

**IN THE DISTRICT COURT OF  
LANCASTER COUNTY, NEBRASKA**

**THE STATE OF** )  
**NEBRASKA, ex rel.** )  
**MICHAEL T. HILGERS,** )  
**Attorney General,** )

**Plaintiff,** )

**v.** )

**CITY OF LINCOLN,** )  
**a municipal corporation;** )  
**BRODEY WEBER, in his official** )  
**capacity as Chair of the Lincoln** )  
**City Council; TOM DUDEN, in his** )  
**official capacity as Vice Chair of** )  
**Lincoln City Council; JAMES** )  
**BOWERS, in his official capacity** )  
**as a member of Lincoln City** )  
**Council; JUSTIN CARLSON, in** )  
**his official capacity as a member** )  
**of Lincoln City Council; SÄNDRA** )  
**WASHINGTON, in her official** )  
**capacity as a member of Lincoln** )  
**City Council; TOM BECKIUS, in** )  
**his official capacity as a member** )  
**of Lincoln City Council; BENNIE** )  
**SHOBE, in his official capacity as** )  
**a member of Lincoln City** )  
**Council, LEIRION GAYLOR** )  
**BAIRD, in her official capacity as** )

**Case No. CI 26-\_\_\_\_\_**

**COMPLAINT FOR  
DECLARATORY AND  
INJUNCTIVE RELIEF**



*Red Cloud*, 181 Neb. 410, 418, 149 N.W.2d 105, 112 (1967).

Municipalities must yield to the Legislature’s prerogative on statewide public policy. Thus, “municipal ordinances are inferior in status and subordinate to the laws of the state.” *State v. Albarenga*, 313 Neb. 72, 84, 982 N.W.2d 799, 810 (2022).

4. That’s true even for home-rule cities. The Nebraska Constitution allows cities with a population of 100,000 or more to adopt a home-rule charter “subject to the Constitution and laws of the state.” Neb. Const. art. XI, § 5. While home-rule cities have greater leeway than other municipalities, even they must yield to “state law ... as to matters of statewide concern.” *Albarenga*, 313 Neb. at 84, 982 N.W.2d at 810; *accord Herman v. Lee*, 210 Neb. 563, 566, 316 N.W.2d 56, 59 (1982) (holding that the Legislature “retains the power to legislate ... even in home rule cities ... when a matter of statewide policy and concern is involved”).

5. The minimum wage that an employer must pay his employees is a matter of statewide concern. *See City of Omaha Human Rels. Dep’t ex rel. Guy v. City Wide Rock & Excavating Co.*, 201 Neb. 405, 408, 268 N.W.2d 98, 101 (1978) (“[T]he power relating to labor relations and practices ... lies in the state, and such matters are of statewide concern and not of local concern nor municipal government concern.”); *Mw. Emps. Council, Inc. v. City of Omaha*, 177 Neb. 877, 886, 131 N.W.2d 609, 614 (1964) (“The matters of fair employment practices and civil rights are matters of statewide and not of local concern.”).

6. The Legislature has decided what that minimum wage should be. Recognizing the importance of predictability in budgeting and the value of teenage labor, in 2026 the Legislature passed L.B. 258 (the “Wage Amendment”), which amended the Nebraska Wage and Hour Act, Neb. Rev. Stat. §§ 48-1201–48-1209 (the “Wage Act”), to provide (1) a fixed growth rate for the minimum wage and (2) a reduced minimum wage for youth employees. A true and correct copy of the Wage Amendment is attached hereto as Exhibit A.

7. In setting the minimum wage growth percentage and the youth minimum wage, the Legislature balanced the need of employees to enjoy a livable wage with the needs of employers to manage ever-inflating costs, providing predictability for both employers and employees. It was the Legislature's prerogative to strike an appropriate balance between the two.

8. But the Lincoln City Council apparently disagreed with the Legislature's choice and now attempts to repeal the Wage Amendment within the City of Lincoln's borders. On May 11, 2026, the Lincoln City Council passed Ordinance 26-41 (the "Wage Ordinance"), which creates a new chapter of the Lincoln Municipal Code that (1) reverts the minimum wage growth percentage back to a variable percentage and (2) revokes the youth minimum wage established by the Wage Amendment. A true and correct copy of the Wage Ordinance is attached hereto as Exhibit B.

