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2 AMENDING ROA 1994, CHAPTER 13, ARTICLE 12 (“THE ALBUQUERQUE
3 MINIMUM WAGE ORDINANCE”) TO INCREASE THE MINIMUM WAGE RATE,
4 CHANGE THE CALCULATION METHOD FOR ANNUAL COST OF LIVING
5 ADJUSTMENTS, AND REMOVE OBSOLETE PROVISIONS.

9 WHEREAS, the average earnings per job in Albuquerque is 20% below the
0 national average, but Fair Market Rent (FMR), or 40th percentile rent, as
1 calculated by the U.S. Department of Housing and Urban Development (HUD)
2 for a two-bedroom unit in Albuquerque is 25% *higher* than the national
3 average; and

9 **WHEREAS, according to the United States Census Bureau’s American**
10 **Community Survey, median gross rent for occupied units in Albuquerque**
11 **increased 36% between 2019 and 2024, tracking with HUD’s established FMR;**
12 **and**

3 **WHEREAS, the average earnings per job in Albuquerque is 20% below the**
4 **national average, but the cost of living in Albuquerque is only 15% below the**
5 **national average; and**

1 WHEREAS, the combination of lower earnings and higher costs of housing
2 and living in Albuquerque means that many Albuquerque workers do not earn
3 sufficient wages to support themselves and their families; and

4 WHEREAS, as a result of lower wages and higher housing costs, low-
5 income workers in Albuquerque must spend a disproportionate percentage of
6 their income sheltering themselves and their families; for example, FMR for a
7 two-bedroom housing unit exceeds 30% of the combined gross income of two
8 full-time minimum wage workers at the prevailing state minimum wage of
9 \$12/hour; and

10 WHEREAS, the Albuquerque Region Housing Needs Assessment (Root
11 Policy Research, 2024) found that over half (52%) of all renters in Albuquerque
12 are cost burdened because they pay more than 30% of their income on
13 housing, and significant subsidies are needed to make housing affordable; and

14 WHEREAS, low wages coupled with high housing costs reduce the ability
15 of low- and moderate-income residents to access affordable housing, and as a
16 result, the City has had to invest significant tax dollars to support affordable
17 housing and rental assistance; and

18 WHEREAS, the community bears additional costs of low wages in the form
19 of increased demand for taxpayer-funded social services including homeless
20 shelters, meal programs, summer and after-school programs, and healthcare
21 for the uninsured; and

22 WHEREAS, according to the United States Census Bureau, as of 2024,
23 14.7% of Albuquerque residents live below the poverty level; and

24 WHEREAS, the public welfare, health, safety, and prosperity of
25 Albuquerque require wages and benefits sufficient to ensure a decent and
26 healthy life for workers and their families.

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

30 SECTION 1. The Albuquerque Minimum Wage Ordinance, ROA 1994
31 Chapter 13, Article 12, is amended as follows:

32 § 13-12-1 SHORT TITLE.

33 This article may be cited as "The Albuquerque Minimum Wage Ordinance."

1 § 13-12-2 DEFINITIONS.

2 For the purpose of this article, the following definitions shall apply unless
3 the context clearly indicates or requires a different meaning.

4 CITY. The City of Albuquerque.

5 EMPLOYEE. Any person who performs work for an employer for monetary
6 compensation for at least two hours in a given week within the municipal
7 limits of the city. EMPLOYEE shall include persons who perform work for an
8 employer on a full-time, part-time, seasonal, or temporary basis. EMPLOYEE
9 shall not include any person who is excluded from the definition of employee
10 under NMSA §§ 50-4-21(c)(3)-(5), (7) of the New Mexico Minimum Wage Act,
11 except that persons employed by the City of Albuquerque are employees.
12 EMPLOYEE shall not include interns working for an employer for academic
13 credit in connection with a course of study at an accredited school, college or
14 university or employees working for an accredited school, college or
15 university pursuant to a work-study program while attending that school,
16 college or university. EMPLOYEE shall not include any person who has
17 received a certificate from the state labor commissioner pursuant to § 50-4-23
18 NMSA 1978 or § 50-4-21(c)(12) NMSA 1978.

