

## **NOTICE AND AGENDA**

### **AMENDED**

**SPECIAL COUNCIL MEETING  
TUESDAY  
FEBRUARY 14, 2017**

**COUNCIL CHAMBERS  
211 WEST ASPEN AVENUE  
6:00 P.M.**

**1. Call to Order**

**NOTICE OF OPTION TO RECESS INTO EXECUTIVE SESSION**

*Pursuant to A.R.S. §38-431.02, notice is hereby given to the members of the City Council and to the general public that, at this meeting, the City Council may vote to go into executive session, which will not be open to the public, for legal advice and discussion with the City's attorneys for legal advice on any item listed on the following agenda, pursuant to A.R.S. §38-431.03(A)(3).*

**2. Pledge of Allegiance**

**3. Roll Call**

*NOTE: One or more Councilmembers may be in attendance telephonically or by other technological means.*

MAYOR EVANS  
VICE MAYOR WHELAN  
COUNCILMEMBER BAROTZ  
COUNCILMEMBER MCCARTHY

COUNCILMEMBER ODEGAARD  
COUNCILMEMBER OVERTON  
COUNCILMEMBER PUTZOVA

**4. Public Participation**

*Public Participation enables the public to address the council about items that are **not** on the prepared agenda. Anyone wishing to comment at the meeting is asked to fill out a speaker card and submit it to the recording clerk. When the item comes up on the agenda, your name will be called. You may address the Council up to three times throughout the meeting, including comments made during Public Participation. Please limit your remarks to three minutes per item to allow everyone to have an opportunity to speak. At the discretion of the Chair, ten or more persons present at the meeting and wishing to speak may appoint a representative who may have no more than fifteen minutes to speak.*

**5. Consideration of Potential Options re Minimum Wage:**

**OPTION ONE:** Ordinance No. 2017-03 Calling a Special Election for May 16, 2017, to submit to the voters an amendment to Title 15, *Labor*, of the Flagstaff City Code as presented through Initiative IN2017-01 and entitled "The Sustainable Wages Act"

**AND / OR**

**OPTION TWO:** Direct staff to place on a future agenda the discussion and possible adoption of an ordinance amending the current law, to further its intent.

**RECOMMENDED ACTION:**

**OPTION ONE: (Calling a Special Election for May 16, 2017)**

At the Council Meeting of February 14, 2017

- 1) Read Ordinance No. 2017-03 by title only for the first time
- 2) City Clerk reads Ordinance No. 2017-03 by title only (if approved above)

At the Council Meeting of February 21, 2017

- 3) Read Ordinance No. 2017-03 by title only for the final time
- 4) City Clerk reads Ordinance No. 2017-03 by title only (if approved above)
- 5) Adopt Ordinance No. 2017-03

**OPTION TWO: (Proposing to Consider an Ordinance to Amend Current Law)**

- 1) Take no action on the ordinance, in which case the initiative IN2017-01 would be placed on the General Election ballot of November 2018.
- 2) Direct staff to place on a future agenda the discussion and possible adoption of an ordinance amending the current law, to further its intent.

**6. Adjournment**

CERTIFICATE OF POSTING OF NOTICE

The undersigned hereby certifies that a copy of the foregoing notice was duly posted at Flagstaff City Hall on \_\_\_\_\_, at \_\_\_\_\_ a.m./p.m. in accordance with the statement filed by the City Council with the City Clerk.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2017.

\_\_\_\_\_  
Elizabeth A. Burke, MMC, City Clerk

## CITY OF FLAGSTAFF

### STAFF SUMMARY REPORT

**To:** The Honorable Mayor and Council  
**From:** Elizabeth A. Burke, City Clerk  
**Date:** 02/08/2017  
**Meeting Date:** 02/14/2017



#### TITLE:

#### Consideration of Potential Options re Minimum Wage:

**OPTION ONE:** Ordinance No. 2017-03 Calling a Special Election for May 16, 2017, to submit to the voters an amendment to Title 15, *Labor*, of the Flagstaff City Code as presented through Initiative IN2017-01 and entitled "The Sustainable Wages Act"

**AND / OR**

**OPTION TWO:** Direct staff to place on a future agenda the discussion and possible adoption of an ordinance amending the current law, to further its intent.

#### RECOMMENDED ACTION:

##### **OPTION ONE: (Calling a Special Election for May 16, 2017)**

##### At the Council Meeting of February 14, 2017

- 1) Read Ordinance No. 2017-03 by title only for the first time
- 2) City Clerk reads Ordinance No. 2017-03 by title only (if approved above)

##### At the Council Meeting of February 21, 2017

- 3) Read Ordinance No. 2017-03 by title only for the final time
- 4) City Clerk reads Ordinance No. 2017-03 by title only (if approved above)
- 5) Adopt Ordinance No. 2017-03

##### **OPTION TWO: (Proposing to Consider an Ordinance to Amend Current Law)**

- 1) Take no action on the ordinance, in which case the initiative IN2017-01 would be placed on the General Election ballot of November 2018.
- 2) Direct staff to place on a future agenda the discussion and possible adoption of an ordinance amending the current law, to further its intent.

#### Executive Summary:

At the November 8, 2016, General Election, Flagstaff voters approved an initiative to adopt Title 15, *Labor*, of the Flagstaff City Code, to implement a minimum wage in Flagstaff to be \$2/hour higher than that of the State of Arizona (which was also increased at the November 8, 2016, election by voters). While the new minimum wage for the state went into effect on January 1, 2017, the Flagstaff minimum wage is scheduled to become effective on July 1, 2017.