9. The Wage Ordinance amounts to an attempted partial repeal of the Wage Act.

10. Specifically, the Nebraska Legislature's law states explicitly that employers "may" pay a youth minimum wage of \$13.50 per hour. The Wage Ordinance, by mandating a higher wage, tells employers within the City that they "may not" pay such a wage.

11. Similarly, state law says that wages "shall" increase by 1.75% percent yearly. By mandating the use of the CPI to adjust wages, the Wage Ordinance effectively modifies the "shall" to "shall not."

12. An employer cannot solely comply with State law without running afoul of the ordinance. Taking advantage of the state's permissive youth minimum wage exposes the employer to criminal liability; so too, if the employer complies with a minimum wage mandated by the State.

13. The Lincoln City Council lacked the authority to enact a minimum wage policy that conflicts with one established by the Legislature. The Wage Ordinance is thus irreconcilable with State law.

14. In attempting to make these changes to state statute, the City of Lincoln attempts to regulate a matter of statewide concern. A patchwork of local minimum wages will affect labor markets and the prices of goods and services across the State. Both the Wage Act and the Wage Amendment attempt to avoid such chaos and instead provide a predictable minimum wage that strikes a careful balance between the needs of workers and businesses.

15. The State of Nebraska, through its Attorney General, therefore seeks a declaration that the Wage Ordinance is preempted, invalid, void, and unenforceable, together with a temporary and permanent injunction preventing the City from enforcing its unlawful Wage Ordinance.

## PARTIES

16. Plaintiff is the State of Nebraska, by and through its Attorney General, Michael T. Hilgers.

17. The Attorney General is Nebraska's "chief law officer," *State ex rel. Meyer v. Peters*, 188 Neb. 817, 820, 199 N.W.2d 738, 740 (1972), and has the authority "to appear for the State and prosecute and defend, in any court ... , any cause or matter, civil or criminal, in which the state may be a party or interested." Neb. Rev. Stat. § 84-203.

18. As the "chief law officer of the state," the Attorney General also has the common-law authority to "exercise all such power and authority as public interests may from time to time require." *Meyer*, 188 Neb. at 820, 199 N.W.2d at 740. That includes the power to seek a declaratory judgment under the Uniform Declaratory Judgments Act. *See id.* at 821, 199 N.W.2d at 740-41; *see* Neb. Rev. Stat. §§ 25-21,149 to 25-21,164. It also includes the power to "make any disposition of the state's litigation which he deems for its best

interest,” where he can seek both legal and equitable relief. *In re Equal. of Assessment of Nat. Gas Pipe Lines*, 123 Neb. 259, 261, 242 N.W. 609, 610 (1932).

19. The Attorney General has standing to bring a legal action in the State’s name when that action seeks to vindicate the public interest. *See Meyer*, 188 Neb. at 819–21, 199 N.W.2d at 739–41; *State v. P. Express Co.*, 80 Neb. 823, 827–36, 115 N.W. 619, 620–24 (1908).

### **I. Defendants**

20. Defendant City of Lincoln, Nebraska, is a municipal corporation and city of the primary class. *See* Neb. Rev. Stat. § 15-101; Lincoln, Neb., Charter, art. I, § 1.

21. Defendant Brodey Weber is the Chair of the Lincoln City Council. He is being sued in his official capacity.

22. Defendant Tom Duden is the Vice Chair of the Lincoln City Council. He is being sued in his official capacity.

23. Defendant James Bowers is a member of the Lincoln City Council. He is being sued in his official capacity.

24. Defendant Justin Carlson is a member of the Lincoln City Council. He is being sued in his official capacity.

25. Defendant Sändra Washington is a member of the Lincoln City Council. She is being sued in her official capacity.

26. Defendant Tom Beckius is a member of the Lincoln City Council. He is being sued in his official capacity.

27. Bennie Shobe is a member of the Lincoln City Council. He is being sued in his official capacity.

28. Section 9.80.050 of the Wage Ordinance imposes criminal penalties that law enforcement has an obligation to enforce. *See* Ex. B at 4; Neb. Rev. Stat. §§ 15-326, 29-215; Lincoln, Neb., Mun. Code, ch. 2, §§ 2.32.010, 2.32.020.