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

28 [ALBUQUERQUE] MINIMUM WAGE, [ALBUQUERQUE] MINIMUM WAGE
29 RATE. The minimum hourly rates of monetary compensation for work as
30 specified in this article [or the State of New Mexico Minimum Wage Rate,
31 whichever is greater].

32 TIP. A sum presented by a customer as a gift or gratuity in recognition of
33 some service performed for the customer. TIP shall include only tips actually

1 received by an employee as money belonging to him or her. Where employees
2 practice tip pooling or splitting, as where wait staff give a portion of their tips
3 to bus persons, both the actual amounts retained by the waiters or waitresses
4 and those given the bus persons shall be considered TIPS of the individual
5 employee who retains them. A compulsory charge for service imposed on a
6 customer by an employer's establishment shall not be considered a TIP unless
7 it is distributed by the employer to its employees.

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

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

12 **§ 13-12-3 MINIMUM WAGE.**

13 (A) Minimum wage payment required. Except as provided herein, employers
14 shall pay all employees no less than the [Albuquerque] minimum wage for
15 each hour worked within the municipal limits of the city. Tips or commissions
16 received and retained by a tipped employee may be counted as wages and
17 credited towards partial satisfaction of the [Albuquerque] minimum wage.

18 Provided, however, that the cash wage paid to a tipped employee by his or her
19 employer shall be no less than the tipped minimum wage, which, beginning
20 ~~[January 1, 2013, shall be 45% of the minimum wage, and beginning January 1,~~
21 ~~2014]~~ [January 1, 2027] and each year thereafter, shall be 60% of the

22 [Albuquerque] minimum wage. An employer may credit tips as part of the
23 wages of a tipped employee only if the employer informs the tipped employee
24 in advance in writing, pays the tipped employee a cash wage equal to or
25 greater than the tipped minimum wage, and is able to establish by the tipped
26 employee's declaration for Federal Insurance Contributions Act (FICA)
27 purposes or by its records of charged tips that the total of the tips received by
28 the tipped employee and the cash wages paid by the employer is equal to or
29 greater than the [Albuquerque] minimum wage. The tips received by a tipped
30 employee become the property of the tipped employee and may not be shared
31 with the employer. This subsection shall not be construed to prohibit the
32 pooling of tips among employees who customarily and regularly receive tips.

1 (B) Minimum wage rate. ~~[Beginning January 1, 2007, the minimum wage for~~
2 ~~employees shall be an hourly rate of \$6.75. Beginning January 1, 2008, the~~
3 ~~minimum wage for employees shall be an hourly rate of \$7.15. Beginning~~
4 ~~January 1, 2009, the minimum wage for employees shall be an hourly rate of~~
5 ~~\$7.50. Beginning January 1, 2013, the minimum wage for employees shall be~~
6 ~~an hourly rate of \$8.50.]~~ [Beginning January 1, 2027, the Albuquerque
7 minimum wage for employees shall be an hourly rate of \$15.00.] For
8 employers who provide healthcare and/or childcare benefits to an employee
9 during any pay period for which the employer pays an amount for those
10 healthcare benefits equal to or in excess of an annualized cost of \$2,500.00,
11 beginning ~~[January 1, 2007, the minimum wage for that employee shall be an~~
12 ~~hourly rate of \$5.75, in addition to the healthcare benefits and/or childcare~~
13 ~~benefits, beginning January 1, 2008, the minimum wage for that employee~~
14 ~~shall be an hourly rate of \$6.15, in addition to the healthcare and/or childcare~~
15 ~~benefits, beginning January 1, 2009, the minimum wage for that employee~~
16 ~~shall be an hourly rate of \$6.50, in addition to the healthcare and/or childcare~~
17 ~~benefits, and beginning January 1, 2013]~~ [January 1, 2027] and each year
18 thereafter, the minimum wage for that employee shall be an hourly rate of
19 \$1.00 less than the current [Albuquerque] minimum wage otherwise applicable
20 to employees who do not receive such benefits.