At the end of last year, a new initiative was circulated entitled "The Sustainable Wages Act" to amend the newly-adopted language, in the hope of having the Council call a special election in May of 2017, prior to the new wage becoming effective.

The purpose of this ordinance is to call a special election for May 16, 2017, for voters to consider these amendments, should that be the direction of Council. If the Council chooses not to call a special election for May, this initiative will be placed on the November 2018 ballot, unless a special election is called for another time prior to November 2018.

Another option that may be considered by the Council is adoption of an ordinance to amend the current language, which is permitted by Arizona law as long as it furthers the purpose of the original initiative approved by the voters.

**Financial Impact:**

Should a special election be called by the City Council for May 16, 2017, costs are anticipated to be approximately \$156,000. While funds were not budgeted in the 2016-2017 budget, they have been identified within the Non Departmental section from items such as salary savings, legal services, metal detectors and excess humane society budget, as well as excess funds available in the Elections line item.

**Connection to Council Goal and/or Regional Plan:**

None

**Previous Council Decision on This:**

The City Council formally discussed the overall issue of minimum wage in Flagstaff at their January 17, 2017, Regular Meeting, and have heard from many residents and business owners during Public Participation at meetings over the last month.

**Options and Alternatives:**

- 1) Call a Special Election for May 16, 2017, by reading Ordinance No. 2017-03 by title only for the first time, as written, with second reading and adoption to take place on February 21, 2017;
- 2) Call a Special Election for May 16, 2017, by amending Ordinance No. 2017-03 and reading it by title only for the first time, as amended, with second reading and adoption to take place on February 21, 2017;
- 3) Direct staff to schedule a future meeting to consider proposed amendments to Title 15, Labor, of the Flagstaff City Council, which would further the intent of the original initiative approved by voters in November 2016;
- 4) Take no action, in which case the initiative IN2017-01 would be placed on the General Election ballot of November 2018, unless a special election is called for another time prior to November 2018..

**Background/History:**

In 2016, an initiative was circulated and subsequently placed on the November 8, 2016, General Election ballot. This initiative adopted a new Title 15, Labor, to the Flagstaff City Code, to implement a new law to increase the minimum wage in Flagstaff on July 1, 2017, to be \$2/hour higher than that of the State. The voters in Arizona also approved a new minimum wage at this same election, to \$10/hour, effective January 1, 2017. A copy of this new law is attached as Title 15, Labor, of the Flagstaff City Code.

Subsequent to this election, a new initiative was circulated and on February 8, 2017, it was determined that sufficient signatures had been filed to forward the proposed question to the voters to amend this newly-adopted language. According to Arizona law, this question would then be placed before the voters at the November 2018 General Election; however, the City Council has the option of adopting an ordinance to call a special election prior to that date to place this question before the voters sooner. The attached ordinance, No. 2017-03, would call such an election for May 16, 2017.

Another option that may be considered by the City Council is adopting an ordinance to amend the

newly-approved language, in furtherance of the intent of the original initiative approved by the voters.

**Community Involvement:**

Inform  
Consult  
Involve  
Collaborate  
Empower

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**Attachments:**    Title 15. Labor, FCC  
                          Ord. 2017-03  
                          IN2017-01

## CHAPTER 15-01

### MINIMUM WAGE\*

#### Sections:

15-01-001-0001	Short Title
15-01-001-0002	Definitions
15-01-001-0003	Minimum Wage
15-01-001-0004	Notice and Recordkeeping Requirements
15-01-001-0005	Retaliation Prohibited
15-01-001-0006	Implementation, Investigation and Enforcement
15-01-001-0007	Civil Penalties and Remedies
15-01-001-0008	Other Legal Requirements
15-01-001-0009	No Effect on More Generous Policies
15-01-001-0010	Savings Clause
15-01-001-0011	Severability

\*Code reviser's note: This chapter was adopted through the initiative process, approved as Proposition 414 at the November 8, 2016 election and proclaimed law by the Mayor on November 28, 2016. The provisions of this chapter may only be amended through the initiative process or as otherwise permitted by law.

#### **15-01-001-0001 Short Title**

This act may be cited as the "The Minimum Wage Act." (Initiative Ord. 2016-01 (Proposition 414), Enacted 11/28/2016)

#### **15-01-001-0002 Definitions**

- A. "City" is the City of Flagstaff.
- B. "Office" is the department, division or office that the City shall establish, create or designate to enforce this chapter.
- C. "Employ" includes to suffer or permit to work.
- D. "Employee" is any individual who (1) works or is expected to work twenty-five (25) hours or more in any given calendar year within the geographic boundaries of the City for an employer and (2) is or was employed by an employer.
- E. "Employer" includes any corporation, proprietorship, partnership, joint venture, limited liability company, trust, association, political subdivision of the state, individual or other entity acting directly or indirectly in the interest of an employer in relation to an employee, and shall include the City, but does not include the state of Arizona or the United States.
- F. "Minimum Wage" is the minimum wage rate as set under Section 15-01-001-0003 of this chapter.
- G. "Tip" means a verifiable sum presented by a customer as a gift or voluntary gratuity in recognition of some service performed for the customer by the employee receiving the tip.

