

ORDINANCE 317
POLK COUNTY MINIMUM WAGE ORDINANCE

WHEREAS, SEC. 39A of the Iowa Constitution grants counties the power and authority to determine their local affairs and government so far as not inconsistent with the laws of the general assembly and it also expressly disavows the proposition that a county can exercise only those powers granted in express words; and

WHEREAS, Section 331.301(1), Iowa Code, permits counties, except as expressly limited by the Constitution of the State of Iowa, and if not inconsistent with the laws of the general assembly, to exercise any power and perform any function it deems appropriate to protect and preserve the rights, privileges, and property of the county or of its residents and to set standards and requirements which are higher and more stringent than those imposed by state law; and

WHEREAS, Polk County, Iowa has one of the highest costs of living in the state; and

WHEREAS, many working families and individuals in Polk County are unable to adequately sustain themselves due to wages being below the cost of living in this county whether a person is single, married with children or single with children; and

WHEREAS, payment of a higher minimum wage will advance Polk County's interests by creating jobs that help workers and their families avoid poverty, economic hardship and hunger, reduce residents' reliance upon public and private aid, and better enable residents to meet basic needs; and

WHEREAS, increasing the minimum wage increases consumer purchasing power which stimulates the economy and increases all workers' standards of living which will improve the peace, safety, health, welfare, comfort, prosperity and convenience of Polk County residents;

WHEREAS, certain "youth employees" (defined herein as between the ages of 14 and 17) are treated differently under Federal and Iowa law from other hourly paid employees for minimum wage purposes (§91D.1(c), Iowa Code) but it is well recognized that many of said employees are legally restricted in performing many job tasks and they are unable to commit to full time availability due to safety, school, family and developmental reasons which truly distinguishes a "youth employee" from those aged 18 to 20; further, many working teens receive value in employment far beyond financial necessity, e.g., teenage workers may develop attributes such as a stronger work ethic, increased responsibility and time management skills which also present employers with opportunities to develop the teens into future full-time employees; and,

WHEREAS, such differences attending "youth employees" mitigate against requiring employers to pay them the same minimum wage paid other workers as set forth herein; and,

WHEREAS, certain "tipped employees" (as defined by state and federal law) are treated differently under Federal and Iowa law than other hourly paid employees for minimum wage purposes (§91D.1(c), Iowa Code); and,

WHEREAS, the fact that “tipped employees” earn total wages higher than the current minimum wage established by State and Federal law mitigates against including them under a Polk County Minimum Wage ordinance without employers receiving a corresponding increase in the current “tipped employee credit”.

NOW, THEREFORE, BE IT RESOLVED BY THE POLK COUNTY BOARD OF SUPERVISORS, as follows:

SECTION I. Purpose.

The purpose of this ordinance shall be to establish a meaningful minimum hourly wage applicable to all employees and employers within the geographical boundaries of Polk County, Iowa except as otherwise set forth herein.

SECTION II. Authority.

This ordinance is adopted pursuant to Polk County’s home rule authority as set out in Article III, Section 39A of the Iowa Constitution, §331.30, Iowa Code and the power of the county to adopt standards that exceed standards set forth by the legislature, both as set out in Iowa Code §§331.301(1) through §331.301(5) and with emphasis on §331.301(3) and also §331.301(6).

SECTION III. Applicability Within Polk County Municipalities.

This ordinance shall be applicable within the unincorporated areas of Polk County, Iowa, and any Polk County municipality that has not adopted a conflicting ordinance.

SECTION IV. The Polk County Minimum Wage Ordinance.

The Polk County Code of Ordinances is hereby amended, which shall read as follows:

POLK COUNTY MINIMUM WAGE ORDINANCE

Minimum Wage Requirements

- (a) The Polk County minimum hourly wage for all employees not exempted by State and Federal law shall be at least **\$8.75** as of April 1, 2017, **\$9.75** as of January 1, 2018, and **\$10.75** as of January 1, 2019. Further, the minimum wage then in effect beginning January 1, 2020 shall be increased by an amount corresponding to the previous calendar year’s increase (e.g., January 1, 2019 through December 31, 2019), if any, in the Consumer Price Index for the Midwest region as published by the Bureau of Labor Statistics, U. S. Department of Labor or its successor index. The adjusted Polk County hourly wage shall be announced by the Board of Supervisors by April 1 of each year and become effective beginning July 1, 2020 and each July 1st, thereafter.
- (b) Every employer as defined in the federal Fair Labor Standards Act of 1938, as amended January 1, 2007, shall pay to each of the employer’s employees as defined in the federal Fair

Labor Standards Act of 1938, as amended to January 1, 2007, the Polk County hourly wage stated in paragraph "a" above, the current state hourly wage pursuant to Iowa Code §91D.1, or the current federal minimum wage, pursuant to 29 U.S.C. §206 whichever is greater.