21 (C) Annual cost of living adjustment.

22 [(1)] Beginning on January 1, ~~[2044]~~ [2028] and annually on each
23 January 1 thereafter, the [Albuquerque] minimum wage shall be adjusted
24 based on ~~[the increase, if any, in the cost of living, and rounded to the~~
25 ~~nearest multiple of five cents.]~~ [the average of the annual increase of the
26 following two factors, and rounded to the nearest multiple of five cents,
27 except that the minimum wage shall never decrease:

28 (a) The ~~[increase in the]~~ cost of living ~~[shall be calculated based on~~
29 ~~the percentage increase, if any,]~~ as of August of the immediately preceding
30 year over the level as of August of the previous year of the Consumer Price
31 Index (All Urban Wage Earners and Clerical Workers, U.S. City Average for
32 All Items) or its successor index as published by the U.S. Department of
33 Labor or its successor agency[, and]

1 [(b) Fair Market Rent for a two-bedroom housing unit in Albuquerque,
2 New Mexico, as published annually by the United States Department of
3 Housing and Urban Development (HUD)].

4 [(2)] The adjusted tipped minimum wage shall be calculated based on
5 the adjusted [Albuquerque] minimum wage, and rounded to the nearest
6 multiple of five cents.

7 [(3)] The city shall publish the adjusted [Albuquerque] minimum wage
8 and the adjusted tipped minimum wage for the forthcoming year on its
9 Internet home page by October 15 of each year, and they shall become
10 effective on January 1 of the forthcoming year.

11 § 13-12-4 NOTICE, POSTING AND RECORDS.

12 (A) Notice to employees. Every employer shall post in a conspicuous place
13 at any workplace or job site where any employee works a notice published
14 each year by the City Attorney informing employees of the current
15 [Albuquerque] minimum wage rates and of their rights under this article. Every
16 employer shall post such notices in English and Spanish.

17 (B) Records. Employers shall maintain payroll records showing the hours
18 worked daily by and the wages paid to all employees. Employers shall retain
19 payroll records pertaining to employees for a period of three years. When the
20 employer uses tips to meet the minimum wage for an employee, the employer
21 must have a tip declaration signed by the tipped employee for each pay
22 period.

23 § 13-12-5 IMPLEMENTATION AND ENFORCEMENT.

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

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

20 (C) Criminal penalty. Any person who violates this article shall be deemed
21 guilty of a petty misdemeanor and upon conviction shall be subject to the
22 criminal penalty provisions set forth in § 1-1-99 of this code of ordinances.
23 Each separate violation shall constitute a separate offense and each day of
24 violation shall constitute a separate offense.

25 (D) The City Attorney shall enforce this article.

26 **§ 13-12-6 RELATIONSHIP TO OTHER REQUIREMENTS.**

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

1 **SECTION 2. SEVERABILITY.** If any section, paragraph, sentence, clause,
2 word or phrase of this Ordinance is for any reason held to be invalid or
3 unenforceable by any court of competent jurisdiction, such decision shall not
4 affect the validity of the remaining provisions of this Ordinance. The Council
5 hereby declares that it would have passed this Ordinance and each section,
6 paragraph, sentence, clause, word or phrase thereof irrespective of any
7 provision being declared unconstitutional or otherwise invalid.

8 **SECTION 3. COMPILATION.** SECTION 1 of this Ordinance amends, is
9 incorporated in, and is to be compiled as part of the Revised Ordinances of
10 Albuquerque, New Mexico, 1994.

11 **SECTION 4. EFFECTIVE DATE.** This Ordinance takes effect 5 days after
12 publication by title and general summary.

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