- H. "Tipped Employee" means an employee who customarily and regularly receives more than \$30 a month in tips, has been informed by the employer in writing about the tip notice provisions required by this chapter, and retains all tips that he or she receives. (Initiative Ord. 2016-01 (Proposition 414), Enacted 11/28/2016)

### **15-01-001-0003 Minimum Wage**

- A. Employers shall pay employees no less than the minimum wage, which shall be not less than:
1. \$10 an hour or \$2 above the state minimum wage as provided for under Section 23-363, Arizona Revised Statutes, whichever is greater, on and after July 1, 2017;
  2. \$11 an hour or \$2 above the state minimum wage as provided for under Section 23-363, Arizona Revised Statutes, whichever is greater, on and after January 1, 2018;
  3. \$12 an hour or \$2 above the state minimum wage as provided for under Section 23-363, Arizona Revised Statutes, whichever is greater, on and after January 1, 2019;
  4. \$13 an hour or \$2 above the state minimum wage as provided for under Section 23-363, Arizona Revised Statutes, whichever is greater, on and after January 1, 2020;
  5. \$15 an hour or \$2 above the state minimum wage as provided for under Section 23-363, Arizona Revised Statutes, whichever is greater, on and after January 1, 2021.
- B. The minimum wage shall be increased on January 1, 2022 and on January 1 of successive years, by the increase in the cost of living. The increase in the cost of living shall be measured by the percentage increase as of August of the immediately preceding year over the level as of August of the previous year of the consumer price index (all urban consumers, U.S. city average for all items) or its successor index as published by the U.S. department of labor or its successor agency, with the amount of the minimum wage increase rounded to the nearest multiple of five cents.
- C. In the event that the federal minimum wage is increased above the level of the minimum wage that is in force under this section, the minimum wage under this section shall be increased to match the higher federal wage, effective on the same date as the increase in the federal minimum wage, and shall become the new minimum wage in effect under this section.
- D. Employees entitled to overtime pay under the federal Fair Labor Standards Act, 29 U.S.C. §§ 206, 207, 213 are entitled to overtime pay under this chapter in accordance with federal law and regulations concerning overtime compensation under 29 U.S.C. §§ 206, 207, 213. Such overtime pay shall be calculated based on the employee's regular rate of pay or the minimum wage rate set forth in this section, whichever is higher
- E. For any tipped employee, the employer may pay a cash wage up to:

1. \$3 per hour less than the minimum wage rate set forth in this section on or after July 1, 2017;
2. \$2.50 per hour less than the minimum wage rate set forth in this section on or after January 1, 2022;
3. \$2 per hour less than the minimum wage set forth in this section on or after January 1, 2023;
4. \$1.50 per hour less than the minimum wage set forth in this section on or after January 1, 2024;
5. \$1 per hour less than the minimum wage set forth in this section on or after January 1, 2025.

Provided, however, that the employer may only pay this lower cash wage if the employer can establish that when adding tips received and retained to wages paid, the employee received not less than the minimum wage for all hours worked and the employee has been informed in writing by the employer of the provisions of this Section. 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 tipped employees, provided that only the amount actually retained by each employee shall be considered part of that employee's wages for purposes of this Section. On and after January 1, 2026, an employer shall pay a tipped employee not less than the minimum wage set forth in this section for all hours worked. (Initiative Ord. 2016-01 (Proposition 414), Enacted 11/28/2016)

#### **15-01-001-0004 Notice and Recordkeeping Requirements**

- A. The Office shall publish and make available to employers all of the following, in English, Spanish and any language spoken by more than 5% of the workforce in the City: (1) a bulletin announcing the adjusted minimum wage rate for the upcoming year and its effective date no less than two months before its effective date; (2) a template bulletin for employers to post in the workplace informing employees of the current minimum wage rate and their rights to the minimum wage, including information about the right to be free from retaliation and the right to file a complaint and the contact information for the Office; and (3) a template notice suitable for use by employers in complying with subsections B and C of this section.
- B. Every employer shall post the bulletin referred to in subsection A in a conspicuous place at any workplace or job site in English, Spanish and any language spoken by at least 5% of the employees at the workplace or job site.
- C. Every employer shall also provide each employee, at the time of hire or by July 1, 2017 whichever is later, written notice of: the employer's business name, address, and telephone number; the employee's right to earn the minimum wage and the current minimum wage rate; the employee's right to be free from retaliation; the employee's right to file a complaint; and the contact information for the Office where questions about rights and responsibilities under this chapter can be answered. If the employee's primary language is one spoken by at least 5% of the employees at the workplace or jobsite, the notice required by this subsection shall be provided in English and in the employee's primary language.



- D. Every employer shall maintain payroll records showing the hours worked for each day worked, and the wages paid to all employees for a period of four years and shall allow the Office access to such records to monitor compliance. Failure to maintain such records and/or allow the Office reasonable access to such records shall raise a rebuttable presumption that the employer did not pay the required minimum wage and the employee's reasonable estimate regarding hours worked and wages paid shall be relied on, absent clear and convincing evidence otherwise. (Initiative Ord. 2016-01 (Proposition 414), Enacted 11/28/2016)

#### **15-01-001-0005 Retaliation Prohibited**

- A. No employer or other person shall discharge or take any other adverse action against any person in retaliation for asserting any claim or right under this chapter, for assisting any other person in doing so, or for informing any person about their rights. Taking adverse action against a person within ninety days of a person's engaging in the foregoing activities shall raise a presumption that such action was retaliation, which may be rebutted by clear and convincing evidence that such action was taken for other permissible reasons. (Initiative Ord. 2016-01 (Proposition 414), Enacted 11/28/2016)

