

**CITY OF BALTIMORE
COUNCIL BILL 10-0505
(First Reader)**

Introduced by: Councilmembers Clarke, Conaway, D’Adamo, Branch, Middleton, Henry,
Stokes, Curran, Welch, Reisinger

Introduced and read first time: May 3, 2010

Assigned to: Labor Subcommittee

REFERRED TO THE FOLLOWING AGENCIES: City Solicitor, Labor Commissioner, Office of
Employment Development, Department of Human Resources, Baltimore Development
Corporation

A BILL ENTITLED

1 AN ORDINANCE concerning

2 **Minimum Wage – Living Wage for Major Retailer Employees**

3 FOR the purpose of requiring major retail stores to pay employees a living wage determined by
4 the Board of Estimates; requiring that affected employees be informed of the required living
5 wage rate; allowing for certain benefits to be included when determining if a wage rate
6 complies with the requirements of this ordinance; defining certain terms; conforming,
7 clarifying, and correcting related provisions; and generally relating to the City’s required
8 minimum wage rate.

9 BY repealing and reordaining, with amendments

10 Article 11 - Labor and Employment
11 Section(s) 1-1, 1-3, and 3-1
12 Baltimore City Code
13 (Edition 2000)

14 BY adding

15 Article 11 - Labor and Employment
16 Section(s) 8-1 to 8-9 to be under the new subtitle,
17 “Subtitle 8. Major Retailer Minimum Wage.”
18 Baltimore City Code
19 (Edition 2000)

20 **Recitals**

21 It is the policy of the City of Baltimore, as expressed in §1-2 of the City’s Labor and
22 Employment Article, to promote living wage jobs to help working families make ends meet, and
23 to protect the health and welfare of our community.

24 The Council has determined that the retail industry is an increasingly important source of jobs
25 for its residents. However, retail jobs are some of the lowest paying in our economy. Without
26 safeguards, many of these retail jobs will fail to provide wages adequate to meet the basic needs
27 of working families, especially given the City’s cost of living. By adopting living wage

EXPLANATION: CAPITALS indicate matter added to existing law.
[Brackets] indicate matter deleted from existing law.

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1 standards for major retailers, Baltimore can ensure that retail employment better meets the
2 community’s need for family-supporting jobs.

3 The Council has determined that major retailers in particular should be required to pay a living
4 wage because:

- 5 (1) major retailers can afford to pay living wages;
- 6 (2) a number of retailers in the region already pay a living wage, proving that it is
7 feasible for retail employers to create and maintain good jobs while still operating
8 profitably;
- 9 (3) major retailers generally are less likely than other kinds of businesses to respond to
10 wage regulation by closing or reducing employment because the retail industry is
11 more location-dependent; and
- 12 (4) in other jurisdictions, the enactment of living wage laws has had no negative impact
13 on the retail market, retail employment or retail development.

14 The Council believes that it is desirable for major retailers to provide certain benefits for their
15 workers, including healthcare, because better benefits can be purchased more economically by
16 groups of individuals. The Council therefore has determined that it is desirable to include
17 incentives in this Subtitle to retailers to provide benefits to their workers by offering retailers the
18 option of offsetting a portion of the living wage rate with a credit for certain benefits retailers
19 pay for their workers.

20 The Council has determined that it is appropriate at this time to refrain from requiring smaller
21 retail businesses to pay a living wage. This approach, which is common in living wage and
22 minimum wage laws, recognizes that for a variety of reasons larger businesses are generally
23 better able to afford to pay a living wage than are small businesses. Therefore, the Council has
24 determined that this ordinance should apply only to retailers whose annual gross volume of sales
25 or business, when added to the annual gross volume of sales or business of the retailer's parent
26 and affiliated corporations, exceeds a certain threshold amount.

27 **SECTION 1. BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF BALTIMORE,** That the
28 Laws of Baltimore City read as follows:

Baltimore City Code

Article 11. Labor and Employment

Subtitle 1. Definitions; General Provisions

§1-1. Definitions.

(a) *In general.*

[The terms hereinafter set forth, wherever used in this Division I, are defined as follows]
IN THIS DIVISION I, THE FOLLOWING TERMS HAVE THE MEANINGS INDICATED.