29. Defendant Leirion Gaylor Baird is the Mayor of the City of Lincoln. As such, she is the chief executive of the City. She is being sued in her official capacity.

30. Defendant Lincoln Police Department is the law enforcement agency for the City of Lincoln.

31. Defendant Michon Morrow is the Chief of Police of the Lincoln Police Department. As such, she is the chief law enforcement agent for the City of Lincoln. She is being sued in her official capacity.

32. The Wage Ordinance directs the Finance Director for the City of Lincoln Finance Department to annually calculate and publish the minimum wage rate that will take effect the following January 1 utilizing the formula set forth in the Wage Ordinance. Ex. B, § 3.

33. Defendant Joe Dondlinger is the Director of the Finance Department for the City of Lincoln. He is being sued in his official capacity.

### **JURISDICTION, STANDING & VENUE**

34. The District Court of Lancaster County has subject-matter jurisdiction pursuant to Neb. Rev. Stat. § 24-302 and the Nebraska Uniform Declaratory Judgments Act. Neb. Rev. Stat. §§ 25-21,149 to 25-21,164.

35. The Court also has subject-matter jurisdiction over this action for injunctive relief pursuant to Neb. Rev. Stat. §§ 25-1062 to 25-1080.

36. Because Lancaster County is the county where Plaintiff's causes of action arose, venue is appropriate pursuant to Neb. Rev. Stat. § 25-403.01.

### **FACTS**

#### **I. Legal Background**

37. Any municipality within Nebraska derives its authority

entirely from the State. Municipalities are wholly subject to the State and may exercise only those powers the State gives them. *Johnson*, 319 Neb. at 361, 23 N.W.3d at 105–06; *Obitz*, 181 Neb. at 418, 149 N.W.2d at 112. As a municipality, the City of Lincoln has no authority except that which Nebraska gives it.

38. Nebraska has delegated authority to municipalities over certain matters. For instance, the State Constitution gives cities with a population over 5,000 inhabitants authority to frame a charter creating a municipal government, which the City of Lincoln has adopted. Neb. Const. art. XI, § 2.

39. The Nebraska Constitution further allows cities over 100,000 inhabitants to adopt a “home rule charter.” Neb. Const. art. XI, § 5.

40. A home-rule charter “render[s] cities independent of state legislation as to all subjects of *strictly* municipal concern.” *State ex rel. Martin v. Cunningham*, 158 Neb. 708, 710, 64 N.W.2d 465, 466 (1954) (emphasis added). But home-rule charters remain “subject to the Constitution and laws of the State.” Neb. Const. art. XI, § 5.

41. That means a home-rule city cannot adopt an ordinance that is “inconsistent with[] State law” on a matter of “statewide concern.” *Albarenga*, 313 Neb. at 83–84, 982 N.W.2d at 809–10.

42. To determine whether a municipal law is inconsistent with State law, the Nebraska Supreme Court has borrowed from federal law and looked for: (1) express preemption, (2) field preemption, or (3) conflict preemption. *Albarenga*, 313 Neb. at 84, 982 N.W.2d at 810.

43. Express preemption occurs when a state statute explicitly states that it preempts any municipal law on the same subject matter.

44. Field preemption occurs when the Legislature has passed “a comprehensive scheme of legislation” such that it can be “inferred” that the legislature intended it to preempt local laws. *Hauptman*,

*O'Brien, Wolf & Lathrop, P.C. v. Auto-Owners Ins. Co.*, 310 Neb. 147, 154, 964 N.W.2d 264, 270 (2021).

45. Conflict preemption occurs when a “local law actually conflicts with state law.” *Id.* at 154, 964 N.W.2d at 270.

46. A law regulates a matter of statewide concern when it “involv[es] a public need or policy” affecting “the people of the state.” *Omaha Parking Auth. v. City of Omaha*, 163 Neb. 97, 104, 77 N.W.2d 862, 869 (1956).

