



# FLORIDA RESTAURANT & LODGING ASSOCIATION

P.O. Box 1779 • Tallahassee, FL 32302-1779  
850-224-2250 • Fax: 850-224-9213

June 1, 2016

Philip Levine, Mayor  
City of Miami Beach  
1700 Convention Center Drive  
Miami Beach, Florida 33139

Re: Proposed City of Miami Beach Minimum Wage Ordinance

Dear Mayor Levine:

As you know, the current minimum wage rate throughout the State of Florida is \$8.05 per hour. This state minimum wage is automatically adjusted for inflation each year pursuant to state law.

On June 8, 2016, I understand that you are scheduled to vote on a proposed ordinance that would adopt a significantly higher local minimum wage within the City of Miami Beach, abruptly increasing the minimum wage to \$10.31 per hour on June 30, 2017, and increasing this wage a dollar per hour each year until it reaches \$13.31 per hour on June 30, 2020. Thereafter, the City-wide minimum wage is proposed to automatically increase by up to three percent each year based on a localized measure of inflation.

On behalf of the Florida Restaurant & Lodging Association, Inc. (FRLA), its more than 10,000 hardworking restauranteur and hotelier members, and the hospitality industry across this state, I am writing you today to express FRLA's strong objections to this proposed ordinance.

Prior to 2003, Florida did not have its own minimum wage law. In that year, however, the Florida Legislature passed, and Governor Bush signed, legislation establishing the federal minimum wage as the minimum wage in this state. While the legislation prohibited cities and counties from adopting local minimum wage rates within their jurisdictions, the legislation allowed cities and counties to set higher minimum wages for their own employees, for the employees of government contractors and subcontractors, and for the recipients of direct tax abatements or subsidies.<sup>1</sup>

In adopting the new law, the Florida Legislature found as follows in the preamble to this legislation (Ch. 2003-87, Laws of Fla.):

<sup>1</sup> As subsequently amended, this law (s. 218.077) states in relevant part:

(2) Except as otherwise provided in subsection (3), a political subdivision may not establish, mandate, or otherwise require an employer to pay a minimum wage, other than a state or federal minimum wage, to apply a state or federal minimum wage to wages exempt from a state or federal minimum wage, or to provide employment benefits not otherwise required by state or federal law.

(3) This section does not:

(a) Limit the authority of a political subdivision to establish a minimum wage other than a state or federal minimum wage or to provide employment benefits not otherwise required under state or federal law:

1. For the employees of the political subdivision;
2. For the employees of an employer contracting to provide goods or services for the political subdivision, or for the employees of a subcontractor of such an employer, under the terms of a contract with the political subdivision; or
3. For the employees of an employer receiving a direct tax abatement or subsidy from the political subdivision, as a condition of the direct tax abatement or subsidy.

## 2016 EXECUTIVE COMMITTEE

PRESIDENT / CEO CAROL B. DOVER, FMP

CHAIRMAN  
**LINO  
MALDONADO**  
Wyndham Vacation Rentals  
Fort Walton Beach

VICE CHAIR  
**DON  
FOX**  
Firehouse of America, LLC  
Jacksonville

SECRETARY-TREASURER  
**KEVIN  
SPEIDEL**  
Hilton Worldwide Hotels & Resorts  
Fort Lauderdale

**CHAU NGUYEN**  
Kobe Japanese Steak House  
Orlando, Tampa & Clearwater

**PAM AVERY**  
Holiday Inn Tampa Westshore  
Tampa

**PAUL HINEMAN**  
First Watch Restaurants, Inc.  
Bradenton

IMMEDIATE PAST  
CHAIRMAN  
**ANDREW  
REISS**  
Andrew's Capital Grill & Bar  
Andrew's 228 • Andrew's Catering  
Tallahassee

WHEREAS, promoting the economic growth and prosperity of its citizens is among the most important responsibilities of the state, and

WHEREAS, this economic growth and prosperity depends upon maintaining a stable business climate that will attract new employers to the state and allow existing employers to grow, and

WHEREAS, with regard to worker wages, federal minimum wage provisions strike the necessary balance between the interests of workers and their employers, and

WHEREAS, allowing each local government to establish minimum wage levels in their individual jurisdictions higher than those required by federal law would threaten to drive businesses out of these communities and out of the state in search of a more favorable and uniform business environment, and

WHEREAS, higher minimum wage standards differing from one locale to another would encourage residents to conduct their business in jurisdictions where wage costs, and hence prices, are lower, and

WHEREAS, such artificial constraints would disrupt Florida's economy and threaten the public welfare . . .

Respectfully, we submit to you that these determinations by the Florida Legislature are as sound today as they were in 2003 and equally deserving of deference from local governments throughout this state.

In addition to the statewide concerns outlined by the Florida Legislature, the specifics of the proposed Miami Beach ordinance raise other concerns. For example, unlike minimum wage ordinances in some other local jurisdictions, the proposed Miami Beach ordinance would apply to all employers in the city, both small and large, rather than those of a stated minimum size, e.g., 25 employees. The ordinance's "one-size-fits-all" approach will naturally hurt most the smaller businesses that lie at the heart of job creation in Florida, many of which operate on very thin profit margins.

Further, unlike local ordinances elsewhere in the country, the proposed Miami Beach minimum wage makes no allowance whatsoever for the cost of employee benefits – inevitably driving many employers to consider eliminating such benefits in order to fund a higher City-mandated minimum wage.

