

COMMITTEE SUBSTITUTE FOR ORDINANCE NO. 150217

Enacting a new Article IV, Chapter 38, Code of Ordinances, entitled "Minimum Wage" to phase in a municipal minimum wage of \$13.00 per hour.

BE IT ORDAINED BY THE COUNCIL OF KANSAS CITY:

Section 1. ENACTMENT OF THE MUNICIPAL MINIMUM WAGE. That a new Article IV, Chapter 38, Code of Ordinances, entitled "Minimum Wage," is enacted to read as follows:

**ARTICLE IV. CITY MINIMUM WAGE
DIVISION 1. GENERAL**

Sec. 38-200. Authority.

This Article is enacted pursuant to its general police powers and the authority to provide for the general health and welfare of its citizens as established by the Missouri Constitution, Article IV, Section 19(a), giving a charter city all powers which are consistent with the Missouri Constitution and that are not limited or denied by the City of Kansas City, Missouri Charter or by statute.

Sec. 38-201. Definitions.

- (a) "Apprentice" means a person bound to serve another for a specified time in order to learn some art, trade, profession, or business;
- (b) "Employ" means to suffer or permit to work;
- (c) "Employee" means any individual employed by an Employer who performs at least 20 hours of work within a calendar year for an Employer whether on a part-time, full-time or temporary basis, and shall include contingent and contracted workers and individuals working through a temporary service, staffing or employment agency or similar entity. However, the term "Employee" shall not include:
 - (1) An individual employed by the United States, the State of Missouri or any political subdivision of the State other than by the City of Kansas City, Missouri;
 - (2) An individual engaged in the activities of an educational, charitable, religious or nonprofit organization where the employer-employee relationship does not, in fact, exist or where the services rendered to such organizations are on a voluntary basis;
 - (3) Apprentices in a registered apprentice program recognized by the State of Missouri or the Federal Bureau of Apprenticeship and Training, as well as any apprentice participating in an apprenticeship program providing significant instructional and practical experience and offered by the City of Kansas City, Missouri;

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- (4) Temporary employees of an educational, charitable or religious youth camp or retreat where room and board are provided to the employee, or if a day camp, where board only is provided. To qualify under this exemption the employer must hold a valid certificate issued annually by the Director of the Missouri Department of Labor pertaining to exemption of seasonal employees;
 - (5) Any employee that is the parent, spouse, child or other member of the employer's immediate family; for purposes of this subsection, the employer shall include the principal stockholder of a family corporation;
 - (6) Interns working for a business for academic credit in connection with a course of study at an accredited school, college or university; and
 - (7) Persons working for a business in connection with a court-ordered community service program;
- (d) "Employer" means any individual, partnership, association, corporation, business trust, or any business organization, person or group of persons engaged in providing, selling, purchasing or investing in goods or services within the corporate limits of Kansas City, Missouri, which shall include, but may not necessarily be limited to, any which is required to obtain a business license, and shall include the City of Kansas City and its departments, 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;
- (e) "Franchise" means a written agreement by which: (1) A person 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; (2) The operation of the business is substantially associated with a trademark, service mark, trade name, advertising, or other commercial symbol; designating, owned by, or licensed by the grantor or its affiliate; and (3) The person pays, agrees to pay, or is required to pay, directly or indirectly, a franchise fee;
- (f) "Franchisee" means a person to whom a franchise is offered or granted;
- (g) "Franchisor" means a person who grants a franchise to another person;
- (h) "Minimum Wage" means the minimum hourly rate of compensation that an employee shall be paid;
- (i) "Schedule 1 Employer" means an Employer that employs more than 250 employees in the United States, regardless of where those employees are employed in the United States, and all franchisees associated with a franchisor or a network of franchises with franchisees that employ more than 250 employees in aggregate in the United States. A

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Schedule 1 employer is required to pay a Minimum Wage according to the schedule established below;

- (j) "Schedule 2 Employer" means an Employer that employs 250 or fewer employees regardless of where those employees are employed in the United States. Schedule 2 employers do not include franchisees associated with a franchisor or a network of franchises with franchisees that employ more than 250 employees in aggregate in the United States. A Schedule 2 employer is required to pay Minimum Wages according to the schedule established below;
- (k) "Tips" means a verifiable sum presented by a customer as a gift or gratuity in recognition of some service performed for the customer by the employee receiving the tip; and
- (l) "Tipped Employee" means an employee who customarily and regularly receives more than thirty dollars (\$30.00) a month in tips.

