

CITY of ALBUQUERQUE SIXTEENTH COUNCIL

COUNCIL BILL NO. _____ ENACTMENT NO. _____

SPONSORED BY:

1 PROPOSAL AND SPECIAL ELECTION RESOLUTION
 2 REGARDING THE ALBUQUERQUE LIVING WAGE INITIATIVE; ADOPTING A
 3 PROPOSED LIVING WAGE ORDINANCE; ADOPTING A PROPOSITION TO BE
 4 SUBMITTED TO THE VOTERS AT THE OCTOBER 4, 2005 MUNICIPAL
 5 ELECTION TO APPROVE OR DISAPPROVE THE PROPOSED ORDINANCE.
 6 BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF
 7 ALBUQUERQUE:

8 Section 1. That the City Clerk is instructed to place the following summary
 9 of the proposal on the ballot for the October 4, 2005 municipal election, and
 10 the qualified voters of the City of Albuquerque shall be permitted to vote "for"
 11 or "against" the following proposition:

PROPOSITION

12
 13 PROPOSING TO ENACT A LIVING WAGE ORDINANCE THAT ESTABLISHES A
 14 MINIMUM WAGE IN THE CITY OF ALBUQUERQUE OF \$7.50 PER HOUR FOR
 15 REGULAR EMPLOYEES AND \$4.50 PER HOUR FOR TIPPED EMPLOYEES.
 16 THE ORDINANCE WILL NOT COVER SMALL BUSINESSES WITH TEN OR
 17 FEWER EMPLOYEES, WORK-STUDY STUDENTS, INTERNS WORKING FOR
 18 ACADEMIC CREDIT, OR CERTAIN OTHER EMPLOYEES WHO ARE EXEMPT
 19 FROM THE NEW MEXICO MINIMUM WAGE LAW. EACH YEAR IN THE FUTURE
 20 THE MINIMUM WAGE RATES WILL BE INCREASED TO KEEP PACE WITH
 21 INFLATION. THE ORDINANCE PROVIDES FOR ENFORCEMENT, INCLUDING
 22 DOUBLE DAMAGES FOR UNPAID WAGES, AND FORBIDS RETALIATION
 23 AGAINST EMPLOYEES FOR EXERCISING THEIR RIGHTS.

24 The City Clerk shall cause the full text of the Proposition that follows to be
 25 published for four consecutive weeks in English and Spanish, the last

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1 publication to be not more than two weeks prior to the election at which time
 2 said Proposition shall be submitted to the electors of the City for their
 3 approval or rejection; and shall further provide notice of the content and
 4 purpose of the Proposition in both English and Spanish to inform electors
 5 about the amendments in the time and manner provided by law. This
 6 resolution for special election shall be published once a week for four
 7 consecutive weeks with the first publication between fifty and sixty days
 8 before the election. The publication of this special election resolution shall
 9 contain the summary of the proposition set forth herein but shall not contain
 10 the full text of the proposition. The full text of the Proposed Ordinance that
 11 follows shall not appear on the ballot.

12 "ORDINANCE (full text)

13 ESTABLISHING THE ALBUQUERQUE LIVING WAGE ORDINANCE.

14 BE IT ORDAINED BY THE COUNCIL, THE GOVERNING BODY OF THE CITY OF
 15 ALBUQUERQUE:

16 Section 1. Short Title. This ordinance may be cited as "The Albuquerque
 17 Living Wage Ordinance."

18 Section 2. Findings. The Council finds that:

19 (A) Workers in Albuquerque must receive wages sufficient to ensure a
 20 decent and healthy life for them and their families;

21 (B) The costs of housing and health care have been rising rapidly but
 22 wages are not growing to keep up. Thousands of Albuquerque residents earn
 23 little more than the current New Mexico and federal minimum wage of \$5.15
 24 per hour. This translates to just \$10,712 per year for a full-time worker which
 25 is not enough to meet their families' basic needs, particularly given the costs
 26 of living and housing in Albuquerque, which are higher than in most other
 27 parts of New Mexico;

28 (C) As a consequence, Albuquerque's low-wage residents must work
 29 long hours and multiple jobs, causing hardship for their families, preventing
 30 them from pursuing further education, and limiting their participation in the
 31 civic and cultural life of our community;