#### **15-01-001-0006 Implementation, Investigation and Enforcement**

- A. Administrative Hearing Process. To the extent allowable under state law, the City shall have the authority to coordinate implementation and enforcement of this chapter, including but not limited to establishing a civil administrative hearing process, including procedural rules, whereby the city shall receive employee complaints in writing and by telephone, investigate and prosecute complaints it deems meritorious and keep complainants notified regarding the status of the investigation. An administrative hearing judge shall hear and adjudicate the case and enter appropriate rulings pursuant to this chapter.
- B. The Office may investigate any possible violations of this chapter by an employer or other person. Any person or organization may file an administrative complaint with the Office charging that an employer has violated this chapter as to any employee or other person. When the Office receives a complaint, it may review records regarding all employees at the employer's worksite in order to protect the identity of any employee identified in the complaint and to determine whether a pattern of violations has occurred. The name of any employee identified in the complaint shall be kept confidential as long as possible. Where the Office determines that an employee's name must be disclosed in order to investigate a complaint further, it may do so only with the employee's consent.
- C. To the extent allowable by law, a civil action to enforce this chapter may be maintained in the Flagstaff Municipal Court or in any court of competent jurisdiction by the City or by any private party injured by a violation of this chapter. (Initiative Ord. 2016-01 (Proposition 414), Enacted 11/28/2016)

#### **15-01-001-0007 Civil Penalties and Remedies**

- A. Any employer who fails to pay the wages required under this chapter shall be required to pay the employee the balance of wages owed, including interest thereon, and an additional amount equal to twice the underpaid wages as liquidated damages.

- B. Any employer who retaliates against an employee or other person in violation of this chapter shall be required to pay the employee a penalty set by the Office or a court sufficient to compensate the employee and deter future violations, but not less than \$250 for each day that the violation continued or until legal judgment is final. In any case where an Employee has been discharged in retaliation for exercising rights under this ordinance, the period of violation extends from the day of discharge until the day the Employee is reinstated, the day the Employee agrees to waive reinstatement or, in the case of an Employee who may not be rehired, from the day of discharge until the day legal judgment is final.
- C. Any employer who violates the recordkeeping, posting or other requirements that the Office may establish under this chapter shall be subject to a civil penalty payable to the City of at least \$250 for a first violation, and least \$1,000 for each subsequent or willful violation and may, if the Office or Court determines appropriate, be subject to special monitoring and inspections. In order to compensate the City for the costs of investigating and remedying violations under this chapter, the Office may also order a violating employer or person to pay to the City a civil penalty of not more than fifty dollars (\$50.00) for each day and for each employee or person as to whom a violation of this chapter occurred or continued. To the extent allowable by law, such funds shall be allocated to the Office and shall be used to offset the costs of implementing and enforcing this chapter. Not less than fifty percent (50%) of such funds, and of any other civil penalties assessed and retained by the City pursuant to this chapter, shall be earmarked for the funding of the community-based outreach program provided for in this Section.
- D. The Office and the courts shall have the authority to order payment of such unpaid wages, liquidated damages, and civil penalties and to order any other appropriate legal or equitable relief for violations of this chapter. To the extent allowable by law, civil penalties paid to the City shall be retained by the Office and used to finance activities to enforce this chapter. A prevailing plaintiff shall be entitled to reasonable attorneys' fees and costs of suit from a violating employer.
- E. A civil action to enforce this chapter may be commenced no later than two years after a violation last occurs, or three years in the case of a willful violation, and may encompass all violations that occurred as part of a continuing course of employer conduct regardless of their date. The statute of limitations for bringing a civil action shall be tolled during any investigation of an employer by the Office or other law enforcement officer, but such investigation shall not bar a person from bringing a civil action under this chapter. The requirements of this chapter may also be enforced by the City Attorney. In such case, unpaid wages and damages recovered shall be payable to the individual Employee as to whom the violation occurred. No verbal or written agreement or employment contract may waive any rights under this chapter.
- F. The Office shall establish an education and outreach program in partnership with community-based organizations to conduct education and outreach to employees and employers of their rights and obligations under this chapter. (Initiative Ord. 2016-01 (Proposition 414), Enacted 11/28/2016)

### **15-01-001-0008 Other Legal Requirements**

- A. Noting in this chapter shall be interpreted or applied so as to create a conflict with Federal or State Law.
- B. This chapter provides minimum requirements and shall not be construed to preempt, limit, or otherwise affect the applicability of any other law, regulation, rule, requirement, policy, or standard that provides for greater protections to employees. (Initiative Ord. 2016-01 (Proposition 414), Enacted 11/28/2016)

### **15-01-001-0009 No Effect on More Generous Policies**

- A. Nothing in this chapter shall be construed to discourage or prohibit the adoption or retention of a wage policy more generous than that which is required herein.
- B. Nothing in this chapter shall be construed as diminishing the obligation of an employer to comply with any contract, collective bargaining agreement, employment benefit plan, or other agreement providing more generous wages to an employee than required herein. (Initiative Ord. 2016-01 (Proposition 414), Enacted 11/28/2016)

### **15-01-001-0010 Savings Clause**

This act does not affect rights and duties that matured, penalties that were incurred and proceedings that were begun before the effective date of this act. (Initiative Ord. 2016-01 (Proposition 414), Enacted 11/28/2016)

### **15-01-001-0011 Severability**

If a provision of this act or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the act that can be given effect without the invalid provision or application, and to this end the provisions of this act are severable. (Initiative Ord. 2016-01 (Proposition 414), Enacted 11/28/2016)

**ORDINANCE NO. 2017-03**

**AN ORDINANCE OF THE COUNCIL OF CITY OF FLAGSTAFF, COCONINO COUNTY, ARIZONA, CALLING A SPECIAL ELECTION FOR MAY 16, 2017, TO SUBMIT TO THE VOTERS AN AMENDMENT TO TITLE 15, LABOR, OF THE FLAGSTAFF CITY CODE AS PRESENTED THROUGH INITIATIVE IN2017-01 AND ENTITLED "THE SUSTAINABLE WAGES ACT"**

