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1 has received a certificate from the state labor commissioner pursuant to § 50-
2 4-23 NMSA 1978 [~~or § 50-4-21(c)(12) NMSA 1978~~].

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

12 [~~MINIMUM WAGE, MINIMUM WAGE RATE. The minimum hourly rates of~~
13 ~~monetary compensation for work as specified in this article.~~]

14 [City Minimum Wage, City Minimum Wage Rate. The minimum hourly rate
15 of monetary compensation for work as set by the City of Albuquerque.

16 Prevailing Minimum Wage. The greatest minimum hourly rate of monetary
17 compensation for work as required by Albuquerque city ordinance, or by New
18 Mexico state law or by federal law.]

19 **TIP.** A sum presented by a customer as a gift or gratuity in recognition of
20 some service performed for the customer. **TIP** shall include only tips actually
21 received by an employee as money belonging to him or her. Where employees
22 practice tip pooling or splitting, as where wait staff give a portion of their tips
23 to bus persons, both the actual amounts retained by the waiters or waitresses
24 and those given the bus persons shall be considered **TIPS** of the individual
25 employee who retains them. A compulsory charge for service imposed on a
26 customer by an employer's establishment shall not be considered a **TIP** unless
27 it is distributed by the employer to its employees.

28 **TIPPED EMPLOYEE.** Any employee engaged in an occupation in which he
29 or she customarily and regularly receives tips from customers.

30 **TIPPED MINIMUM WAGE.** The minimum cash wage that a tipped
31 employee must receive from his or her employer, as provided under § 13-12-
32 32 3(A).

33 § 13-12-3 MINIMUM WAGE.

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1 (A) *Minimum wage payment required.* Except as provided herein,
2 employers shall pay all employees ~~[no less than the minimum wage for each~~
3 ~~hour worked within the municipal limits of the city.]~~ [their regular rate of pay
4 for all hours worked within the municipal limits of the city, but in no event
5 shall an employer pay an employee less than the Prevailing Minimum Wage for
6 all hours] ~~[each hour]~~ worked. [For all hours worked in excess of forty (40)
7 hours within a seven-day period employers shall pay employees at one and
8 one-half times their regular rate of pay] ~~[within the municipal limits of the city].~~
9 Tips or commissions received and retained by a tipped employee may be
10 counted as wages and credited towards partial satisfaction of the [Prevailing]
11 minimum wage. Provided, however, that the cash wage paid to a tipped
12 employee by ~~[his or her]~~ [their] employer shall be no less than the tipped
13 minimum wage, which ~~[, beginning January 1, 2013, shall be 45% of the~~
14 ~~minimum wage, and beginning January 1, 2014 and each year thereafter,]~~ shall
15 be 60% of the [Prevailing] Minimum Wage. ~~[An employer may credit tips as~~
16 ~~part of the wages of a tipped employee only if the employer informs the tipped~~
17 ~~employee in advance in writing, pays the tipped employee a cash wage equal~~
18 ~~to or greater than the tipped minimum wage, and is able to establish by the~~
19 ~~tipped employee's declaration for Federal Insurance Contributions Act (FICA)~~
20 ~~purposes or by its records of charged tips that the total of the tips received by~~
21 ~~the tipped employee and the cash wages paid by the employer is equal to or~~
22 ~~greater than the minimum wage. The tips received by a tipped employee~~
23 ~~become the property of the tipped employee and may not be shared with the~~
24 ~~employer. This subsection shall not be construed to prohibit the pooling of~~
25 ~~tips among employees who customarily and regularly receive tips.]~~
26 (B) *Minimum wage rate.* ~~[Beginning January 1, 2007, the minimum wage~~
27 ~~for employees shall be an hourly rate of \$6.75. Beginning January 1, 2008, the~~
28 ~~minimum wage for employees shall be an hourly rate of \$7.15. Beginning~~
29 ~~January 1, 2009, the minimum wage for employees shall be an hourly rate of~~
30 ~~\$7.50. Beginning January 1, 2013, the minimum wage for employees shall be~~
31 ~~an hourly rate of \$8.50.]~~ [The City Minimum Wage Rate is \$12.00 per hour,
32 effective January 1, 2025. In the event that the minimum wage rate mandated
33 by either the State of New Mexico or the United States is higher that the City

