

Finance Committee Meeting
Thursday, April 16, 2015
5:00 pm, Council Chambers

1. 5:00 P.M. Consideration And Action To Adopt A Minimum Wage Ordinance

Documents: [MINIMUM WAGE PACKET FROM MAYOR 4.10.2015_1.PDF](#)

DRAFT 4/10/2015

Chapter 33 MINIMUM WAGE ORDINANCE

<u>Art. I.</u>	<u>Purpose, §33.1</u>
<u>Art. II.</u>	<u>Definitions, §33.2 - 33-6</u>
<u>Art. III.</u>	<u>Minimum Wage, 33-7</u>
<u>Art. IV.</u>	<u>Notice, Posting and Records, 33-8</u>
<u>Art. V.</u>	<u>Enforcement and Violations, 33-9</u>
<u>Art. VI.</u>	<u>Relationship To Other Requirements, 33-10</u>
<u>Art. VII.</u>	<u>Severability Clause, 33-11</u>
<u>Art. VIII.</u>	<u>Effective Date, 33-12</u>

ARTICLE I

Sec. 33.1. 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, its most important asset, and those who work within the City's borders is an endeavor that plainly meets this criterion; and

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

WHEREAS, Mayor Michael Brennan created a working group, which included community, labor and business leaders, and tasked them with reviewing the minimum wage issue within the City of Portland; and

WHEREAS, the cost of living in Portland has increased making life here cost, as a percentage of income, as much as is paid by residents of Chicago, Illinois, Sacramento, California and other major United States cities where the minimum wage is much higher; and

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

WHEREAS, The Massachusetts Institute of Technology has calculated that, for a single adult to support him- or herself in Portland at the current minimum wage, he or she would need to work over 50 hours a week; and

WHEREAS, more than 50 percent of Portland public school students are eligible for free lunch, meaning their families have incomes at between 100 percent and 185 percent of the Federal poverty level, which is higher than what a single parent with one child in school would earn with a full-time minimum wage job; and

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

WHEREAS, the Fair Market Rent in the Portland Area for a two-bedroom apartment is \$1,012, and a full-time worker job would have to earn at least \$19.46 per hour to afford that rent;

WHEREAS, phasing in the wage increase over time will allow businesses to adjust and result in reasonable annual increases in expenses;

WHEREAS, based on the work of the working group (the materials and report of which are incorporated herein by reference) and the aforementioned facts, Mayor Brennan proposed that the minimum wage be increased within the City of Portland;

NOW THEREFORE, to promote the health, safety and welfare of its citizen, 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

Sec. 33.2. 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.

Consumer Price Index - All Urban Consumers ("CPI-U") means the national, annual average of the Consumer Price Index for all urban consumers as reported by the United States Bureau of Labor Statistics, with the Series identification number of CUUR0000SA0.

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. "Employer" shall include but not be limited to the City of Portland.

Employee: Any person who performs work for an Employer for monetary compensation within the municipal limits of the City. 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.

Minimum wage: The minimum hourly rate of monetary compensation that an Employer may legally pay an Employee, including, but not limited to, Tipped Employees, for work within the City.

Service Employee: Any Employee engaged in an occupation in which he or she customarily and regularly receives more than \$30.00 a month or more in tips.

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

Tipped Employee: Any Service Employee engaged in an occupation in which he or she customarily and regularly receives tips from customers.

Sec. 33.5 - 33-6 Reserved.

Article III.

Section 33.7. Minimum Wage.

- (a) Minimum wage payment required: Except as provided herein, Employers shall pay all Employees including, but not limited to, Tipped Employees no less than the Minimum Wage established by this ordinance for each hour worked within the City Limits.
- (b) Tipped Employees:
 - (i) As provided in 26 M.R.S. §664(2), 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 50% of the minimum hourly wage established by this ordinance.
 - (ii) An Employer who elects to use the tip credit described in subsection (b)(i) above 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.
- (c) Minimum Wage rate:

- (i) Beginning on July 1, 2015, the Minimum Wage for all Employees, including, but not limited to, Tipped Employees, shall be established as \$9.50 per hour;
- (ii) Beginning on January 1, 2016, the regular Minimum Wage for all Employees, including, but not limited to, Tipped Employees, shall be raised to \$10.10 per hour;
- (iii) Beginning on January 1, 2017, the regular Minimum Wage for all Employees, including, but not limited to, Tipped Employees, shall be raised to \$10.68 per hour; and
- (iv) Beginning on every first day of July following January 1, 2018, and every first day of July thereafter, the Minimum Wage for all Employees, including, but not limited to, Tipped Employees, shall be increased according to the Consumer Price Index - All Urban Consumers (CPI-U) percentage increase from the prior year. If there is no increase, the Minimum Wage will be unchanged. The percentage increase in the annual CPI-U for the previous calendar year from the annual CPI-U for the calendar year preceding that shall be the percentage by which the Minimum Wage is increased on the first day of July 2018 and every July 1 thereafter.

(d) Overtime.

- (i) The Minimum Wage set out in this ordinance are 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 including, but not limited to, Tipped 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 including, but not limited to a Tipped Employee in retaliation for exercising any right under this ordinance.

ARTICLE IV.

Sec. 33.8. 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, including, but not limited to, Tipped 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, including a Tipped 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.

Sec. 33.9. Enforcement and Violations.

(a) Enforcement.

- (i) The City Manager or his/her designee shall enforce the provisions of this ordinance.
- (ii) City Manager is authorized to adopt rules and regulations for the proper administration and enforcement of this ordinance.

(b) Complaint Process.

- (i) Any Employee, including, but not limited to, a Tipped 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 may 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 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 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, including, but not limited to, a Tipped 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.

Sec. 33.10. Relationship To Other Requirements.

This ordinance provides for payment of Minimum Wage rates within the City and shall not be construed to preempt or otherwise limit or affect the applicability of any other law, regulation, requirement or policy, including any that provides for payment of higher wages and/or benefits. Nothing contained in this ordinance prohibits an employer from paying more than the Minimum Wage rates established herein.

ARTICLE VII.

Sec. 33.11. Severability Clause.

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.

ARTICLE VIII.

Sec. 33.12. Effective Date.

This ordinance shall take effect on July 1, 2015.

MINIMUM WAGE ORDINANCE, WITH ALTERNATIVES AND ADDITIONS		
As drafted: \$9.50 July 1, 2015 \$10.10 January 1, 2016 \$10.68 January 1 2017 Increased according to CPI Annually July 1, 2018 and thereafter on every July 1	Tipped Wage, as drafted: 50% of the Minimum Wage rate in the Ordinance	Location, as drafted: Place of work, i.e. Portland, regardless of where the business may be headquartered.
STATUS QUO		
Present Maine Minimum Wage \$7.50	Maine Tipped Wage: 50% of \$7.50, or \$3.75	Location: State of Maine
EXCEPTIONS		
None in Draft Ordinance	Training Wage at \$7.50 for three-month maximum	Minimum Wage would not apply to workers who need a work permit and are therefore under 16 years of age.
ENFORCEMENT		
As drafted, file complaint with Portland City Manager, who investigates and makes a decision regarding violations.	Hire one full-time staff person to address complaints and enforcement.	Wait for six months after enactment and evaluate need for additional staff at that time.
EXEMPTIONS		
None as drafted. The proposal applies to both for- profit and non-profit businesses.	Add exemptions based on size of business or number of employees.	Add exemptions based on corporate status.

To: Nick Mavodones, Chair, Finance Committee

Jill Duson, Vice Chair, Finance Committee

Ed Suslovic, Finance Committee

Jon Hinck, Finance Committee

Michael Brennan, Mayor

From: Virginia Mayer

Re: Minimum Wage Questions

Date: March 17, 2015

During the last Finance Committee meeting (January 22, 2015), members of the Committee asked for more information on the following topics. The answers are addressed below:

- How do other cities that have a minimum wage address the issue of business location?
 - o In Seattle, the Ordinance applies to “occasional basis employees” – employees who work primarily outside of Seattle, but who work inside the city limits on an ad hoc, irregular basis. Specifically, if they perform more than two hours of work for an employer within Seattle during a two week period.
 - o All employers with employees performing work in Seattle are covered by the Ordinance, with implementation specifications related to the number of national employees.
 - o In San Francisco, the Office of Labor Standards Enforcement acknowledges the following as subject to enforcement here, as per SEC. 12R.18: (1) the person's principal place of business in the City, or (2) if the person's principal place of business is outside the City, the fixed location within the City from or at which the person conducts business in the City, or (3) if the person does not regularly conduct business from a fixed location in the City, one of the following: (i) the location where the person maintains payroll records (only relevant for violation of Section 12R.5(c)), or (ii) the job-site or other primary location where the person's employees perform services in the City at the time a violation occurs.
- How do these cities address tipped wages?