**RECITALS:**

**WHEREAS**, on January 12, 2017, Elevate Flagstaff filed initiative petitions for "The Sustainable Wages Act" with the Flagstaff City Clerk's Office purporting to contain 8,642 signatures; and

**WHEREAS**, after review of these petitions in accordance with ARS §19-101 and §19-121.01 and removal of some signatures, it was determined that 8,146 signatures were eligible for verification; and

**WHEREAS**, in accordance with ARS §19-121.01 a five percent random sampling of said signatures was forwarded to the Coconino County Recorder's Office for signature verification; and

**WHEREAS**, on February 8, 2017, the Coconino County Recorder's Office certified that 27 percent of said signatures were ineligible; and

**WHEREAS**, in accordance with ARS §19-121.04 a like percentage of ineligible signatures was applied to the remainder of eligible signatures to determine that of the 4,411 signatures required for the initiative, 5,865 were eligible signatures; and

**WHEREAS**, pursuant to its authority under Article IX of the Flagstaff City Charter, the City Council may by ordinance call for a special election; and

**WHEREAS**, pursuant to ARS §19-143, the Flagstaff City Council desires to call a special election to bring this question before the voters of the City of Flagstaff rather than waiting for the November 2018 General Election; and

**WHEREAS**, the next available consolidated election date pursuant to ARS §16-204, at which all requirements for calling the special election, can be met is May 16, 2017; and

**WHEREAS**, the Flagstaff City Council may call a special mail ballot election; and

**WHEREAS**, to protect against voter fraud, the Coconino County Recorder's Office matches every voter signature affixed to each returned ballot envelope against the voter's signature on the voter registration form.

**ENACTMENTS:**

**NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF FLAGSTAFF, ARIZONA, AS FOLLOWS:**

Section 1. THAT a special mail ballot election of the qualified electors of the City is hereby called to be held on May 16, 2017, at which there will be submitted to the qualified electors of the City, for their approval or rejection, a question to amend Title 15, Labor, of the Flagstaff City Code with regard to minimum wage, said question to be in substantially the form shown on Exhibit A.

Section 2. THAT the Clerk of the City has provided notice in substantially the form attached and marked Exhibit 'B' (hereinafter referred to as the "Notice for Arguments") by posting the Notice of Arguments at all places at which notices of meetings of the Council of the City are posted and publishing the Notice of Arguments once in the *Arizona Daily Sun*. The deadline to submit arguments shall be 5:00 p.m. MST on Monday, March 6, 2017.

Section 3. THAT

- (A) the Election shall be held, conducted and canvassed in conformity with the provisions of the general election laws of the State of Arizona, except as otherwise provided by law, and only such persons shall be permitted to vote at the Election who are qualified electors of the City.
- (B) all expenditures as may be necessary to order, notice, hold and administer the Election are hereby authorized, which expenditures shall be paid from current operating funds of the City.
- (C) the Clerk of the City is hereby further authorized to take all other necessary action to facilitate the Election.

PASSED AND ADOPTED by the Flagstaff City Council this 14<sup>th</sup> day of February, 2017.

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MAYOR

ATTEST:

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CITY CLERK

APPROVED AS TO FORM:

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CITY ATTORNEY

**EXHIBIT A****QUESTION NO. 1**

**OFFICIAL TITLE:** PROPOSED BY INITIATIVE PETITION, AMENDING TITLE 15, LABOR, TO THE FLAGSTAFF CITY CODE TO IMPLEMENT “THE SUSTAINABLE WAGES ACT”

**DESCRIPTIVE TITLE:** Amendment to the Flagstaff City Code Title 15, Labor, requiring employers in Flagstaff to pay their employees at least the minimum hourly wage imposed by state law and eventually an additional fifty cents per hour; and providing for enforcement and remedies for violations to be similar to state law.

A **YES** vote shall have the effect of amending Title 15, Labor, to the Flagstaff City Code requiring employers in Flagstaff to pay their employees at least the minimum hourly wage imposed by state law and eventually an additional fifty cents per hour; and providing for enforcement and remedies for violations to be similar to state law.

**YES** ☐

A **NO** vote shall have the effect of not amending Title 15, Labor, to the Flagstaff City Code.

**NO** ☐

**EXHIBIT 'B'****NOTICE FOR ARGUMENTS**

Pursuant to an initiative petition submitted by Elevate Flagstaff to amend Title 15, Labor, of the Flagstaff City Code, a special election in and for the City may be called by the Flagstaff City Council to be held on May 16, 2017. If a special election is not called, this question will be placed on the ballot of the November 2018 General Election.

Notice of the Election will be given by mailing an informational pamphlet to each household that contains a registered voter, with such pamphlet to include arguments for and against the proposed question to be considered at the Election as indicated below:

Question 1: Proposed by initiative petition, amending Title 15, Labor, to the Flagstaff City Code to implement "The Sustainable Wages Act."

Any person interested in providing any such argument is hereby requested to provide the same to the City Clerk, before 5:00 p.m., Arizona time on Monday, March 6, 2017. As outlined in A.R.S. 19-124, each argument shall contain the sworn statement of each person sponsoring it. If the argument is sponsored by an organization, it shall contain the sworn statement of two executive officers of the organization or if sponsored by a political committee it shall contain the sworn statement of the committee's chairman or treasurer. Each argument filed shall also be submitted to the City Clerk's Office in electronic format. The person or persons signing the argument shall identify themselves by giving their residence or post office address and a telephone number, which information shall not appear in the publicity pamphlet. Each argument filed pursuant to this subsection shall not exceed three hundred words in length.