## **II. The Wage Act and the Wage Amendment.**

47. In 1967, the Nebraska Legislature adopted the Nebraska Wage and Hour Act (“Wage Act”). 1967 Neb. Laws ch. 285, § 2, p. 773. The Wage Act expressly safeguards existing minimum wage compensation standards which are adequate to maintain the health, efficiency, and general well-being of workers. Neb. Rev. Stat. § 48-1201.

48. The Legislature intended the Wage Act to occupy the field of minimum wage. It is comprehensive and enshrines the Legislature’s holistic judgment about how to structure wages across the State. The Wage Act establishes a general minimum wage while recognizing targeted exceptions for certain jobs. Neb. Rev. Stat. §§ 48-1202, -1203. It requires employers to post notices of employee rights on their job sites. *Id.* § 48-1205. It creates enforcement mechanisms and vests the Nebraska Commissioner of Labor with certain powers to investigate potential violations. *Id.* § 48-1206.

49. In short, the Wage Act leaves no room for municipalities to legislate.

50. During the 109th Nebraska Legislature, 2nd Session, the Legislature amended the Wage Act through the Wage Amendment.

51. The Wage Amendment sets the yearly minimum wage increase statewide at 1.75%. Ex. A, § 1. Senator Jane Raybould, who

introduced the Wage Amendment, testified that the fixed rate was intended “to provide certainty to businesses across the state who are required to comply with this mandate.” Transcript, L.B. 258, Business and Labor Committee, 109th Leg., 1st Sess. 58 (Feb. 24, 2025). She had earlier testified that it was important for businesses “to be able to predict ... who they can hire and how many they can hire.” Transcript, L.B. 258, Floor Debate, 109th Leg., 1st Sess. 3 (Feb. 5, 2025).

52. The Wage Amendment also provides that “an employer may pay a youth [14–15 years old] minimum wage of thirteen dollars and fifty cents per hour.” Ex. A, § 1. The Wage Amendment also provides that employers “may pay a new employee” who is 16–19 years old a “training wage” of \$13.50 for 90 days after the employee is hired. Ex. A, § 2. Senator Clouse explained that the youth minimum wage was intended to give small businesses “room for options” to “help them create ... jobs rather than killing the jobs.” *Id.* at 24.

53. The Legislature passed the Wage Amendment with 33 votes, clearing the Constitution’s two-thirds supermajority hurdle to amend a statute passed via ballot initiative. *See* Neb. Const. art. III, § 2.

54. Governor Pillen signed the Wage Amendment into law on February 9, 2026, and it takes effect on July 17, 2026.

55. Prior to the Wage Amendment’s enactment, the Legislature has otherwise amended the Wage Act numerous times to modify the statewide minimum wage. *See* Neb. Rev. Stat. § 48-1203 (Reissue 1973); Neb. Rev. Stat. § 48-1203 (Reissue 1987); Neb. Rev. Stat. § 48-1203 (Reissue 1989); Neb. Rev. Stat. § 48-1203 (Reissue 1991); Neb. Rev. Stat. § 48-1203 (Reissue 1997); Neb. Rev. Stat. § 48-1203 (Reissue 2007). Minimum wage has traditionally been within the Legislature’s province to regulate.

### **III. The Wage Ordinance**

56. On May 11, 2026—less than three months after the

Governor signed the Wage Amendment—the Lincoln City Council passed the Wage Ordinance.

57. The Wage Ordinance amends Lincoln’s home-rule charter to create a minimum wage specific to the City.

58. The Wage Ordinance directs that, with certain enumerated exceptions, “every employer shall pay to each of his or her employees, without regard to the age of the employee, a minimum wage of fifteen dollars (\$15.00) per hour on the Effective Date through December 31, 2026.” Ex. B, § 3.