(c) **Training wage:** An employer is not required to pay an employee the applicable Polk County hourly wage provided in paragraph "a" above until the employee has completed ninety calendar days of employment with the employer. An employee who has completed ninety calendar days of employment with the employer prior to April 1, 2017, January 1, 2018, and January 1, 2019 or as thereafter determined by future resolution shall earn the applicable Polk County hourly minimum wage as of that date. Except as provided in subsection (d) hereof, such hourly wage shall not be less than \$6.25 an hour.

(d) **Youth employees:** The "youth minimum wage" provided for in Section 6(g) of the Federal Fair Labor Standards Act Amendments of 1996 and incorporated into Iowa law in Section 91D.2(a), Iowa Code, which permits 14-20 year olds to be paid \$4.25 an hour for their first 90 days of employment is not affected by this Ordinance, provided however, after their first 90 days of employment, employees who are at least 14 years of age but not over 17 years of age can be paid 85% of the hourly Polk County minimum wage rate provided for in this Ordinance provided the current Iowa minimum wage does not exceed 85% of the Polk County minimum wage.

(e) **TIPPED EMPLOYEE CREDIT.**

i. For purposes of determining whether an employee of a restaurant, hotel, motel, inn or cabin, who customarily and regularly receives more than thirty dollars a month in tips ("tipped wage employees") is receiving the minimum hourly wage rate prescribed in this section, the amount paid the employee by the employer shall be deemed to be increased on account of the tips by an amount determined by the employer. The employer's "tipped employee credit" shall not exceed \$5.00 per hour provided the employee's total hourly wage meets or exceeds the Polk County minimum wage.

ii. An employee may file a written appeal with the Iowa Labor Commissioner if the amount of tips received by the employee is less than the amount determined by the employer under this subsection. If the Commissioner does not act on the appeal, the employee may file an appeal with the Polk County Attorney.

iii. All Iowa and Federal statutes, regulations and administrative rules applicable to "tipped wage employees" shall apply equally to the Polk County Minimum Wage ordinance as applicable.

(f) **Covered employees:** Employees are covered by this ordinance for each hour worked within the geographic boundaries of Polk County or one of the municipalities located therein, provided that an employee who performs work in the geographic boundaries of Polk County or one of the municipalities located therein on an occasional basis is covered by this ordinance in a two-week period only if the employee performs more than two hours of work within Polk County or an applicable municipality during that two-week period.

(g) **Exceptions.** The exemptions and exceptions from the minimum wage requirements stated in Iowa Code §§91D.1 and 91D.2 (which incorporate all or parts of the Federal Fair Labor Standards Act and its exemptions {29 USC 206 et seq.}) and the Iowa Administrative Rules promulgated thereunder shall apply to this ordinance except as modified herein.

(h) **Anti-discrimination:** Employers may not take any action to displace any employee (including partial displacements such as a reduction in hours, wages, or employment benefits) for the purpose of employing someone at the youth wage. Violation of this anti-displacement provision is a violation of 29 USC §15(a)(3).

(i) **Enforcement of Violations.** Any violation of this ordinance may be enforced pursuant to Iowa Code Chapter 91A and the remedies provided therein whether pursued by the Iowa Labor Commissioner, the County Attorney or the aggrieved employee acting independently as set forth in §91A.8, Iowa Code. Any violation of this ordinance shall also be considered a county infraction, punishable and enforceable as provided by §331.307, Iowa Code, and the County Attorney may enforce the affected employee's remedies thereunder and in Ch. 91A., Iowa Code, provided the employee consents thereto.

(j) **Applicability.** Notwithstanding the above, this ordinance shall not be applicable within the geographic boundaries of any Polk County municipality that has adopted a conflicting ordinance, or to work performed by covered employees within said Polk County municipality.

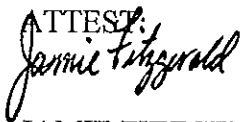
SECTION V. Repealer. All other Polk County ordinances or parts of Polk County ordinances in conflict with the provisions of this ordinance are hereby repealed.

SECTION VI. Savings Clause. If any section, provision, or part of this ordinance shall be adjudged invalid, illegal or unconstitutional, such adjudication shall not affect the validity of the Ordinance as a whole or any section, provision or part thereof not adjudged invalid, illegal or unconstitutional.

SECTION VII. Effective Date. This ordinance shall be in effect on the date of April 1, 2017, or after its final passage and publication as part of the proceedings of the Board of Supervisors.



POLK COUNTY BOARD OF SUPERVISORS
TOM HOCKENSMITH



JAMIE FITZGERALD
POLK COUNTY AUDITOR