If you have any questions about the foregoing, please contact Elizabeth Burke, City Clerk, at 928-213-2076.

/s/ Elizabeth Burke

## OFFICIAL TITLE

### THE SUSTAINABLE WAGES ACT

#### AN INITIATIVE MEASURE

AMENDING TITLE 15, CHAPTER 15-01 OF THE FLAGSTAFF CITY CODE RELATING TO MINIMUM WAGE LAWS.

#### TEXT OF PROPOSED AMENDMENT

Be it enacted by the People of the City of Flagstaff, Arizona:

##### **15-01-001-0001 Short Title**

This act may be cited as the "The ~~Minimum~~ SUSTAINABLE Wages Act."

##### **15-01-001-0002 Definitions**

- A. "City" is the City of Flagstaff.
- B. "Office" is the department, division or office that the City shall establish, create or designate to enforce this chapter.
- C. "Employ" includes to suffer or permit to work; WHETHER A PERSON IS AN INDEPENDENT CONTRACTOR OR AN EMPLOYEE SHALL BE DETERMINED ACCORDING TO THE STANDARDS OF THE FEDERAL FAIR LABOR STANDARDS ACT, BUT THE BURDEN OF PROOF SHALL BE UPON THE PARTY FOR WHOM THE WORK IS PERFORMED TO SHOW INDEPENDENT CONTRACTOR STATUS BY CLEAR AND CONVINCING EVIDENCE.
- D. "Employee" is any individual who (1) works or is expected to work twenty-five (25) hours or more in any given calendar year within the geographic boundaries of the City for an employer and (2) is or was employed by an employer; BUT DOES NOT INCLUDE ANY PERSON WHO IS EMPLOYED BY A PARENT OR A SIBLING, OR WHO IS EMPLOYED PERFORMING BABYSITTING SERVICES IN THE EMPLOYER'S HOME ON A CASUAL BASIS.
- E. "Employer" includes any corporation, proprietorship, partnership, joint venture, limited liability company, trust, association, political subdivision of the state, individual or other entity acting directly or indirectly in the interest of an employer in relation to an employee, and shall include the City, but does not include the state of Arizona or the United States.
- F. "Minimum Wage" is the minimum wage rate as set under Section 15-01-001-0003 of this chapter.



G. "Tip" means a verifiable sum presented by a customer as a gift or voluntary gratuity in recognition of some service performed for the customer by the employee receiving the tip.

~~H. "Tipped Employee" means an employee who customarily and regularly receives more than \$30 a month in tips, has been informed by the employer in writing about the tip notice provisions required by this chapter, and retains all tips that he or she receives.~~

### **15-01-001-0003 Minimum Wage**

A. Employers shall pay employees no less than the minimum wage, which shall be not less than:

1. ~~BEFORE JANUARY 1, 2021, \$10 an hour or \$2 above the state minimum wage as provided for under Section 23-363, Arizona Revised Statutes, OR ITS SUCCESSOR STATUTE whichever is greater, on and after July 1, 2017;~~

2. ~~ON AND AFTER JANUARY 1, 2021, \$11 an hour or \$2 FIFTY CENTS PER HOUR above the state minimum wage as provided for under Section 23-363, Arizona Revised Statutes, OR ITS SUCCESSOR STATUTE. whichever is greater, on and after January 1, 2018;~~

3. ~~\$12 an hour or \$2 above the state minimum wage as provided for under Section 23-363, Arizona Revised Statutes, whichever is greater, on and after January 1, 2019;~~

4. ~~\$13 an hour or \$2 above the state minimum wage as provided for under Section 23-363, Arizona Revised Statutes, whichever is greater, on and after January 1, 2020;~~

5. ~~\$15 an hour or \$2 above the state minimum wage as provided for under Section 23-363, Arizona Revised Statutes, whichever is greater, on and after January 1, 2021.~~

B. The minimum wage shall be increased on January 1, 2022 and on January 1 of successive years, by the increase in the cost of living. The increase in the cost of living shall be measured by the percentage increase as of August of the immediately preceding year over the level as of August of the previous year of the consumer price index (all urban consumers, U.S. city average for all items) or its successor index as published by the U.S. department of labor or its successor agency, with the amount of the minimum wage increase rounded to the nearest multiple of five cents.

~~C. In the event that the federal minimum wage is increased above the level of the minimum wage that is in force under this section, the minimum wage under this section shall be increased to match the higher federal wage, effective on the same date as the increase in the federal minimum wage, and shall become the new minimum wage in effect under this section.~~

~~D. Employees entitled to overtime pay under the federal Fair Labor Standards Act, 29 U.S.C. §§ 206, 207, 213 are entitled to overtime pay under this chapter in accordance with federal law and regulations concerning overtime compensation under 29 U.S.C. §206, 207, 213. Such overtime pay shall be calculated based on the employee's regular rate of pay or the minimum wage rate set forth in this section, whichever is higher.~~

EC. For any tipped employee who customarily and regularly receives tips or gratuities from patrons or others, the employer may pay a cash wage up to: \$3 per hour less than the minimum wage rate set forth in this section on or after July 1, 2017.