Facing a government mandate to pay higher minimum wages, the options for local businesses, like small restaurants, are both limited and stark: (a) reduce employment costs by cutting staff (perhaps through increased automation if possible) and cutting employee benefits; and/or (b) where market pressures allow it, raise prices, imposing higher costs on all consumers, including the very population of workers that the minimum wage ordinance is intended to help.

According to research by the National Restaurant Association, 58 percent of restaurant operators increased menu prices and 41 percent reduced employee hours following the 2007 increase to the federal minimum wage, from \$5.15 to \$7.25 per hour. Restaurants are labor-intensive businesses that already devote about a third of their sales to wages and benefits. The typical restaurant has a pre-tax profit margin ranging from 3

percent to 6 percent and therefore has a difficult time absorbing higher labor costs. As a frequent provider of first jobs for young people and less-skilled workers, a mandatory wage increase would have a disproportionately negative effect on job opportunities for these individuals.

While touted as a means of reducing poverty, the evidence is clear that a higher minimum wage will not have this desired effect. According to economists at the Federal Reserve Board and the University of California-Irvine, the majority of empirical research shows that a higher minimum wage reduces employment for the least-skilled while having little to no effect on poverty rates.<sup>2</sup> This conclusion is supported by research from economists at American University and Cornell University who studied the 28 states that raised their minimum wages between 2003 and 2007 and found no associated reduction in poverty.<sup>3</sup>

As you are aware, in 2004, Florida voters passed an amendment to the Florida Constitution creating a new inflation-indexed minimum wage for the state. Originally established at \$6.15 per hour, the Florida minimum wage currently sits at \$8.05 per hour.

Now contained in Article X, Section 24 of the Florida Constitution, the amendment contains the following language at paragraph (f):

This amendment provides for payment of a minimum wage and shall not be construed to preempt or otherwise limit the authority of the state legislature or any other public body to adopt or enforce any other law, regulation, requirement, policy or standard that provides for payment of higher or supplemental wages . . .

Neither in this text, nor anywhere else in the amendment, is there any express language removing the Florida Legislature's otherwise lawful authority -- derived from elsewhere in the Florida Constitution -- to set the minimum wage policy for this state and to preempt local governments from adopting their own individual minimum wage rates.

While the text makes clear that the drafters did not intend "[t]his amendment" to limit the otherwise lawful powers of state and local governments except as expressly delineated in the amendment, e.g., no state or local government could lower the Florida minimum wage, the amendment expresses no intent to eliminate the Florida Legislature's plenary authority to exercise its other powers relative to minimum wages -- including the power to preclude local governments from adopting their own individual minimum wages. Nor did the ballot summary presented by the initiative sponsors to voters in 2004 reveal any such intent to remove the Legislature's authority in this regard.<sup>4</sup>

While the City Attorney has struggled to advance a strained interpretation of the amendment to try and support the City Commission's proposed minimum wage ordinance, FRLA submits to you that any reasonable review of the law leads to the inescapable conclusion that the City of Miami Beach -- like Florida's 67 counties and over 400 other municipalities -- simply has no legal authority to adopt its own local minimum

---

<sup>2</sup> David Neumark & William L. Wascher, *Minimum Wages* (The MIT Press, 2008).

<sup>3</sup> Joseph J. Sabia & Richard R. Burkhauser, *Minimum Wages and Poverty: Will the Obama Proposal Help the Working Poor* (Employment Policies Institute, Sept. 2008).

<sup>4</sup> Ballot Summary: "This amendment creates a Florida minimum wage covering all employees in the state covered by the federal minimum wage. The state minimum wage will start at \$6.15 per hour six months after enactment, and thereafter be indexed to inflation each year. It provides for enforcement, including double damages for unpaid wages, attorney's fees, and fines by the state. It forbids retaliation against employees for exercising this right."

wage. Pursuit of the proposed ordinance under these circumstances will inevitably lead to costly legal challenges, imposing ill-founded and unnecessary expense on the City's taxpayers.

With that said, FRLA fully appreciates the desire of elected officials in Miami Beach to take action in this area. We submit to you that the only legally sound basis for doing so, which is also the most equitable means of dealing with this issue from the perspective of the hardworking restauranters and hoteliers in your area, is to utilize the opportunity afforded in section 218.077 to make a higher minimum wage a condition of some sort of meaningful tax abatement or tax subsidy that would encourage, but not require, local employers to pay a higher minimum wage.

Moreover, there may be other innovative ideas worth exploring that would make it more affordable to live and work in the City of Miami Beach, including affordable housing, free or discounted public transit, free or discounted parking, meal allowances, etc., recognizing that most of the workers affected by the proposed minimum wage ordinance likely reside outside the City and must commute on a daily basis.

In closing, FRLA and its local membership in the Miami Beach area thank you for your service to the community. Under your stewardship, we trust that the County's stature as a preeminent tourism and recreation destination will only continue to grow. We look forward to playing a constructive role in your efforts and to your thoughtful consideration of this matter.

Sincerely,



Carol B. Dover, FMP  
President/CEO

cc:

Raul J. Aguila, City Attorney  
Commissioner Mickey Steinberg  
Commissioner Michael Grieco  
Commissioner Joy Malakoff  
Commissioner Kristen Rosen Gonzalez  
Commissioner Ricky Arriola  
Commissioner John Elizabeth Aleman