

CITY OF BALTIMORE

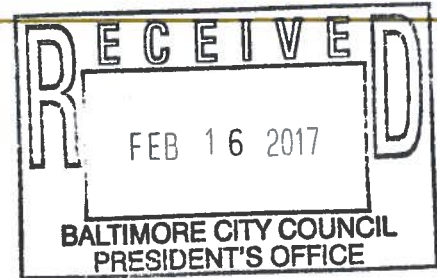
CATHERINE E. PUGH, Mayor



DEPARTMENT OF LAW

101 City Hall
Baltimore, Maryland 21202

February 16, 2017



The Honorable President and Members
of the Baltimore City Council
Attn: Natawna B. Austin, Executive Secretary
Room 409, City Hall
100 N. Holliday Street
Baltimore, Maryland 21202

Re: City Council Bill 17-0018 – Labor and Employment – City Minimum Wage

Dear Mr. President and City Council Members:

The Law Department has reviewed City Council Bill 17-0018 for form and legal sufficiency. The bill sets Baltimore City’s minimum wage rate for the years 2019 through 2023 and sets the formula to determine Baltimore City’s minimum wage rate from 2023 onward. It defines certain terms and repeals and creates certain exceptions. In addition, it sets the terms and qualifications for Wage Commission members, and requires the production and posting of multilingual posters summarizing Baltimore City’s minimum wage laws. The bill also sets Baltimore City’s tipped minimum wage rate and sets Baltimore City’s small employer minimum wage through 2026. It also limits the withholdings employers may make from employee wages. Further, the bill allows any person to make a complaint to the Wage Commission, changes the Wage Commission’s procedures for responding to complaints, and repeals the prohibition of bad faith employee complaints to the Wage Commission. The bill also establishes certain penalties and clarifies and conforms related provisions.

The Mayor and City Council may “exercise within the limits of Baltimore City all the power commonly known as the Police Power to the same extent as the State has or could exercise that power within the limits of Baltimore City,” and may “pass any ordinance, not inconsistent with the provisions of this Charter or the laws of the State, which it may deem proper in the exercise of any of the powers, either express or implied, enumerated in this Charter, as well as any ordinance as it may deem proper in maintaining the peace, good government, health and welfare of Baltimore City.” Baltimore City Charter, Article II, §§ 27, 47. The City has the power to establish a minimum wage under its broad police powers. *Mayor and City Council v. Sitnick*, 254 Md. 303, 309-10 (1969). In *Sitnik*, the Court of Appeals found that the State minimum wage law did not preempt local legislation establishing a more generous minimum wage, concluding instead that the State and the City had concurrent authority to legislate within the field. *Id.* at 322.

“Minimum wage regulation is considered social and economic legislation,” and courts generally defer to the legislature’s judgment in crafting such enactments. *New Mexicans for Free Enterprise v. The City of Santa Fe*, 138 N.M. 785, 803 (2005). With regard to certain

Fav w/ comments

employers or employees not covered by Council Bill 17-0018 under the “Definitions” and “Exception(s)” provisions, the Law Department notes that federal labor law, as well as legislation from state and local jurisdictions, includes exceptions to minimum wage laws based on occupation, business size, and age, to name just a few. Courts reviewing such exceptions employ a rational basis test. Under this analysis, courts “must determine whether there is ‘any reasonably conceivable state of facts that could provide a rational basis for the classification.’” *RUI One Corp. v. City of Berkeley*, 371 F.3d 1137, 1154 (9th Cir.2004), *cert. denied*, 543 U.S. 1081 (2005), *quoting*, *FCC v. Beach Communications, Inc.*, 508 U.S. 307, 313 (1993).

In other words, the rational-basis inquiry is lenient, the Court need only to determine if there are plausible reasons for the legislative action.” *RUI One Corp.*, 371 F.3d at 1154-56. *See, e.g., International Franchise Ass’n, Inc. v. City of Seattle*, 803 F.3d 389, 400-07 (2015), *cert. denied*, 136 S.Ct. 1838 (2016) (in case denying preliminary injunction against enforcement of wage law, classification based on number of employees and business model held not to be discriminatory or violate equal protection; rational relationship existed between franchises and their classification as large employer); *Garcia v. Four Points Sheraton LAX*, 188 Cal.App.4th 364, 383-84 (2010) (legislative classification of hotels with 50 or more guest rooms and located in airport corridor did not violate equal protection); *Visiting Homemaker Service of Hudson County v. Bd. of Chosen Freeholders of County of Hudson*, 380 N.J.Super. 596, 611-12 (App.Div.2005) (county living wage ordinance which directed contractors to provide increased minimum wage to their employees providing food, janitorial, unarmed security guard, and home health care services to county held not to violate equal protection despite claim that it applied only to certain employers); *New Mexicans for Free Enterprise*, 138 N.M. at 804 (local ordinance creating exception for businesses with fewer than 25 employees found not to violate equal protection); *RUI One Corp.*, 371 F.3d at 1154-56 (living wage ordinance targeting only employers of a certain size operating within marina found not to violate equal protection). *See also Branch v. McGeeney*, 123 Md. App. 330, 361 (1998) (claims of discrimination on the basis of age are reviewed under rational basis scrutiny; official action must be rationally related to a legitimate state purpose).

In sum, Council Bill 17-0018 is consistent with the authority of the City Council. Therefore, the Law Department approves it for form and legal sufficiency.

Sincerely,


Jennifer Landis
Assistant Solicitor

cc: David Ralph, Acting City Solicitor
Karen Stokes, Director, Mayor’s Office of Government Relations
Kyron Banks, Mayor’s Legislative Liaison
Angela C. Gibson, Mayor’s Legislative Liaison
Elena DiPietro, Chief Solicitor, General Counsel Division
Hilary Ruley, Chief Solicitor
Victor Tervalá, Chief Solicitor