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1 (D) An adequate minimum wage will promote the health, safety, and
 2 welfare of all members of the Albuquerque community rather than just those
 3 receiving the minimum wage. An adequate minimum wage reduces employee
 4 turnover, ensuring a more stable workforce for our city. When working
 5 families have more money to spend on necessities, consumer spending is
 6 increased and neighborhood businesses are invigorated;

7 (E) An adequate minimum wage also helps ensure that our community's
 8 employers do their part in sharing the costs of maintaining a healthy
 9 workforce. When employers pay inadequate wages, they shift the cost of
 10 supporting their workers to the taxpayers who must pay for increased demand
 11 for public assistance, emergency health care, and subsidized housing;

12 (F) Without an adequate minimum wage, responsible employers who
 13 treat their workers fairly by paying decent wages face unfair competition from
 14 employers who try to cut costs by cutting their workers' pay. An adequate
 15 minimum wage, and protections to ensure that all employers follow it, will
 16 level the playing field and protect responsible employers and their workers
 17 against this unfair competition;

18 (G) For all of these reasons, it is in the public interest to ask employers
 19 in our community do their part by establishing a minimum wage that is more
 20 adequate to meet the cost of living in Albuquerque. In addition, because the
 21 benefits of an adequate minimum wage will be realized only if all members of
 22 the community are aware of and comply with it, it is important to establish
 23 effective procedures for educating workers and employers about the minimum
 24 wage and for ensuring its enforcement.

25 Section 3. Definitions.

26 *CITY.* The City of Albuquerque.

27 *CITY ATTORNEY.* The City Attorney or his/her designee.

28 *EMPLOYER.* Any person, partnership, association, corporation, business
 29 trust, legal representative, or any other entity, or group of persons or entities,
 30 including corporate officers or executives, who directly or indirectly or
 31 through an agent or any other person including, but not limited to, through a
 32 subsidiary or through the services of a temporary services agency, a staffing
 33 agency, a building services contractor, or any similar entity, employs or

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1 exercises control over the wages, hours or working conditions of any
2 Employee. "Employer" shall include the City of Albuquerque.

3 *EMPLOYEE.* Any person who performs work for an Employer for monetary
4 compensation for at least two (2) hours in a given week within the geographic
5 boundaries of the City. "Employee" shall include persons who perform work
6 for an Employer on a full-time, part-time, seasonal, or temporary basis, and
7 shall include independent contractors and persons who perform work for an
8 Employer indirectly through a subsidiary or through the services of a
9 temporary services agency, a staffing agency, a building services contractor,
10 or any similar entity. "Employee" shall include any former Employee.
11 Employee shall not include any person who is excluded from the definition of
12 employee under NMSA §§ 50-4-21(c)(1)-(5), (7) of the New Mexico Minimum
13 Wage Act. "Employee" shall not include interns working for an Employer for
14 academic credit in connection with a course of study at an accredited school,
15 college or university or employees working for an accredited school, college
16 or university pursuant to a work-study program while attending that school,
17 college or university. "Employee" shall not include any person who is a
18 handicapped individual or who is a seasonal employee of an educational,
19 charitable or religious youth camp or retreat, and who is the subject of a valid
20 certificate authorizing their employment at a wage lower than the New Mexico
21 Minimum Wage issued by the New Mexico Department of Labor pursuant to
22 NMSA § 50-4-23 or NMSA § 50-4-21(c)(12).

23 *MINIMUM WAGE, MINIMUM WAGE RATE, MINIMUM WAGE FOR REGULAR*
24 *EMPLOYEES, AND MINIMUM WAGE FOR TIPPED EMPLOYEES.* The minimum
25 hourly rates of monetary compensation for work as specified in Section 4 of
26 this ordinance.

27 *SMALL BUSINESS.* Any Employer for which ten (10) or fewer persons work
28 for monetary compensation over the course of a given calendar month. In
29 determining the number of persons performing work for an Employer during a
30 given month for purposes of this definition, all persons performing work for
31 the Employer for monetary compensation at all places of business or
32 worksites, whether inside or outside of the City, on a full-time, part-time, or
33 temporary basis shall be counted, including independent contractors, persons

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1 working for any subsidiary or parent company of the Employer, and persons
2 made available to work through the services of a temporary services agency, a
3 staffing agency, a building services contractor, or any similar entity.