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1 minimum wage rate of \$12.00 per hour, the higher rate shall prevail and the
2 Prevailing Minimum Wage Rate shall be considered the City’s minimum wage
3 rate.] For employers who provide healthcare and/or childcare benefits to an
4 employee during any pay period for which the employer pays an amount for
5 those healthcare [and/or childcare] benefits equal to or in excess of an
6 annualized cost of \$2,500.00, ~~[, beginning January 1, 2007, the minimum wage~~
7 ~~for that employee shall be an hourly rate of \$5.75, in addition to the healthcare~~
8 ~~benefits and/or childcare benefits, beginning January 1, 2008, the minimum~~
9 ~~wage for that employee shall be an hourly rate of \$6.15, in addition to the~~
10 ~~healthcare and/or childcare benefits, beginning January 1, 2009, the minimum~~
11 ~~wage for that employee shall be an hourly rate of \$6.50, in addition to the~~
12 ~~healthcare and/or childcare benefits, and beginning January 1, 2013 and each~~
13 ~~year thereafter,]~~ the minimum wage for that employee ~~[shall]~~ [may] be an
14 hourly rate of [up to] \$1.00 less than the current minimum wage otherwise
15 applicable to employees who do not receive such benefits, [but in no event
16 shall the deduction decrease an employee’s pay rate below the State or
17 Federal minimum wage.] ~~rate paid be less than the amount mandated by State~~
18 ~~or federal law].~~

19 (C) *Annual cost of living adjustment.* Beginning on January 1,
20 [2026] ~~[2014]~~ and annually on each January 1 thereafter, the ~~[minimum wage~~
21 ~~rate]~~ [City Minimum Wage Rate] shall be adjusted based on the increase, if
22 any, in the cost of living, and rounded to the nearest multiple of five cents [or
23 alternatively, to an amount which is equal to any minimum wage established
24 by the State of New Mexico or the United States, whichever is highest]. The
25 increase in the cost of living shall be calculated based on the percentage
26 increase, if any, as of August of the immediately preceding year over the level
27 as of August of the previous year of the Consumer Price Index [["CPI"]] (All
28 Urban Wage Earners and Clerical Workers, U.S. City Average for All Items) or
29 its successor index as published by the U.S. Department of Labor or its
30 successor agency. [In any year where the CPI adjustment is zero or less than
31 zero, there shall be no change in the City Minimum Wage Rate.] The adjusted
32 tipped minimum wage shall be calculated based on the adjusted minimum

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1 wage, and rounded to the nearest multiple of five cents. The city shall publish
2 forthcoming year on its Internet home page by October 15 of each year, and
3 they shall become effective on January 1 of the forthcoming year.

4 **§ 13-12-4 NOTICE, POSTING AND RECORDS.**

5 (A) *Notice to employees.* Every employer shall post in a conspicuous
6 place at any workplace or job site where any employee works a notice
7 published each year by the City Attorney informing employees of the current
8 minimum wage rates and of their rights under this article. Every employer
9 shall post such notices in English and Spanish.

10 (B) *Records.* Employers shall maintain payroll records showing the
11 hours worked daily by and the wages paid to all employees. Employers shall
12 retain payroll records pertaining to employees for a period of three years.
13 When the employer uses tips to meet the minimum wage for an employee, the
14 employer must have a tip declaration signed by the tipped employee for each
15 pay period.

