheck issued to an Employee a notice advising the Employee of the current Minimum Wage under this ordinance and of the Employee's rights under this ordinance.

ARTICLE V. Enforcement and Violations.

(a) Enforcement.

(i) The City Manager or his/her designee shall enforce the provisions of this Ordinance.

(ii) The City Manager is authorized to adopt rules and regulations for the proper administration and enforcement of this Ordinance.

(b) Complaint Process.

(i) Any Employee receiving less than the Minimum Wage he or she is required to receive under this Ordinance may file a written complaint with the City Manager's office.

(ii) The City Manager or his or her designee shall investigate and issue a response to the complaint within fifteen (15) work days following the receipt of a complaint. The City Manager's or his or her designee's response to the complaint shall be final.

(iii) If the City Manager or his/her designee finds that a violation of this chapter has occurred, he or she may order any and all appropriate relief including, but not limited to, the payment of any back wages withheld and/or the payment of not less than \$100.00 or more per affected Employee as a penalty for each day that a violation of this chapter has occurred. A violation of this Ordinance may also be considered a civil violation subject to the general penalty provisions of section 1-15 of this Code.

(c) Private Cause of Action.

(i) Any Employee, the City, or any person aggrieved by a violation of this Ordinance may bring an action in a Court of competent jurisdiction against the Employer for any and all violations of this Ordinance, including, but not limited to, wages owed under this Ordinance.

ARTICLE VI. Relationship To Other Requirements.

(a) This Ordinance provides for payment of minimum wage rates within the City, and to the extent any provision of this Ordinance conflicts with any provision of another City ordinance applicable to the Minimum Wage, the provisions of this Ordinance shall control and apply.

(b) Any exemptions implied or expressed by any other City ordinance or City policy to the requirements and obligations described in Article III shall be considered null.

(c) Except as specified in §(a) and §(b), this Ordinance shall not be construed to preempt, limit, or affect the applicability of other law, including any that provides for payment of higher wages and/or benefits.

(c) Nothing contained in this Ordinance prohibits an employer from paying more than the Minimum Wage rates established herein.

ARTICLE VII. Severability Clause.

(a) If any section, paragraph, sentence, word or phrase of this Ordinance is for any reason held to be invalid or unenforceable by any court, such decision shall not affect the validity of the remaining provisions of this Ordinance.

(b) If any court holds for any reason that it is illegitimate or unenforceable to differentiate, in all cases or in some cases, between Schedule A Employers and Schedule B Employers as described in Article II, or to establish different Minimum Wages for different Employers as described in Article III §(c), then all Employers shall be treated as Schedule B Employers, and the rates for, values of, and changes to the Schedule B Minimum Wage described in Article III §(c) shall be held to describe the Minimum Wage applying to all Employers.

ARTICLE VIII. Effective Date.

This ordinance shall take effect thirty (30) days after the declaration of the results of the election in which it is voted upon, as described in the City of Portland Code of Ordinances Chapter 9 §9-42.