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1 (A-1) COMMISSION.

2 “COMMISSION” MEANS THE WAGE COMMISSION OF BALTIMORE CITY ESTABLISHED BY
3 SUBTITLE 2 OF THIS ARTICLE.

4 (b) *Employ*.

5 “Employ” means to permit to work.

6 (c) *Employer*.

7 (1) “Employer” means any person, individual, partnership, association, corporation,
8 business trust, or any other organized group or successor of an individual,
9 partnership, association, corporation, OR trust [of persons] employing 2 or more
10 persons in the City of Baltimore.

11 (2) “Employer” [shall] DOES not include the United States, any State, or any political
12 subdivision thereof.

13 (d) *Employee*.

14 (1) “Employee” means any person permitted or instructed to work or be present by an
15 employer.

16 (2) “Employee” [shall] DOES not include:

17 (i) persons engaged in the activities of an educational, charitable, religious, or
18 other nonprofit organization where the services rendered to [such] THE
19 organization are on a voluntary basis, or in return for charitable aid conferred
20 [upon such] ON THAT person;

21 (ii) persons EARNING MORE THAN \$50,000 A YEAR, EXCLUDING OVERTIME, AND
22 employed in a bona fide executive, supervisory, or professional capacity;

23 (iii) persons employed by any member of their immediate family;

24 (iv) persons compensated [upon] ON a commission basis only; or

25 (v) persons employed as domestics within a home, BUT only to the extent that
26 [such] THESE persons have been exempted from the Federal Fair Labor
27 Standards Act as amended[and as hereafter amended].

28 **§ 1-3. Severability.**

29 If any provision of this Division I or [the] ITS application [thereof] to any person or
30 circumstances is held invalid, the remainder of [the] THIS Division I and [the] ITS application
31 [thereof] to other persons or circumstances [shall] WILL not be affected [thereby].

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Subtitle 3. Wage Requirements

§ 3-1. Minimum wage required.

(a) *Employers must pay.*

Subject to the other provisions of this Division I, every employer operating and doing business in Baltimore City [shall] MUST pay wages to each employee in the City at a rate not less than THE GREATER OF:

(1) THE WAGE RATE REQUIRED TO BE PAID BY THAT EMPLOYER UNDER ANY PROVISION OF THIS DIVISION I; OR

(2) the minimum wage required by the Federal Fair Labor Standards Act, as amended.

(b) *Violations.*

It is a violation of this Division I for any employer to pay any employee a wage less than the minimum wage required by this Division I, and it is a separate violation each time an employee is not paid the wage required by this Division I at the time the employee is entitled to be paid.

SUBTITLE 8. MAJOR RETAILER MINIMUM WAGE.

§ 8-1. DEFINITIONS.

(A) *IN GENERAL.*

IN THIS SUBTITLE, THE FOLLOWING TERMS HAVE THE MEANINGS INDICATED.

(B) *AFFILIATED CORPORATION.*

“AFFILIATED CORPORATION” MEANS ANY CORPORATION THAT SHARES A COMMON PARENT CORPORATION WITH A MAJOR RETAILER.

(C) *BENEFITS.*

(1) *IN GENERAL.*

“BENEFITS” MEANS ACTUAL PAYMENTS PAID DIRECTLY TO AN EMPLOYEE OR PAID TO A THIRD PARTY ON BEHALF OF AN EMPLOYEE OR EMPLOYEE’S FAMILY FOR THE FOLLOWING PURPOSES:

(I) HEALTH CARE;

(II) RETIREMENT SECURITY;

(III) DISABILITY, DEATH, OR LIFE INSURANCE;

(IV) CHILDCARE;

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1 (V) LEGAL SERVICES;

2 (VI) PUBLIC TRANSPORTATION;

3 (VII) PARKING AT LOCATIONS NOT OWNED BY THE MAJOR RETAILER; OR

4 (VIII) EDUCATION AND TRAINING AT ACCREDITED INSTITUTIONS.