16 **§ 13-12-5 IMPLEMENTATION AND ENFORCEMENT.**

17 (A) *Implementation and Rulemaking.* The city shall implement and
18 enforce this article and shall promulgate appropriate guidelines or rules for
19 such purposes. Any guidelines or rules promulgated by the city shall have the
20 force and effect of law and may be relied on by employers, employees, and
21 other parties to determine their rights and responsibilities under this article.
22 Any such guidelines or rules shall establish procedures for ensuring fair,
23 efficient and cost-effective implementation of this article, including
24 supplementary procedures, such as a hotline, for helping to inform employees
25 of their rights under this article and for monitoring employer compliance with
26 this article.

27 (B) ~~[Civil enforcement.]~~ [Private Cause of Action] Any employee
28 receiving less than the wage to which the employee is entitled under this
29 article may bring a civil action in a court of competent jurisdiction and, upon
30 prevailing, shall recover the balance of the wages owed, including interest
31 thereon, and an additional amount equal to twice the wages owed, and any
32 other appropriate legal or equitable relief.

33 [(C) Retaliation Prohibited.] Any employee who has suffered discrimination

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1 in any manner or had adverse [employment] action taken against that
2 employee in retaliation for exercising rights protected under this article may
3 bring a civil action in a court of competent jurisdiction and, upon prevailing,
4 shall recover actual damages plus reinstatement in the case of discharge. In
5 any case where an employee has been discharged in retaliation for exercising
6 rights under this article, the period of violation extends from the day of
7 discharge until the day the employee is reinstated, the day the employee
8 agrees to waive reinstatement or, in the case of an employee who may not be
9 rehired, from the day of discharge until the day legal judgment is final. In such
10 case, unpaid wages and actual damages recovered shall be payable to the
11 individual employee as to whom the violation occurred. A plaintiff prevailing in
12 an action to enforce this article shall be entitled to recover his or her costs
13 and expenses of suit and reasonable attorney's fees.

14 [D] ~~[(C)]~~ *Criminal penalty.* Any person who violates this article shall be
15 deemed guilty of a petty misdemeanor and upon conviction shall be subject to
16 the criminal penalty provisions set forth in § 1-1-99 of this code of ordinances.
17 Each separate violation shall constitute a separate offense and each day of
18 violation shall constitute a separate offense.

19 [E] ~~[(D)]~~ *Civil Enforcement.* The City Attorney or their
20 designee shall have the following authority:

- 21 1. To implement administrative rules consistent with this ordinance;
- 22 2. To initiate investigations, on its own initiative or upon receipt of an
23 allegation of a violation, to determine compliance with this ordinance at
24 any time, in accordance with administrative rule;
- 25 3. To establish an administrative process to determine an employer's
26 compliance with this ordinance where there is cause to believe that an
27 employer is not in compliance with this ordinance, in accordance with
28 administrative rule;
- 29 4. To sanction employers for noncompliance with this ordinance through
30 the issuance of wage orders and the restriction of licenses, permits, and
31 privileges related to the conduct of business within the municipal limits
32 of the City;
- 33 5. To judicially enforce this ordinance in a court of competent jurisdiction.

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1 including but not limited to actions for declaratory, injunctive and legal
2 relief, on behalf of the City and, in the sole discretion of the City
3 Attorney, any employee adversely affected by an employer's
4 noncompliance with this ordinance.]

5 [(F) The City Attorney, or their designee, has sole discretion to decide
6 whether to investigate a complaint or otherwise pursue a possible violation of
7 this article.]

8 [(G) All private actions to enforce this ordinance shall be brought within
9 three (3) years of the last violation of this ordinance. To the extent permitted
10 by law, the statute of limitations for civil actions is tolled during any
11 investigation of an employer by the City Attorney.

12 [(H) The remedies provided herein shall not be exclusive, but are
13 supplemental to all other remedies provided by law.]