4 *REGULAR EMPLOYEE.* Any Employee who is not a Tipped Employee.

5 *TIP.* A sum presented by a customer as a gift or gratuity in recognition of
6 some service performed for them. "Tip" shall include only tips actually
7 received by an Employee as money belonging to him or her. Where
8 Employees practice tip pooling or splitting, as where wait staff give a portion
9 of their tips to bus persons, both the actual amounts retained by the waiters or
10 waitresses and those given the bus persons shall be considered "Tips" of the
11 individual Employee who retains them. A compulsory charge for service
12 imposed on a customer by an Employer's establishment shall not be
13 considered a "Tip" unless it is distributed by the Employer to its Employees.

14 *TIPPED EMPLOYEE.* Any Employee engaged in an occupation in which he
15 or she customarily and regularly receives Tips from customers.

16 Section 4. Minimum Wage.

17 (A) Minimum Wage Payment Required. Except as provided herein,
18 Employers shall pay Regular Employees no less than the Minimum Wage for
19 Regular Employees for each hour worked within the geographic boundaries of
20 the City. Employers shall pay Tipped Employees no less than the Minimum
21 Wage for Tipped Employees for each hour worked within the geographic
22 boundaries of the City, provided that the Employer meets the requirements
23 specified in this ordinance for eligibility to pay the Minimum Wage for Tipped
24 Employees.

25 (B) Minimum Wage Rate. Beginning on the effective date of this
26 ordinance, the Minimum Wage for Regular Employees shall be an hourly rate
27 of \$7.50 and the Minimum Wage for Tipped Employees shall be an hourly rate
28 of \$4.50.

29 (C) Inflation Indexing. To prevent inflation from eroding its value, no
30 later than September 30 of each year, beginning in calendar year 2006, the
31 Minimum Wage for Regular Employees and the Minimum Wage for Tipped
32 Employees shall both be adjusted based upon the increase (if any) from
33 August of the preceding year to August of the year in which the calculation is

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1 made in the U.S. City Average Consumer Price Index for All Urban Wage
2 Earners and Clerical Workers for All Items, or a successor index, as prepared
3 by the Bureau of Labor Statistics of the United States Department of Labor or
4 its successor. The adjusted Minimum Wage for Regular Employees and the
5 Minimum Wage for Tipped Employees shall then (1) be rounded to the nearest
6 five cents, and (2) become effective on January 1 of the following year as the
7 new Minimum Wage for Regular Employees and the new Minimum Wage for
8 Tipped Employees, replacing the Minimum Wage for Regular Employees and
9 the Minimum Wage for Tipped Employees previously established pursuant to
10 this ordinance.

11 (D) Small Businesses. Employers that are Small Businesses may pay
12 their Employees less than the Minimum Wage and shall not be subject to any
13 of the requirements of this ordinance.

14 Section 5. Notice, Posting and Records.

15 (A) Notice to Employees. Every Employer shall post in a conspicuous
16 place at any workplace or job site where any Employee works a notice
17 published each year by the City Attorney informing Employees of the current
18 Minimum Wage rates and of their rights under this ordinance. Every Employer
19 shall post such notices in English, Spanish, and any other language spoken
20 by at least five percent of Employees at the workplace or job site. Every
21 Employer shall also provide each Employee at the time of hire the Employer's
22 name, address and telephone number in writing. Every Employer shall allow
23 any member of the public access to non-work areas of the Employer's
24 business that are otherwise open to the public or customers generally, such
25 as parking lots, sidewalks, and pedestrian areas, to inform Employees of their
26 rights under this ordinance and other laws.