59. The Wage Ordinance also directs that “[t]he minimum wage ... shall be increased on January 1, 2027, and on January 1 of successive years by the increase in the cost of living.” It further directs the City’s “Finance Director” to “calculate and publish the minimum wage rate that will take effect the following January 1.” *Id.*

60. Both provisions of the Wage Ordinance conflict with State law.

61. *First*, the Wage Ordinance sets an annual minimum wage growth rate that is based on the percentage increase in the Department of Labor’s Consumer Price Index (“CPI”) for All Urban Consumers for the Midwest Region. *Id.* That adjustment mechanism differs from the statewide adjustment mechanism adopted by the Nebraska Legislature. While the Wage Act’s growth percentage is fixed at 1.75%, the CPI for 2026 is increasing at around 3%. *Consumer Price Index, Midwest Region — March 2026*, U.S. Bureau of Lab. Stat. (April 10, 2026), <https://perma.cc/D83S-4VYE>. At that rate, under the Wage Ordinance, Lincoln’s minimum wage for 2027 will be \$15.45 per hour, while the State minimum wage will be \$15.26. The difference will only grow as the CPI typically exceeds 1.75%.

62. *Second*, the Wage Ordinance outright eliminates the youth minimum wage created by the Wage Amendment. Whereas the Wage Amendment provides that “an employer may pay a youth [14–15

years old] a minimum wage of thirteen dollars and fifty cents per hour,” Ex. A, § 1, the Wage Ordinance directs every employer to “pay to each of his or her employees, *without regard to the age of the employee*, a minimum wage of fifteen dollars (\$15.00) per hour.” Ex. B, § 3. The provisions cannot be reconciled.

63. The Wage Ordinance also seeks to impose criminal penalties for employers who do not comply. Violators “shall be guilty of a misdemeanor and upon conviction thereof shall be fined in any sum not to exceed \$500.00. Each day that any violation continues shall constitute a separate and distinct offense.” Ex. B, § 5. This means that local employers who do not comply may face criminal penalties in the form of fines for each day that they are not in compliance with the Wage Ordinance.

64. On May 4, 2026, before the Wage Ordinance was adopted, Senators Jane Raybould and Beau Ballard requested an Attorney General Opinion, asking whether state law preempted the Wage Ordinance.

65. In response, the Attorney General issued Opinion No. 26-003, concluding that, if adopted, the Wage Ordinance would be invalid because it conflicts with Nebraska minimum-wage law and regulates a matter of statewide concern. A true and correct copy of Op. Att’y General No. 26-003 is attached hereto as Exhibit C.

66. Despite the Attorney General Opinion, the Lincoln City Council passed the Wage Ordinance. Lincoln City Mayor Gaylor Baird approved the Wage Ordinance on May 15, 2026.

67. The Wage Ordinance goes into effect on July 18, 2026. Ex. B, § 9.

#### **IV. The State’s Injury**

68. Plaintiff is entitled to injunctive relief that enjoins Defendants from enforcing the Wage Ordinance.

69. Plaintiff is likely to succeed on the merits of its claims.

70. Plaintiff will suffer irreparable harm that cannot be rectified by remedies available at law.

71. Plaintiff's irreparable harms include the intrusion on its sovereignty and sole prerogative to "to create and enforce a legal code." *Texas v. United States*, 787 F.3d 733, 749 (5th Cir. 2015) (quoting *Alfred L. Snapp & Son, Inc. v. Puerto Rico ex rel. Barez*, 458 U.S. 592, 601 (1982)). The Wage Ordinance flatly contravenes State law and undermines the public policies established by the Legislature through statute. The State is harmed as a result.

72. Plaintiff's irreparable harm also includes the State's interest in ensuring that a home-charter city cannot unilaterally impose wage requirements and criminal punishments in conflict with State law. Whenever a State cannot "effectuat[e] statutes enacted by representatives of its people, it suffers a form of irreparable injury." *Trump v. CASA, Inc.*, 606 U.S. 831, 861 (2025) (quoting *Maryland v. King*, 567 U.S. 1301, 1303 (2012) (Roberts, C.J., in chambers)).

73. That irreparable harm will be immediate when the Wage Ordinance goes into effect because it will render state law—particularly, the Wage Act and the Wage Amendment—ineffective within the City of Lincoln.

74. Lincoln employers who pay employees the minimum wage will no longer be able to rely on a predictable inflation percentage in budgeting costs, undermining the Wage Amendment's very purposes. Lincoln employers will also no longer be able to pay youth employees the minimum wage established by the Legislature via the Wage Amendment.