Sec. 38-202. Applicability.

- (a) This Article shall be effective within the corporate limits of the City of Kansas City, Missouri, established by Article 1, Section 101 of the Kansas City, Missouri Charter.
- (b) Every Employer shall pay to each Employee for each hour worked not less than the Minimum Wage established by this Article. However, the provisions of this subsection are expressly limited by and subject to collective bargaining agreements between the City of Kansas City, Missouri and any bargaining unit.
- (c) For the purposes of determining whether a non-franchisee employer is a Schedule 1 Employer or a Schedule 2 Employer, separate entities that form an integrated enterprise shall be considered a single employer under this Article. Separate entities will be considered an integrated enterprise and a single employer under this Chapter where a separate entity controls the operation of another entity. The factors to consider in making this assessment include, but are not limited to: (1) Degree of interrelation between the operations of multiple entities; (2) Degree to which the entities share common management; (3) Centralized control of labor relations; and (4) Degree of common ownership or financial control over the entities. There shall be a presumption that separate legal entities, which may share some degree of interrelated operations and common management with one another, shall be considered separate employers for purposes of this section as long as (1) the separate legal entities operate substantially in separate physical locations from one another, and (2) each separate legal entity has partially different ultimate ownership. The determination of employer schedule for the current calendar year will be calculated based upon the average number of employees employed per calendar week during the preceding calendar year for any and all weeks during which at least one employee worked for compensation. For employers that did not have any employees during the previous calendar year, the employer schedule will be calculated based upon the average number of employees employed per calendar week

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during the first 90 calendar days of the current year in which the employer engaged in business.

- (d) As of the effective date of this Article, contracts entered into by the City of Kansas City, Missouri for services, including construction services, shall require the contractor to pay not less than the Minimum Wage established by this Article.

Sec. 38-203. Findings.

- (a) The public welfare, health, safety and prosperity of citizens of the City of Kansas City, Missouri requires that citizens be paid a Minimum Wage sufficient to ensure a decent and healthy life.
- (b) Establishing a mandatory minimum hourly wage in the City of Kansas City will promote the public welfare, health, safety and prosperity by ensuring that citizens can better support and care for their families through their own efforts.
- (c) When businesses do not pay adequate wages, the community bears the cost in the form of increased demand for taxpayer-funded social services.
- (d) It is in the public interest to require that employers benefiting from the opportunity to do business in the City of Kansas City, Missouri pay employees a Minimum Wage that is adequate to meet the basic needs of living in the City of Kansas City, Missouri.

Sec. 38-204. Minimum Wage Payment Requirements.

- (a) Except as provided in subsection (d), the Minimum Wage rate for Schedule 1 Employers shall be:
 - (i) Effective August 24, 2015, nine dollars (\$9.00) per hour;
 - (ii) Effective January 1, 2017, through January 1, 2020, an additional one dollar and (\$1.00) per hour each year.
- (b) Except as provided in subsection (d), the Minimum Wage rate for Schedule 2 Employers shall be:
 - (i) Effective August 24, 2015, eight dollars and fifty cents (\$8.50) per hour;
 - (ii) Effective January 1, 2017, nine dollars (\$9.00) per hour;
 - (iii) Effective January 1, 2018 through January 1, 2021, an additional one dollar (\$1.00) per hour each year.
- (c) The City of Kansas City, Missouri shall post the Minimum Wage rates established by this Ordinance on its website after this Ordinance becomes effective and at least ninety (90) days prior to each adjustment.

