

Order 105-16/17

Passage as an Emergency: 9-0 on 12/19/2016

Effective 12/19/2016

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**CITY OF PORTLAND
IN THE CITY COUNCIL**

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**AMENDMENT TO PORTLAND CITY CODE
CHAPTER 33 MINIMUM WAGE RE: TIPPED WAGE**

**BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF PORTLAND,
MAINE IN CITY COUNCIL ASSEMBLED AS FOLLOWS:**

1. *That Section 33-2, 33-7 of the Portland City Code is hereby amended to read as follows:*

Sec. 33.2. Definitions.

Unless the context otherwise indicates, the following words shall have the following meanings.

City: City of Portland.

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State Minimum Wage: The minimum hourly wage established by 26 M.R.S. § 664.

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.

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Section 33.7. Minimum Wage.

(a) *Minimum wage payment required:* Except as provided herein, Employers shall pay all Employees no less than the Minimum Wage established by this ordinance for each hour worked within the City Limits.

(b) *Minimum Wage rate:*

- (i) Beginning on January 1, 2016, the regular Minimum Wage for all Employees, including, but not limited to, Service Employees, shall be raised to \$10.10 per hour;
- (ii) Beginning on January 1, 2017, the regular Minimum Wage for all Employees, including, but not limited to, Service Employees, shall be raised to \$10.68 per hour; and
- (iii) 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, Service Employees, shall be increased according to the Consumer Price Index - All Urban Consumers (CPI-U) percentage increase from the prior year, unless the Minimum Wage equals the State Minimum Wage as set forth below. 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.
- (iv) If the State Minimum Wage established by 26 M.R.S. § 664 is equal to or greater than the Minimum Wage established herein, the Minimum Wage for all Employees, including, but not limited to, Service Employees, shall be raised to equal the State Minimum Wage.

(c) *Tip Credit:*

- (i) As provided in 26 M.R.S. §664(2), An Employer may consider tips as part of the wages of a Service Employee toward satisfaction of the Minimum Wage established by this ordinance, in accordance with 26 M.R.S. §664(2) and until such time as the tip credit is eliminated under state law. Such a tip credit shall be no greater than the amount necessary to reduce the direct wages paid to a Service Employee to an amount equal to the minimum direct wages required to be paid to Service Employees pursuant to 26 M.R.S. §664(2).

Minimum direct wages pursuant to 26 M.R.S. §664(2) is the amount required by state law to be paid to a Service Employee after an Employer reduces the state minimum wage by the maximum allowable tip credit as provided in 26 M.R.S. §664(2).

- (ii) An Employer who elects to use the tip credit, until it is eliminated under state law, must inform the affected employee in advance and must be able to show that the employee receives at least the Minimum Wage established by this ordinance when direct wages and the tip credit are combined. Upon a satisfactory showing by the employee or the employee's representative that the actual tips received were less than the tip credit, the employer shall increase the direct wages by the difference.

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BE IT FURTHER ORDAINED that these amendments are enacted as an Emergency, pursuant to Article II, Section 11 of the Portland City Charter, in order to make the amendment effective immediately and allow the changes to the minimum wage ordinance to be in place prior to the enactment of the State Minimum Wage Law on January 1, 2017.