27 (B) Records. Employers shall maintain payroll records showing the
28 hours worked daily by and the wages paid to, and the number of piece-rate
29 units earned by and any applicable piece rate paid to, all Employees including
30 Employees who perform work at their place of business or worksite and who
31 are independent contractors or who perform work for the Employer through a
32 subsidiary or through the services of a temporary services agency, staffing
33 agency, building services contractor, or any similar entity. Employers shall

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1 retain payroll records pertaining to Employees for a period of three years, and
2 shall allow the City Attorney access to such records, with appropriate notice
3 and at a mutually agreeable time, to monitor compliance with the requirements
4 of this ordinance. Where an Employer does not maintain or retain adequate
5 records documenting wages paid or does not allow the City Attorney
6 reasonable access to such records, it shall be presumed that the Employer
7 paid no more than the applicable federal or state minimum wage, absent clear
8 and convincing evidence otherwise. Employers shall also keep a record
9 showing the names and addresses of all Employees employed and the ages of
10 all minors. When the Employer elects to provide the Minimum Wage for
11 Tipped Employees, the Employer must have a Tip declaration signed by the
12 Tipped Employee for each pay period showing on the payroll records that
13 when adding the Tips received to the wages paid by the Employer, the
14 Employee received no less than the Minimum Wage for Regular Employees for
15 all hours worked. When the Employer's time and payroll records do not meet
16 these requirements, the Employer may not pay the Minimum Wage for Tipped
17 Employees, but instead must pay the Minimum Wage for Regular Employees.
18 Employers shall allow any Employee or his or her designated representative to
19 inspect and copy the Employer's payroll records pertaining to that Employee
20 in order to verify that the Employer is complying with this ordinance.

21 Section 6. Prohibited Actions.

22 (A) It shall be unlawful for an Employer or any other person to
23 discriminate in any manner or take adverse action against any person in
24 retaliation for exercising rights protected under this ordinance. Rights
25 protected under this ordinance include, but are not limited to:

26 (1) The right to inquire about one's rights under this ordinance, to
27 request to be paid in accordance with this ordinance, to inquire about any
28 party's compliance with this ordinance, to file a formal or informal complaint
29 under this ordinance, or to inform any person about any party's alleged
30 noncompliance with this ordinance; and

31 (2) The right to inform any person of his or her potential rights
32 under this ordinance and to assist him or her in asserting such rights. The
33 protections of this ordinance shall apply to any person who mistakenly, but in

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1 good faith, alleges noncompliance with this ordinance. Taking adverse action
2 against a person within ninety (90) days of the person's exercise of rights
3 protected under this ordinance shall raise a rebuttable presumption of having
4 done so in retaliation for the exercise of such rights, which may be rebutted by
5 clear and convincing evidence that such action was taken for reasons not
6 forbidden under this ordinance.

7 (B) No Employer may fund wage increases required by this ordinance,
8 or otherwise respond to the requirements of this ordinance, by reducing the
9 wages of any of its Employees.

10 (C) For purposes of enforcing this ordinance, a person's immigration
11 status is irrelevant and in any proceedings undertaken to enforce it, no inquiry
12 shall be permitted into a person's immigration status.

13 Section 7. Implementation and Enforcement.

14 (A) Rulemaking. The City Attorney shall have the authority to
15 coordinate implementation and enforcement of this ordinance and may
16 promulgate appropriate guidelines or rules for such purposes. Any guidelines
17 or rules promulgated by the City Attorney shall have the force and effect of
18 law and may be relied on by Employers, Employees, and other parties to
19 determine their rights and responsibilities under this ordinance. Any such
20 guidelines or rules may establish procedures for ensuring fair, efficient and
21 cost-effective implementation of this ordinance, including supplementary
22 procedures for helping to inform Employees of their rights under this
23 ordinance, for monitoring Employer compliance with this ordinance, and for
24 providing administrative hearings to determine whether an Employer or other
25 person has violated the requirements of this ordinance.