75. As prices for labor increase in Lincoln, the price of goods and services made with Lincoln labor and sold throughout the State will inevitably increase. Businesses in surrounding labor markets will be forced to adjust their own labor costs to compete with inflated

Lincoln wages, further highlighting the statewide nature of minimum wage laws.

76. Other municipalities may follow Lincoln’s illegal lead. The sitting City Council President for the City of Omaha has already said that he plans to advance a similar city charter amendment in Omaha. John Grinvalds, *‘The voters spoke’: Omaha may follow Lincoln in defying recent Nebraska minimum wage law*, KETV (May 21, 2026), <https://perma.cc/FKQ9-ZMEX>.

77. The balance of equities and public interest weigh in favor of granting an injunction by, including but not limited to, preserving statewide uniformity in Nebraska wage law, preventing unlawful municipal enforcement, and protecting the supremacy of state law on matters of statewide concern.

78. The public interest weighs in favor of stopping government officials from acting unlawfully even when they are pursuing public employment goals.

## CLAIMS

### Count I – Field Preemption Neb. Const. art. XI, § 5

79. Plaintiff realleges and incorporates all prior allegations in the preceding paragraphs into this cause of action as if set forth fully herein.

80. The Wage Ordinance is “inconsistent with[] State law” on a matter of “statewide concern.” *Albarenga*, 313 Neb. at 83, 982 N.W.2d at 810.

81. Through the Wage Act, the Legislature created such “a comprehensive scheme of legislation” that it can be “inferred” that the Legislature intended the Wage Act to preempt local laws. *Hauptman, O’Brien, Wolf & Lathrop*, 310 Neb. at 154, 964 N.W.2d at 270.

82. Yet by enacting the Wage Ordinance, the Lincoln City

Council nonetheless attempted to legislate in an area the State Legislature did not leave open.

83. In particular, Neb. Rev. Stat § 48-1203 and the Wage Amendment set forth a statewide minimum wage, a minimum wage for youth, and a formula for calculating annual increases to the minimum wage amount.

84. Yet the Wage Ordinance eliminates the statewide minimum wage for youth and requires a different formula for calculating annual increases to the minimum wage amount.

85. Nothing in the Wage Act, Wage Amendment, or any other State law authorizes municipalities—even home-rule cities—to legislate on “labor relations and practices,” including minimum-wage policy. *City Wide Rock & Excavating Co.*, 201 Neb. at 408, 268 N.W.2d at 101. Only the Legislature has this authority.

86. The Wage Ordinance therefore violates state law on a matter of statewide concern and must be set aside as inconsistent with the Nebraska Constitution. *See* Neb. Const. art. XI, § 5.

**Count II – Conflict Preemption**  
**Neb. Const. art. XI, § 5**

87. Plaintiff realleges and incorporates all prior allegations in the preceding paragraphs into this cause of action as if set forth fully herein.

88. The Wage Ordinance is “inconsistent with[] State law” on a matter of “statewide concern.” *Albarenga*, 313 Neb. at 83-84, 982 N.W.2d at 810.

89. The Wage Act and the Wage Amendment permit employers to pay youth a minimum wage (including a training wage for 16–19 year olds) of \$13.50. Ex. A, §§ 1–2.

90. Yet the Wage Ordinance requires employers within the City of Lincoln to pay all employees, regardless of age, a minimum

wage of \$15. Ex. B, § 3.

91. On youth minimum wage, State law and the Wage Ordinance are expressly in conflict and cannot be reconciled.

92. The Wage Ordinance also allows employers within the City to use a different formula for calculating minimum wage growth than employers elsewhere in the State.

93. This conflict between the Wage Ordinance and State law is also irreconcilable.

94. Yet again, nothing in the Wage Act, Wage Amendment, or any other State law authorizes municipalities—even home-rule cities—to legislate on “labor relations and practices,” including minimum-wage policy. *City Wide Rock & Excavating Co.*, 201 Neb. at 408, 268 N.W.2d at 101. Only the Legislature has this authority.