~~2. \$2.50 per hour less than the minimum wage rate set forth in this section on or after January 1, 2022;~~

~~3. \$2 per hour less than the minimum wage set forth in this section OR on after January 1, 2023;~~

~~4. \$1.50 per hour less than the minimum wage set forth in this section on or after January 1, 2024;~~

~~5. \$1 per hour less than the minimum wage set forth in this section on or after January 1, 2025.~~

Provided, however, that the employer may only pay this lower cash wage if the employer can establish BY ITS RECORDS OF CHARGED TIPS OR BY THE EMPLOYEE'S DECLARATION FOR FEDERAL INSURANCE CONTRIBUTIONS ACT (FICA) PURPOSES that when adding tips received and retained to wages paid, the employee received not less than the minimum wage for all hours worked. ~~and the employee has been informed in writing by the employer of the provisions of this Section. 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 tipped employees, provided that only the amount actually retained by each employee shall be considered part of that employee's wages for purposes of this Section. On after January 1, 2026, an employer shall pay a tipped employee not less than the minimum wage set forth in this section for all hours worked.~~

#### **15-01-001-0004 Notice and Recordkeeping Requirements**

A. The Office shall publish and make available to employers all of the following, in English, Spanish and any language spoken by more than 5% of the workforce in the City: (1) a bulletin announcing the adjusted minimum wage rate for the upcoming year and its effective date no less than two months before its effective date; (2) a template bulletin for employers to post in the workplace informing employees of the current minimum wage rate and their rights to the minimum wage, including information about the right to be free from retaliation and the right to file a complaint and the contact information for the Office; and (3) a template notice suitable for use by employers in complying with subsections B and C of this section.

- B. Every employer shall post the bulletin referred to in subsection A in a conspicuous place at any workplace or job site in English, Spanish and any language spoken by at least 5% of the employees at the workplace or job site.
- C. Every employer shall also provide each employee, at the time of hire or by July 1, 2017 whichever is later, written notice of: the employer's business name, address, and telephone number; the employee's right to earn the minimum wage and the current minimum wage rate; the employee's right to be free from retaliation; AND the employee's right to file a complaint; ~~and the contact information for the Office where questions about rights and responsibilities under this chapter can be answered.~~ If the employee's primary language is one spoken by at least 5% of the employees at the workplace or jobsite, the notice required by this subsection shall be provided in English and in the employee's primary language.
- D. Every employer shall maintain payroll records showing the hours worked for each day worked, and the wages paid to all employees for a period of four years ~~and shall allow the Office access to such records to monitor compliance.~~ Failure to maintain such records ~~and/or allow the Office reasonable access to such records~~ shall raise a rebuttable presumption that the employer did not pay the required minimum wage ~~and the employee's reasonable estimate regarding hours worked and wages paid shall be relied on, absent clear and convincing evidence otherwise.~~ THE RIGHTS OF PERSONS TO INSPECT AND COPY THE RECORDS REQUIRED BY THIS CHAPTER SHALL BE AS PROVIDED IN SECTION 23-364(D) OF THE ARIZONA REVISED STATUTES OR ITS SUCCESSOR STATUTE.

#### **15-01-001-0005 Retaliation Prohibited**

- A. No employer or other person shall discharge or take any other adverse action against any person in retaliation for asserting any claim or right under this chapter, for assisting any other person in doing so, or for informing any person about their rights. Taking adverse action against a person within ninety days of a person's engaging in the foregoing activities shall raise a presumption that such action was retaliation, which may be rebutted by clear and convincing evidence that such action was taken for other permissible reasons.

#### **15-01-001-0006 Implementation, Investigation and Enforcement**

- A. ~~Administrative Hearing Process. To the extent allowable under state law, the City shall have the authority to coordinate implementation and enforcement of this chapter, including but not limited to establishing a civil administrative hearing process, including procedural rules; whereby the city shall receive employee complaints in writing and by telephone, investigate and prosecute complaints it deems meritorious and keep complainants notified regarding the status of the investigation. An administrative hearing judge shall hear and adjudicate the case and enter appropriate rulings pursuant to this chapter.~~
- A.B. ~~The Office may investigate any possible violations of this chapter by an employer or other person. Any person or organization may file an administrative complaint with the Office charging that an employer has violated this chapter as to any employee or other person. When the Office receives a complaint, it may review records regarding all employees at the employer's worksite in order to protect the identity of any employee~~

~~identified in the complaint and to determine whether a pattern of violations has occurred. The name of any employee identified in the complaint shall be kept confidential as long as possible. Where the Office determines that an employee's name must be disclosed in order to investigate a complaint further, it may do so only with the employee's consent.~~ SHALL FORWARD THE COMPLAINT TO THE ARIZONA INDUSTRIAL COMMISSION FOR INVESTIGATION AND ENFORCEMENT PROCEEDINGS AS PROVIDED IN SECTION 23-364 OF THE ARIZONA REVISED STATUTES OR ITS SUCCESSOR STATUTE. THE OFFICE SHALL NOT HAVE AUTHORITY TO INVESTIGATE OR PURSUE ENFORCEMENT PROCEEDINGS IN CONNECTION WITH ANY COMPLAINT THAT ALLEGES CONDUCT IN VIOLATION OF TITLE 23, CHAPTER 2, ARTICLE 8 OF THE ARIZONA REVISED STATUTES, OR THEIR SUCCESSOR STATUTES, IRRESPECTIVE OF WHETHER SUCH CONDUCT ALSO WOULD VIOLATE THIS CHAPTER.