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- (d) Beginning January 1, 2021 and on January 1 of successive years for Schedule 1 Employers, and beginning January 1, 2022, and on January 1 of successive years for Schedule 2 Employers, the Minimum Wage shall be adjusted based upon the increase or decrease in the cost of living. On September 30, 2020 and on each September 30 of each successive year for Schedule 1 Employers, and on September 30, 2022, and on each September 30 of each successive year for Schedule 2 Employers, the City of Kansas City Human Relations Department shall measure the increase or decrease in the cost of living by the percentage increase or decrease as of the preceding July over the level as of July of the immediately preceding year of the Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI-W) or a successor index as published by the U.S. Department of Labor or its successor agency, with the amount of the Minimum Wage increase or decrease rounded to the nearest five cents. The City of Kansas City, Missouri shall post on its website a bulletin announcing the adjusted Minimum Wage rate for the upcoming calendar year no later than ninety (90) days prior to each adjustment.
- (e) A Tipped Employee shall be paid a minimum cash wage directly by a Schedule 1 Employer of no less than fifty percent (50%) of the Minimum Wage established by subsection (a) this Section. A Tipped Employee shall be paid a minimum cash wage directly by a Schedule 2 Employer of no less than fifty percent (50%) of the Minimum Wage established by subsection (b) of this Section. An Employer may consider Tips as part of wages of a Tipped Employee, but the Tips combined with the minimum cash wage paid directly by the Employer shall not equal less than the Minimum Wage as provided in subsections (a) and (b) of this Section. In the event a Tipped Employee earns insufficient Tips combined with this minimum cash wage to receive a wage at least equal to the Minimum Wage established by this Article, the Employer shall pay the Employee the difference to ensure the Employee receives a wage equal to the Minimum Wage established by this Article. All Tips received by Tipped Employees are the sole property of the Tipped Employee and shall be retained by the Tipped Employee, except that nothing in this Section shall prohibit a valid tip pool under which Tips are pooled and distributed among all Tipped Employees, provided that only the amount actually retained by each Employee shall be considered part of that Employee's wages.

DIVISION 2. ENFORCEMENT

Sec. 38-204. Prohibition Against Retaliation and Circumvention.

It shall be unlawful for any Employer or Employer's agent or representative to discharge, demote, deny promotion to or in any way discriminate against an Employee in the terms or conditions of employment in retaliation for the person asserting a claim or right pursuant to this Article or assisting another person to do so.

Sec. 38-205. Remedies and Penalties.

- (a) The Human Relations Department may promulgate rules and regulations regarding the interpretation, application and enforcement of this Ordinance. The Human Relations Department is 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.

- (b) A person violating this Article shall be subject to a fine of up to \$1,000.00 per violation. Any person violating any of the requirements of this Article shall be guilty of a separate offense for each week or portion thereof and for each worker or person as to which any such violation has occurred.
- (c) The remedies provided in this Article are not exclusive, and nothing in this Article shall preclude any person from seeking any other remedies, penalties, or relief provided by law.

DIVISION 3. APPLICATION

Sec. 38-207. Prospective Application.

Nothing in this Article shall be deemed to, nor shall be applied in such a manner, so as to have a constitutionally prohibited effect as an ex post facto law or impairment of an existing contract within the meaning of the Missouri Constitution, Article 1, Section 13.

Sec. 38-208. Severability.

The requirements and provisions of this article are severable. In the event that any requirement, provision, part, subpart or clause of this article, or the application thereof to any person or circumstance, is held by a court of competent jurisdiction to be invalid or unenforceable, it is the intent of the Council that the remainder of the article be enforced to the maximum extent possible consistent with the objective of ensuring a Minimum Wage.

Sec. 38-209. Notice Posting.

Any holder of a business license shall, as a condition of obtaining or holding a business license, post and display in a prominent location next to its business license a notice that the business is in compliance with the provisions of this article and shall include the text of sections 38-202, 38-203 and 38-204 of this article. Failure to comply with this requirement is a violation of this article and, in addition, shall constitute grounds for suspension, revocation, or termination of the business license.

Sec. 38-210. Procedure.

A complaint form for use in reporting violations of this Ordinance shall be available on the City webpage for use in reporting violations.