14 **§ 13-12-6 RELATIONSHIP TO OTHER REQUIREMENTS.**

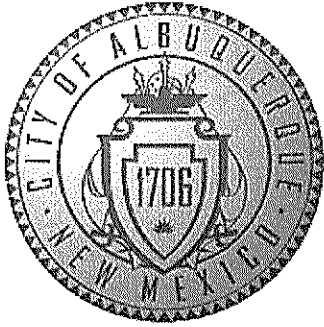
15 This article provides for payment of minimum wage rates and shall not be
16 construed to preempt or otherwise limit or affect the applicability of any other
17 law, regulation, requirement, policy or standard that provides for payment of
18 higher or supplemental wages, benefits, or protections. Nothing contained in
19 this article prohibits an employer from paying more than the minimum wage
20 rates established under this article.

21 **SECTION 2. SEVERABILITY CLAUSE.** If any section, paragraph, sentence,
22 clause, word or phrase of this ordinance is for any reason held to be invalid or
23 unenforceable by any court of competent jurisdiction, such decision shall not
24 affect the validity of the remaining provisions of this ordinance. The Council
25 hereby declares that it would have passed this ordinance and each section,
26 paragraph, sentence, clause, word or phrase thereof irrespective of any
27 provision being declared unconstitutional or otherwise invalid.

28 **SECTION 3. COMPILATION.** Section 1 of this ordinance shall amend, be
29 incorporated in and compiled as part of the Revised Ordinances of
30 Albuquerque, New Mexico, 1994.

31 **SECTION 4. EFFECTIVE DATE.** This ordinance takes effect five days after
32 publication by title and general summary.

33



Mayor Timothy M. Keller

CITY OF ALBUQUERQUE


Albuquerque, New Mexico

Office of the Mayor

INTER-OFFICE MEMORANDUM

March, 25 2024

TO: Dan Lewis, President, City Council

FROM: Timothy M. Keller, Mayor 

SUBJECT: Amendments to the Minimum Wage Ordinance

The Mayor's Office recommends amending the Minimum Wage Ordinance, Chapter 13, Article 12.

The proposed amendment will:

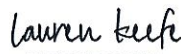
- Raise the City minimum wage to \$12.00/hr consistent with state law, keep the current indexed inflation tied to the Consumer Price Index and ensure the minimum wage will not fall below state or federal minimum wage going forward.
- Require that employers pay overtime pay in accordance with state and federal law
- Clarify that the City may pursue civil or administrative enforcement of wage violations (the current law only provides for criminal charges)

AMENDMENTS TO THE MINIMUM WAGE ORDINANCE


Approved:

Approved as to Legal Form:


Samantha Sengel Date
Chief Administrative Officer

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 3/25/2024 | 2:27 PM MDT
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Lauren Keefe Date
City Attorney

Approved:

DocuSigned by:
 3/25/2024 | 2:24 PM MDT
Director Anderson Date
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Cover Analysis

1. What is it?

Proposed amendments to the Albuquerque Minimum Wage Ordinance.

2. What will this piece of legislation do?

Update the Ordinance to bring the City minimum wage into alignment with state law and ensure the City can adequately address wage theft through administrative, civil or criminal penalties.

3. Why is this project needed?

The City's minimum wage ordinance's built-in increases have fallen behind the state minimum wage such that City minimum wage is now obsolete because it is less than the state minimum wage. This prevents the City from effectively enforcing the actual minimum wage. The current ordinance also does not provide remedies for wage theft where the employer fails to pay overtime pay required by federal law.

The current ordinance also only provides for criminal penalties for violators, which limits the City's enforcement options.

4. How much will it cost and what is the funding source?

Amending this law will not impose a cost on the City.

5. Is there a revenue source associated with this contract? If so, what level of income is projected?

No

6. What will happen if the project is not approved?

The City will not be able to effectively enforce minimum wage requirements or address wage theft.

7. Is this service already provided by another entity?

The State Department of Workforce Solutions is tasked with enforcing the state minimum wage law. However, due to capacity, there is about a 2-year backlog for enforcement of wage claims.