26 (B) Administrative Enforcement. The City Attorney shall enforce this
27 ordinance by receiving and investigating complaints of alleged violations.
28 Any person or organization may file a complaint with the City Attorney
29 charging that an Employer has violated this ordinance as to any Employee.
30 When the City Attorney receives a complaint, the City Attorney may review
31 records regarding all Employees at the business or worksite in order to
32 protect the anonymity of the Employee identified in the complaint and to
33 determine whether a pattern of violations has occurred. The name of any

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1 Employee who submits or is identified in a complaint to the City Attorney shall
2 be kept confidential until the validity of the complaint is established by the
3 City Attorney. Where the City Attorney determines that an Employee's name
4 must be disclosed in order to investigate a complaint, it may disclose such
5 information only with the Employee's consent. The City Attorney may hold
6 hearings, make administrative determinations regarding alleged violations,
7 and negotiate settlements with Employers. Provided, however, that all
8 settlements negotiated by the City Attorney must provide for the payment of
9 any wages due, including interest thereon, and an additional amount as
10 liquidated damages equal to twice the amount of any wages due. Where the
11 City Attorney finds that an Employer has engaged in a pattern of violating this
12 ordinance, it shall also have the authority to revoke the Employer's business
13 license or registration for a period of time.

14 (C) Penalty. A person violating this ordinance shall be guilty of a petty
15 misdemeanor and, upon conviction, for each offense may be subject to a fine
16 of up to \$500. A person violating any of the requirements of this ordinance
17 shall be guilty of a separate offense for each day or portion thereof and for
18 each Employee or person as to which any such violation has occurred.

19 (D) Civil Enforcement. Any Employee receiving less than the wage to
20 which the Employee is entitled under this ordinance may bring a civil action in
21 a court of competent jurisdiction and, upon prevailing, shall recover the
22 balance of the wages owed, including interest thereon, and an additional
23 amount equal to twice the wages owed as liquidated damages, and any other
24 appropriate legal or equitable relief. Any Employee who has suffered
25 discrimination in any manner or had adverse action taken against that
26 Employee in retaliation for exercising rights protected under this ordinance
27 may bring a civil action in a court of competent jurisdiction and, upon
28 prevailing, shall recover actual damages and liquidated damages of \$150 per
29 day of violation, plus reinstatement in the case of discharge. In any case
30 where an Employee has been discharged in retaliation for exercising rights
31 under this ordinance, the period of violation extends from the day of discharge
32 until the day the Employee is reinstated, the day the Employee agrees to waive
33 reinstatement or, in the case of an Employee who may not be rehired, from the

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1 day of discharge until the day legal judgment is final. The requirements of this
 2 ordinance may also be enforced by the City Attorney, any organization
 3 representing an Employee who has suffered a violation, or any organization
 4 representing Employees who are suffering from unfair competition from an
 5 Employer that has violated the provisions of this ordinance. In such cases,
 6 unpaid wages, actual damages and liquidated damages recovered shall be
 7 payable to the individual Employee as to whom the violation occurred. A
 8 plaintiff prevailing in an action to enforce this ordinance shall be entitled to
 9 recover his or her costs and expenses of suit and reasonable attorney's fees.
 10 The amounts of all sums and payments authorized or required under this
 11 ordinance shall be updated annually for inflation, rounded to the nearest
 12 dollar, beginning January 1, 2007, using the inflation rate and procedures set
 13 forth in Section 4(c) of this ordinance.

14 Section 8. Relationship to Other Requirements. This ordinance provides
 15 for payment of Minimum Wage rates and shall not be construed to preempt or
 16 otherwise limit or affect the applicability of any other law, regulation,
 17 requirement, policy or standard that provides for payment of higher or
 18 supplemental wages, benefits, or protections. Nothing contained in this
 19 ordinance prohibits an Employer from paying more than the Minimum Wage
 20 rates established under this ordinance.

21 Section 9. Effective Date. This ordinance is intended to have prospective
 22 effect only and shall become effective on January 1, 2006.

23 Section 10. Severability Clause. If any section, paragraph, sentence,
 24 clause, word or phrase of this ordinance, or any requirement imposed or
 25 credit authorized pursuant to it, or the application thereof to any person or
 26 circumstance, is for any reason held to be invalid or unenforceable by any
 27 court of competent jurisdiction, such decision shall not affect the validity of
 28 the remaining provisions of this ordinance, or their application to other
 29 persons or circumstances. It is hereby declared that this ordinance and each
 30 section, paragraph, sentence, clause, word or phrase thereof would have been
 31 passed irrespective of any provision being declared unconstitutional or
 32 otherwise invalid."

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