

ORDINANCE 2023-4

AN ORDINANCE ESTABLISHING LOCAL MINIMUM WAGE REQUIREMENTS AND RELATED PENALTIES, REMEDIES AND ENFORCEMENT

RECITALS:

A. Despite a statewide minimum wage rate, many working Boulder County residents struggle to afford the basic necessities of life;

B. The health and welfare of all Boulder County residents is benefited and advanced when workers are paid a wage that better enables them to afford their basic needs;

C. The Board of County Commissioners of Boulder County (“the Board”) seeks to confront the cost of living affordability in the community;

D. Ensuring that workers in Boulder County can support themselves benefits the Boulder County economy and the well-being of the county;

E. Studies of local minimum wage laws have demonstrated that jurisdiction-wide minimum wage laws can increase earnings for workers without negatively affecting overall employment. For example, the 2023 Local Minimum Wage Report by the Colorado Department of Labor and Employment (the “LMW Report”) shows that, in 2021 and 2022, as Denver’s minimum wage rose significantly, its unemployment rate dropped more than any comparator jurisdiction’s. Likewise, in each of the first three years since its local minimum wage took effect, Denver maintained strong wage growth, and stronger wage growth than Colorado and comparator jurisdictions;

F. The State of Colorado, under Colorado Revised Statute §29-1-1401, allows local governments to enact a law establishing a minimum wage for individuals performing work while physically within the local government’s jurisdiction;

G. Addressing the minimum wage needs of workers is a matter of significant local concern, especially given the cost-of-living statistics for Boulder County stated in the LMW Report;

H. Boulder County has consulted with surrounding local governments and engaged with community stakeholders, including chambers of commerce, small and large businesses, businesses that employ tipped workers, workers, labor unions, and numerous community groups;

I. Boulder County engaged with multiple community stakeholders by facilitating three listening sessions with the chair of the Board of County Commissioners to engage employers, mountain/rural small employers, and small employers in specific industries, and held a listening session to engage with the nonprofit community and a listening session to engage with workers. The Board also held a publicly advertised open town hall event on October 12, 2023, where residents and business attended and shared comments and questions. Further, the commissioners

have individually met with dozens of community leaders to receive and consider advice and feedback related to a Boulder County minimum wage;

J. Boulder County also solicited feedback through email and an online survey available in English and Spanish;

K. Through its expansive outreach efforts, Boulder County solicited, received, and considered feedback, and revisited the terms of this ordinance based on stakeholder feedback;

L. The Board finds that it should adopt an ordinance to require employers throughout unincorporated Boulder County to compensate workers no less than the Boulder County minimum wage established in this ordinance; and

BE IT ORDAINED, by the Board of County Commissioners of the County of Boulder:

SECTION I: Purpose and Scope

1. The purpose of this ordinance is to address cost of living affordability in Boulder County by ensuring that all workers within Boulder County are paid a sufficient wage relative to the cost of living; to do so in a manner that is mindful of the larger market in which Boulder County is situated; and to establish a local minimum wage requirement in a manner that respects, serves, and protects the interests of employees and employers in the county.

2. Employers must pay, at a minimum, the wage rates established by this ordinance to individuals performing, or expected to perform, four or more hours of work for an employer in any given week within the geographic boundaries of Boulder County's jurisdiction, excluding incorporated cities or towns. This minimum wage requirement does not apply to time spent in Boulder County solely for the purpose of traveling through Boulder County's boundaries to a destination outside of Boulder County's boundaries, with no employment-related or commercial stops in Boulder County's jurisdiction except for refueling or the employee's personal meals or errands.

SECTION II: Definitions

"County" means Boulder County, Colorado. When the term is used geographically, it excludes incorporated portions of the county except as provided for in Section V.

"Employee" means an adult or minor performing, or expected to perform, four or more hours of work for an employer in any given week within the county.

"Employer" means an individual, partnership, firm, corporation, or any other person, group, collective or entity that employs one or more employees.

"Food and beverage worker" means a worker for any business or enterprise that prepares and offers for sale food or beverages for consumption either on or off an employer's physical premises.

"Tips" means a verifiable sum presented directly and customarily by customers as a gift or gratuity in recognition of some service performed for customers by the person receiving the tip.