- o San Francisco does not differentiate between tipped employees and all other employees. Everyone earns the same minimum wage.
- o Seattle doesn't have a tipped wage.
- o You can see how Seattle differentiates between different businesses, the timeline for implementation, as well as fact sheets here:
<http://murray.seattle.gov/minimumwage/#sthash.FbYjY8Cf.dpbs>
- o In Louisville, KY, "Tipped Employee" shall be the same definition as found in KRS 337.010(2Ud) and as per LMCO § 112.10(C) employers must pay no less than the minimum wage to tipped employees and shall not use any tips or gratuities toward the payment of statutory minimum wage.
- Do other cities have a training wage?
 - o San Francisco does have a training wage, although it's very narrow. Only for government subsidized non-profits and for youth and seniors (legal language can be found here on page 3, line 1: [San Francisco Minimum Wage Ordinance](#))
 - o 1) Seattle doesn't have a training wage.
- How do other cities address ordinance enforcement?
 - o The City of Seattle's Office of Civil Rights created a new Office of Labor Standards which is responsible for administering and enforcing the Ordinance: [Seattle Office of Labor Standards](#)
 - o A copy of the Draft Ordinance governing the new law, dated 2/19/2015 can be found at: [Seattle Minimum Wage Administrative Rules](#)
 - o SF has an Office of Labor Standards Enforcement that enforces all of its workers rights laws including Health Care Security Ordinance, Paid Sick Leave, and others. They have the power to investigate and cite, and most of their work is complaint-driven.
 - o Louisville Metro Government would initiate civil action to collect penalties incurred as a result of Minimum Wage violations. The civil action shall be taken in the court which has jurisdiction over the location in which the violation occurred.

MINIMUM WAGE - BACKGROUND

Since President Obama first called for an increase in the minimum wage in 2013, 17 states and the District of Columbia have raised their minimum wages through legislation – including the four states that passed initiatives to raise the minimum wage in the midterm elections.

- In the midterms, in four states, voters took action that will raise the minimum wage, benefitting over 300,000 workers: Voters in Alaska, Arkansas, Nebraska and South Dakota approved measure to raise their states' minimum wage. According to estimates by President Obama's Council of Economic Advisors ("CEA"), those actions will benefit about 325,000 workers by 2017.
- In Illinois, voters expressed support for an increase in the minimum wage to \$10 – which would benefit another 1.4 million workers: Voters in Illinois supported a non-binding resolution concerning whether the minimum wage should be raised to \$10, which – if heeded by the state's legislature – would result in another 1.4 million workers receiving a raise.
- Voters in cities and counties also mobilized in support of a higher minimum wage: Voters in San Francisco, and Oakland, California voted to increase local minimum wages, while some of Wisconsin's largest counties – including Milwaukee County, Dane County, Kenosha County and La Crosse County – also approved non-binding resolutions supporting a minimum wage increase to \$10.10.

This progress reflects broader successes in the campaign to raise the minimum wage:

- According to estimates by the CEA, by 2017, about 7 million workers will benefit in the 17 states and DC that have passed minimum wage increases since 2013.
- As of January 1, 2015, 29 states and DC have a higher minimum wage than the federal minimum wage.

State Laws Currently in Effect

- 29 states and DC have a higher minimum wage than the federal minimum wage.
- Thirty-one states plus the District of Columbia require a tipped wage above \$2.13 per hour, though some of those rates are still well below \$7.25 per hour.
- Only seven states (California, Alaska, Nevada, Montana, Minnesota, Oregon and Washington) require employers to pay their tipped workers the same as the minimum wage for all workers.
- In the 2015 legislation, thirty-seven state legislatures have introduced and/or are considering laws that would either raise the state's minimum wage, eliminate/reduce the tip credit and/or pre-empt or allow local jurisdictions to enact minimum wages higher than the state minimum wage.

Local Laws Currently in Effect

Twenty-five local jurisdictions have either enacted minimum wage increases for all public and private employees within the jurisdiction or a smaller subset (such as city employees or city contractors).