95. The Wage Ordinance therefore violates state law on a matter of statewide concern and must be set aside as inconsistent with the Nebraska Constitution. *See* Neb. Const. art. XI, § 5.

**Count III – Ultra Vires**  
**Neb. Const. art. I, § 3**

96. Plaintiff realleges and incorporates all prior allegations in the preceding paragraphs into this cause of action as if set forth fully herein.

97. The Nebraska Constitution prevents any person from being “deprived of life, liberty, or property, without due process of law.” Neb. Const. art. I, § 3.

98. Like its federal counterpart, Nebraska’s Due Process Clause, as originally understood, prevents the enforcement of any law inconsistent with the State constitution. *Keller v. City of Fremont*, 280 Neb. 788, 791, 790 N.W.2d 711, 713 (2010) (“We have interpreted the Nebraska Constitution’s due process and equal protection clauses to afford protections coextensive to those of the federal Constitution.”); *see*

also Randy E. Barnett & Evan D. Bernick, *No Arbitrary Power: An Originalist Theory of the Due Process of Law*, 60 Wm. & Mary L. Rev. 1599, 1619–23 (2019) (arguing than an act is only a law under the Due Process Clause if the legislating body had the power to do the act in the first place).

99. In short, “the due process of law” is a “guarantee against *all* arbitrary government action.” Barnett & Bernick, *supra*, at 1643. Because enactments that are “not made in pursuance of the Constitution ... are mere acts that do not become part of the ‘law of the land,’” the enforcement of such enactments violate due process. *Id.* at 1619 (citing and quoting *McCulloch v. Maryland*, 17 U.S. 316, 406 (1819)).

100. The Nebraska Constitution permits “home rule charter[s]” only so long as those charters are “subject to the Constitution and laws of the state.” Neb. Const. art. XI, § 5.

101. A municipal ordinance in conflict with State law on a matter of statewide concern is not “subject to the ... laws of the state.”

102. By enacting a municipal ordinance on a matter of statewide concern that is in conflict with State law, the Lincoln City Council acted without authority.

103. The Lincoln City Council’s *ultra vires* actions and the resulting Wage Ordinance are violative of the Due Process Clause.

### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiff prays for relief as follows:

A. For a judgment declaring that the Wage Ordinance, and any similar future ordinance, is void and unlawful;

B. For a judgment declaring (1) that the Lincoln City Council, its members, and Mayor Gaylor Baird (or any official who subsequently hold these positions) lack jurisdiction and authority to enact and/or enforce the Wage Ordinance and all similar future

ordinances, and (2) that the enactment and enforcement of the Wage Ordinance and all similar future ordinances is therefore void and unlawful;

C. For temporary and permanent injunctive relief enjoining Defendants from enforcing any operative Wage Ordinance and all similar future ordinances;

D. For temporary and permanent injunctive relief enjoining Defendants from enacting any subsequent wage ordinances in violation of state law; and for such other, further, and different relief as shall be just and equitable.

Respectfully submitted June 18, 2026.

**STATE OF NEBRASKA ex rel.  
MICHAEL HILGERS, Attorney General**

BY: MICHAEL T. HILGERS, #24483  
*Nebraska Attorney General*

BY: /s/ Cody S. Barnett  
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*Counsel for Plaintiff*

# **EXHIBIT A**

## LEGISLATIVE BILL 258

Approved by the Governor February 9, 2026

Introduced by Raybould, 28; Murman, 38.

A BILL FOR AN ACT relating to the Wage and Hour Act; to amend section 48-1203.01, Reissue Revised Statutes of Nebraska, and section 48-1203, Revised Statutes Cumulative Supplement, 2024; to change provisions relating to the minimum wage and the training wage; to enact a youth minimum wage; to harmonize provisions; and to repeal the original sections.

Be it enacted by the people of the State of Nebraska,

**Section 1.** Section 48-1203, Revised Statutes Cumulative Supplement, 2024, is amended to read:

48-1203 (1) Except as otherwise provided in this section and section 48-1203.01, every employer shall pay to each of his or her employees a minimum wage of:

- (a) Nine dollars per hour through December 31, 2022;
- (b) Ten dollars and fifty cents per hour on and after January 1, 2023, through December 31, 2023;
- (c) Twelve dollars per hour on and after January 1, 2024, through December 31, 2024;
- (d) Thirteen dollars and fifty cents per hour on and after January 1, 2025, through December 31, 2025; and
- (e) Fifteen dollars per hour on and after January 1, 2026, through December 31, 2026.