5 (2) *EXCLUSIONS.*

6 “BENEFITS” DOES NOT INCLUDE ANY PAYMENTS THAT ARE:

7 (I) REQUIRED BY ANY FEDERAL, STATE, OR CITY LAW; OR

8 (II) DEDUCTED FROM AN EMPLOYEE’S WAGES OR OTHERWISE REIMBURSED BY AN
9 EMPLOYEE.

10 (D) *MAJOR RETAILER.*

11 “MAJOR RETAILER” MEANS ANY ENTITY THAT:

12 (1) OPERATES A RETAIL STORE, AND

13 (2) WHOSE ANNUAL GROSS VOLUME OF SALES OR BUSINESS WHEN ADDED TO THE
14 ANNUAL GROSS VOLUME OF SALES OR BUSINESS OF ITS PARENT CORPORATION AND
15 ALL OF ITS AFFILIATED CORPORATIONS EXCEEDS \$10,000,000 (EXCLUSIVE OF
16 EXCISE TAXES AT THE RETAIL LEVEL THAT ARE SEPARATELY STATED).

17 (E) *PARENT CORPORATION.*

18 “PARENT CORPORATION” MEANS ANY CORPORATION THAT OWNS OR CONTROLS AT LEAST
19 51% OF THE VOTING STOCK, VOTING SHARES OR OTHER EQUITY IN A MAJOR RETAILER OR
20 AN AFFILIATED CORPORATION.

21 (F) *RETAIL STORE.*

22 “RETAIL STORE” MEANS A STORE THAT IS LOCATED WITHIN THE GEOGRAPHIC BOUNDARIES
23 OF THE CITY OF BALTIMORE AND THAT DERIVES A MAJORITY OF ITS REVENUE FROM
24 RETAIL SALES OF GOODS FOR USE OR CONSUMPTION, BUT NOT FOR RESALE.

25 **§ 8-2. PAYMENT OF LIVING WAGE RATE**

26 MAJOR RETAILERS MUST ENSURE THAT ALL EMPLOYEES RECEIVE A MINIMUM WAGE, BEFORE
27 TIPS OR GRATUITIES, OF NO LESS THAN THE LIVING WAGE RATE AS DEFINED IN § 8-3 BELOW
28 FOR EACH HOUR WORKED.

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1 **§ 8-3. LIVING WAGE RATE, COST OF LIVING ADJUSTMENTS**

2 THE LIVING WAGE RATE IS AN HOURLY RATE EQUAL TO THE LIVING HOURLY WAGE RATE
3 ESTABLISHED BY THE BOARD OF ESTIMATES PURSUANT TO ARTICLE 5 § 26-16 OF THE CITY
4 CODE. ON THE FIRST DAY OF EACH SUCCESSIVE FISCAL YEAR, THE LIVING WAGE RATE MUST
5 BE ADJUSTED TO EQUAL THE LIVING HOURLY WAGE RATE ESTABLISHED BY THE BOARD OF
6 ESTIMATES FOR THE FISCAL YEAR.

7 **§ 8-4. {RESERVED}**

8 **§ 8-5. CREDIT FOR BENEFITS**

9 (A) *IN GENERAL.*

10 CREDIT MAY BE TAKEN TOWARDS THE PAYMENT OF THE LIVING WAGE RATE FOR EACH
11 EMPLOYEE WHO RECEIVES BENEFITS UP TO A TOTAL AMOUNT OF \$2 PER HOUR.

12 (B) *COMPUTATION.*

13 (1) A MAJOR RETAILER MAY USE ANY REASONABLE METHODOLOGY THAT IS NOT
14 INCONSISTENT WITH ANY REGULATIONS ISSUED UNDER THIS SUBTITLE TO DETERMINE
15 THE HOURLY DOLLAR VALUE OF ANY BENEFITS.

16 (2) EVERY MAJOR RETAILER WHO ELECTS TO TAKE CREDITS FOR BENEFITS MUST PREPARE
17 A WRITTEN ACCOUNTING JUSTIFYING CREDIT AMOUNTS AND A WRITTEN EXPLANATION
18 OF THE MAJOR RETAILER'S METHODOLOGY EVERY TWO YEARS. THIS ACCOUNTING
19 AND EXPLANATION MUST BE:

20 (I) FILED WITH THE COMMISSION; AND

21 (II) PROVIDED TO ANY EMPLOYEE OR EMPLOYEE REPRESENTATIVE ON REQUEST.