- B. IF, AFTER INVESTIGATING A COMPLAINT FILED PURSUANT TO THIS CHAPTER OR STATE LAW, THE ARIZONA INDUSTRIAL COMMISSION FINDS THAT THE EMPLOYER HAS ENGAGED IN CONDUCT THAT VIOLATES TITLE 23, CHAPTER 2, ARTICLE 8 OF THE ARIZONA REVISED STATUTES, OR THEIR SUCCESSOR STATUTES, THE OFFICE MAY NOT ASSESS OR IMPOSE ADDITIONAL CIVIL PENALTIES OR REMEDIES UNDER THIS CHAPTER FOR THE SAME CONDUCT.
- C. IF, AFTER INVESTIGATING A COMPLAINT FILED PURSUANT TO THIS CHAPTER OR STATE LAW, THE ARIZONA INDUSTRIAL COMMISSION FINDS THAT THE EMPLOYER HAS ENGAGED IN CONDUCT THAT DOES NOT VIOLATE TITLE 23, CHAPTER 2, ARTICLE 8 OF THE ARIZONA REVISED STATUTES, OR THEIR SUCCESSOR STATUTES, BUT THAT DOES VIOLATE THIS CHAPTER, THE OFFICE MAY ASSESS OR IMPOSE CIVIL PENALTIES OR REMEDIES UNDER THIS CHAPTER.
- G.D. To the extent allowable by law, a civil action to enforce this chapter may be maintained in the Flagstaff Municipal Court or in any court of competent jurisdiction by the City or by any private party injured by a violation of this chapter.

#### **15-01-001-0007 Civil Penalties and Remedies**

- A. Any employer who fails to pay the wages required under this chapter shall be required to pay the employee the balance of wages owed, including interest thereon, and an additional amount equal to twice the underpaid wages as liquidated damages.
- B. Any employer who retaliates against an employee or other person in violation of this chapter shall be required to pay the employee a penalty set by THE ARIZONA INDUSTRIAL COMMISSION, the Office or a court sufficient to compensate the employee and deter future violations, but not less than \$250 for each day that the violation continued or until legal judgment is final. ~~In any case where an Employee has been discharged in retaliation for exercising rights under this ordinance, the period of violation extends from the day of discharge until the day the Employee is reinstated, the day the Employee agrees to waive reinstatement or in the case of an Employee who may not be rehired, from the day of discharge until the day legal judgment is final.~~

- C. SUBJECT TO SECTION 15-01-001-006, Any employer who violates the recordkeeping, posting or other requirements that the Office may establish under this chapter shall be subject to CIVIL PENALTIES AS PROVIDED IN SECTION 23-364(F) OF THE ARIZONA REVISED STATUTES, OR ITS SUCCESSOR STATUTE. CIVIL PENALTIES SHALL BE RETAINED BY THE AGENCY THAT RECOVERED THEM. ~~a civil penalty payable to the City of at least \$250 for a first violation, and least \$1,000 for each subsequent or willful violation and may, if the Office or Court determines appropriate, be subject to special monitoring and inspections. In order to compensate the City for the costs of investigating and remedying violations under this chapter, the Office may also order a violating employer or person to pay to the City a civil penalty of not more than fifty dollars (\$50.00) for each day and for each employee or person as to whom a violation of this chapter occurred or continued. To the extent allowable by law, such funds shall be allocated to the Office and shall be used to offset the costs of implementing and enforcing this chapter. Not less than fifty percent (50%) of such funds, and of any other civil penalties assessed and retained by the City pursuant to this chapter, shall be earmarked for the funding of the community based outreach program provided for in this Section.~~
- D. ~~The Office and the courts~~ AND, SUBJECT TO SECTION 15-01-001-006, THE OFFICE, shall have the authority to order payment of such unpaid wages, liquidated damages, and civil penalties and to order any other appropriate legal or equitable relief for violations of this chapter. To the extent allowable by law, civil penalties paid to the City shall be retained by the Office and used to finance activities to enforce this chapter. A prevailing plaintiff shall be entitled to reasonable attorneys' fees and costs of suit from a violating employer.
- E. A civil action to enforce this chapter may be commenced no later than two years after a violation last occurs, or three years in the case of a willful violation, and may encompass all violations that occurred as part of a continuing course of employer conduct regardless of their date. The statute of limitations for bringing a civil action shall be tolled during any investigation of an employer by the Office ARIZONA INDUSTRIAL COMMISSION or other law enforcement officer, but such investigation shall not bar a person from bringing a civil action under this chapter. ~~The requirements of this chapter may also be enforced by the City Attorney. In such case, unpaid wages and damages recovered shall be payable to the individual Employee as to whom the violation occurred. No verbal or written agreement or employment contract may waive any rights under this chapter.~~
- F. ~~The Office shall establish an education and outreach program in partnership with community based organizations to conduct education and outreach to employees and employers of their rights and obligations under this chapter.~~

#### **15-01-001-0008 Other Legal Requirements**

- A. Noting in this chapter shall be interpreted or applied so as to create a conflict with Federal or State Law.

- B. This chapter provides minimum requirements and shall not be construed to preempt, limit, or otherwise affect the applicability of any other law, regulation, rule, requirement, policy, or standard that provides for greater protections to employees.

#### **15-01-001-0009 No Effect on More Generous Policies**

- A. Nothing in this chapter shall be construed to discourage or prohibit the adoption or retention of a wage policy more generous than that which is required herein.
- B. Nothing in this chapter shall be construed as diminishing the obligation of an employer to comply with any contract, collective bargaining agreement, employment benefit plan, or other agreement providing more generous wages to an employee than required herein.

#### **15-01-001-0010 Savings Clause**

This act does not affect rights and duties that matured, penalties that were incurred and proceedings that were begun before the effective date of this act.

#### **15-01-001-0011 Severability**

If a provision of this act or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the act that can be given effect without the invalid provision or application, and to this end the provisions of this act are severable.