“Work” means any services performed on behalf of or for the benefit of an employer whether on an hourly, piecework, commission, time, task, or other basis but shall not include services performed by an independent contractor.

SECTION III: Minimum wage required

1. Every employer must ensure its employees are paid not less than the Boulder County Minimum Wage. An increase in the Boulder County Minimum Wage takes effect on the same date as a secured increase to the statewide minimum wage required under section 15 of article XVII of the state constitution.
2. The Boulder County Minimum Wage is as follows, exclusive of fringe benefits and any other deductions or credits, except as otherwise described in this ordinance:
 - a. Beginning January 1, 2024: \$ 15.69 per hour;
 - b. For subsequent years, the Board intends to amend this ordinance to establish a Boulder County Minimum Wage that is consistent with the minimum wage and annual rate of increase adopted by municipalities within Boulder County.
3. Tips regularly and actually received by a food and beverage worker may be applied to an employer’s obligation to pay the food and beverage worker the Boulder County Minimum Wage (i.e. tip offset). However, no more than \$3.02 per hour in tip income, or tip credit, may be used to partially offset payment of this wage.
4. Nothing in this Ordinance shall lessen any other obligation applicable to an employer to pay a minimum wage under any other law, rule, or regulation, including but not limited to federal and state minimum wage laws. In the event of a conflict with any other applicable wage requirement, the greater wage rate must be paid.

SECTION IV: Employer responsibilities

1. Employers must post notice of the currently effective Boulder County Minimum Wage in a prominent place that is easily accessible to all employees. Employers must display the posting in English and Spanish. If display of a physical notice is not feasible, including the situation when an employee does not have a regular workplace or job site, employers must provide the required information on an individual basis, in an employee’s primary language, in paper or electronic form that is reasonably conspicuous and accessible.
2. Employers must make, retain, and make available to the county or its designee, upon request, payroll records adequate to determine compliance with this ordinance for a minimum of three years for each record.

SECTION V: Violations, enforcement, and penalties

1. It is unlawful and a violation of this ordinance to commit, allow, cause, authorize, aid, abet or conceal a violation of this ordinance.
2. The Colorado Department of Labor and Employment (“CDLE”) is fully authorized to investigate and issue orders to remedy violations as provided by Colorado law. Nothing

in this ordinance shall be construed to limit actions or remedies available under Colorado law.

SECTION VI: Intergovernmental Agreement

If Boulder County enters into intergovernmental agreements with one or more contiguous counties or any municipality within the geographic boundaries of Boulder County, the intergovernmental agreement will establish the manner in which the Boulder County minimum wage law will be enforced and administered without the necessity of revising or reenacting this ordinance, and the intergovernmental agreement will supersede any conflicting provision of this ordinance.

SECTION VII: Severability

If any section, paragraph, clause, or phrase of this ordinance is held to be unconstitutional or invalid for any reason, such decision shall not affect the validity or constitutionality of the remaining portions of this ordinance.

ADOPTED ON SECOND AND FINAL READING on November 2, 2023.

THE BOARD OF COMMISSIONERS
OF THE COUNTY OF BOULDER, COLORADO

Claire Levy, Chair

ATTEST: _____

Clerk to the Board

CERTIFICATION AND ATTESTATION

I, Molly Fitzpatrick, Boulder County Clerk and Recorder, do hereby certify that the foregoing Ordinance No. 2023-4, entitled **AN ORDINANCE ESTABLISHING LOCAL MINIMUM WAGE REQUIREMENTS AND RELATED PENALTIES, REMEDIES AND ENFORCEMENT** is a true, correct and complete copy from the records in my office, that said ordinance was duly adopted by the Board of County Commissioners of the County of Boulder. The first reading of Ordinance 2023-4 took place on _____, 2023, at a regular Board of County Commissioners Meeting. It was published in full in the _____ on _____, 2023. The Ordinance was adopted on second reading at a public hearing held before the Board of County Commissioners on _____, 2023. Further, one (1) copy of the Ordinance is now filed in the office of the Clerk and Recorder for the County of Boulder, Colorado, and may be inspected during regular business hours.

Clerk and Recorder