22 (C) *REVIEW BY COMMISSION.*

23 (1) AT AN EMPLOYEE'S REQUEST, THE COMMISSION MUST EXAMINE THE ACCOUNTING
24 FILED UNDER SUBSECTION (B)(2) OF THIS SECTION.

25 (2) IF THE COMMISSION DETERMINES THAT THE ACCOUNTING IS INACCURATE OR
26 UNREASONABLE, THE MAJOR RETAILER'S RIGHT TO TAKE A CREDIT FOR BENEFITS WILL
27 BE REVOKED UNTIL THE MAJOR RETAILER FILES ANOTHER ACCOUNTING AND
28 EXPLANATION THAT THE COMMISSION EXAMINES AND DETERMINES IS ACCURATE AND
29 REASONABLE.

30 (D) *LIMITATION ON CREDITS.*

31 NO CREDITS UNDER THIS SECTION MAY BE TAKEN IN AN AMOUNT THAT WOULD REDUCE
32 AN EMPLOYEE'S HOURLY MINIMUM COMPENSATION BELOW THE STATE OR FEDERAL
33 MINIMUM WAGE RATE, WHICHEVER IS HIGHER.

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1 **§ 8-6. BULLETINS AND NOTICES.**

2 (A) *CITY TO PUBLISH RATES.*

3 NO LATER THAN APRIL 1 OF EACH YEAR THE COMMISSION MUST PUBLISH AND MAKE
4 AVAILABLE TO MAJOR RETAILERS A BULLETIN ANNOUNCING THE ADJUSTED LIVING WAGE
5 RATE FOR THE UPCOMING 12 MONTHS.

6 (B) *EMPLOYER TO POST.*

7 MAJOR RETAILERS MUST POST NOTICES IN CONSPICUOUS PLACES IN EVERY RETAIL STORE
8 THAT INFORM EMPLOYEES OF THEIR RIGHTS UNDER THIS SUBTITLE. THESE NOTICES MUST
9 BE:

10 (1) IN THE FORM THAT THE COMMISSION SPECIFIES; AND

11 (2) IN A LANGUAGE OR LANGUAGES UNDERSTOOD BY EACH OF THE MAJOR RETAILER'S
12 EMPLOYEES AT THAT RETAIL STORE.

13 (C) *EMPLOYER TO DISTRIBUTE NOTICES.*

14 (1) WITHIN 30 DAYS OF THE EFFECTIVE DATE OF THIS SUBTITLE, ALL MAJOR RETAILERS
15 MUST PROVIDE A COPY OF A NOTICE TO ALL CURRENT EMPLOYEES INFORMING THEM OF
16 THEIR RIGHTS UNDER THIS SUBTITLE.

17 (2) MAJOR RETAILERS MUST PROVIDE A NOTICE TO EACH NEW EMPLOYEE AT THE TIME OF
18 HIRE IN A LANGUAGE IN WHICH THE NEW EMPLOYEE IS LITERATE INFORMING THE NEW
19 EMPLOYEE OF THE EMPLOYEE'S RIGHTS UNDER THIS SUBTITLE.

20 **§§ 8-7 to 8-8. {RESERVED}**

21 **§ 8-9. CERTIFICATION OF COMPLIANCE.**

22 ON OR BEFORE JUNE 30 OF EACH YEAR, EVERY MAJOR RETAILER MUST CERTIFY IN A WRITING
23 FILED WITH THE COMMISSION UNDER PENALTY OF PERJURY THAT IT HAS:

24 (1) PAID ALL EMPLOYEES A LIVING WAGE IN ACCORDANCE WITH THIS SUBTITLE; AND

25 (2) PROVIDED OR POSTED ALL NOTICES REQUIRED BY THIS SUBTITLE.

26 **SECTION 2. AND BE IT FURTHER ORDAINED,** That the catchlines contained in this Ordinance
27 are not law and may not be considered to have been enacted as a part of this or any prior
28 Ordinance.

29 **SECTION 3. AND BE IT FURTHER ORDAINED,** That this Ordinance takes effect on the 30th day
30 after the date it is enacted.