- Thirteen local jurisdictions have approved increases in the minimum wage for both public and private employees (Montgomery and Prince Georges Counties, MD; Sea-Tac, WA; Berkeley, CA; Las Cruces, NM; Oakland, CA; Richmond, CA; Sunnyvale, CA; Seattle, WA; Mountain View, CA; San Francisco, CA; Louisville, KY; and Chicago, IL;).
- Twelve local jurisdictions that raised their minimum wage for a smaller subset of employees, such as city employees or city contractor employees only (St. Louis, MO; Ypsilanti, MI; Santa Monica, CA; Santa Clara County, CA; Philadelphia, PA; Port of Seattle, WA; Milwaukee, WI; LaGuardia, Newark, and JFK Airports; Jackson, MS; Logan Airport; St. Petersburg, FL; and New York City, NY).

Currently, the states with the highest minimum wages are D.C. (\$9.50) and Washington State (\$9.47). Washington voters tied the state's minimum wage to inflation in 1998; the state has not passed legislation to increase its minimum wage since.



Occupational Employment Statistics

May 2014 Metropolitan and Nonmetropolitan Area Occupational Employment and Wage Estimates

Portland-South Portland-Biddeford, ME

For metropolitan and nonmetropolitan area definitions used by the OES survey, see the [Metropolitan and nonmetropolitan area definitions](#) page.

These estimates are calculated with data collected from employers in all industry sectors in Portland-South Portland-Biddeford, ME, a metropolitan statistical area in Maine.

Additional information, including the hourly and annual 10th, 25th, 75th, and 90th percentile wages and the employment percent relative standard error, is available in the [downloadable XLS file](#).

[Links to OES estimates for other areas and States](#)

Major Occupational Groups in Portland-South Portland-Biddeford, ME (**Note**--clicking a link will scroll the page to the occupational group):

- 00-0000 [All Occupations](#)
- 11-0000 [Management Occupations](#)
- 13-0000 [Business and Financial Operations Occupations](#)
- 15-0000 [Computer and Mathematical Occupations](#)
- 17-0000 [Architecture and Engineering Occupations](#)
- 19-0000 [Life, Physical, and Social Science Occupations](#)
- 21-0000 [Community and Social Service Occupations](#)
- 23-0000 [Legal Occupations](#)
- 25-0000 [Education, Training, and Library Occupations](#)
- 27-0000 [Arts, Design, Entertainment, Sports, and Media Occupations](#)
- 29-0000 [Healthcare Practitioners and Technical Occupations](#)
- 31-0000 [Healthcare Support Occupations](#)
- 33-0000 [Protective Service Occupations](#)
- 35-0000 [Food Preparation and Serving Related Occupations](#)
- 37-0000 [Building and Grounds Cleaning and Maintenance Occupations](#)
- 39-0000 [Personal Care and Service Occupations](#)
- 41-0000 [Sales and Related Occupations](#)
- 43-0000 [Office and Administrative Support Occupations](#)
- 45-0000 [Farming, Fishing, and Forestry Occupations](#)
- 47-0000 [Construction and Extraction Occupations](#)
- 49-0000 [Installation, Maintenance, and Repair Occupations](#)
- 51-0000 [Production Occupations](#)
- 53-0000 [Transportation and Material Moving Occupations](#)

To sort this table by a different column, click on the column header

Occupation code	Occupation title (click on the occupation title to view its profile)	Level	Employment	Employment RSE	Employment per 1,000 jobs	Location quotient	Median hourly wage	Mean hourly wage	Annual mean wage	Mean wage RSE
00-0000	All Occupations	total	198,880	1.2%	1000.000	1.00	\$17.32	\$21.86	\$45,480	1.6%
11-0000	Management Occupations	major	12,360	2.4%	62.165	1.25	\$40.38	\$45.72	\$95,100	1.5%
11-1011	Chief Executives	detail	360	7.6%	1.820	1.00	\$76.59	\$82.64	\$171,890	5.1%
11-1021	General and Operations Managers	detail	4,140	4.4%	20.815	1.37	\$41.25	\$48.19	\$100,230	2.4%
11-2011	Advertising and Promotions Managers	detail	90	18.3%	0.476	2.19	\$35.81	\$44.68	\$92,940	7.3%