(2) The minimum wage established in subdivision (1)(e) of this section shall be increased on January 1, 2027, and on January 1 of successive years, by one and three-quarters percent the increase in the cost of living. The increase in the cost of living shall be measured by the percentage increase, if any, as of August of the previous year over the level as of August of the year preceding that year in the consumer price index for all urban consumers (CPI-U) for the Midwest Region, or its successor index, as published by the U.S. Department of Labor, or its successor agency, with the amount of the minimum wage increase rounded up to the nearest multiple of five cents. No later than October 15 of each year, commencing October 15, 2026, the Nebraska Department of Labor shall calculate and publish the minimum wage rate that will take effect the following January 1.

(3) For persons compensated by way of gratuities such as waitresses, waiters, hotel bellhops, porters, and shoeshine persons, the employer shall pay wages at the minimum rate of two dollars and thirteen cents per hour, plus all gratuities given to them for services rendered. The sum of wages and gratuities received by each person compensated by way of gratuities shall equal or exceed the applicable minimum wage rate provided in subsection (1) or (2) of this section. In determining whether or not the individual is compensated by way of gratuities, the burden of proof shall be upon the employer.

(4) Any employer employing student-learners as part of a bona fide vocational training program shall pay such student-learners' wages at a rate of at least seventy-five percent of the minimum wage rate which would otherwise be applicable under this section.

(5)(a) An employer may pay a youth minimum wage of thirteen dollars and fifty cents per hour to an employee who:

- (i) Is at least fourteen years of age but younger than sixteen years of age; and
- (ii) Is not an emancipated minor.

(b) Beginning on January 1, 2030, and on January 1 of every fifth year thereafter, the youth minimum wage shall increase by one and one-half percent, rounded to the nearest cent.

**Sec. 2.** Section 48-1203.01, Reissue Revised Statutes of Nebraska, is amended to read:

48-1203.01 (1) An employer may pay a new employee who is at least sixteen years of age but younger than twenty years of age and who is not a seasonal or migrant worker or an emancipated minor a training wage rate as described in subsection (2) of this section of at least seventy-five percent of the federal minimum wage for ninety days from the date the new employee was hired. An employer may pay such new employee the training wage rate for an additional ninety-day period while the new employee is participating in on-the-job training which (a) (1) requires technical, personal, or other skills which are necessary for his or her employment and (b) (2) is approved by the Commissioner of Labor. No more than one-fourth of the total hours paid by the employer shall be at the training wage rate.

(2) For the purposes of this section, the training wage rate shall be:

- (a) Thirteen dollars and fifty cents per hour through December 31, 2026;
- and

(b) Beginning on January 1, 2027, and on January 1 of each year thereafter, the training wage rate shall increase by one and one-half percent, rounded to the nearest cent.

(3) An employer shall not pay the training wage rate if the hours of any other employee are reduced or if any other employee is laid off and the hours or position to be filled by the new employee is substantially similar to the hours or position of such other employee. An employer shall not dismiss or reduce the hours of any employee with the intention of replacing such employee or his or her hours with a new employee receiving the training wage rate.

**Sec. 3.** Original section 48-1203.01, Reissue Revised Statutes of Nebraska, and section 48-1203, Revised Statutes Cumulative Supplement, 2024, are repealed.

# **EXHIBIT B**



21872

26-41

Introduce: 04-27-26

ORDINANCE NO. 21872

1 AN ORDINANCE amending Title 9 of the Lincoln Municipal Code relating to Public  
2 Peace and Welfare by creating a new Chapter 9.80 entitled "Lincoln Minimum Wage Ordinance"  
3 to adopt a minimum wage ordinance.

4 BE IT ORDAINED by the City Council of the City of Lincoln, Nebraska:

5 Section 1. That Title 9 of the Lincoln Municipal Code be amended by adding a new  
6 section numbered 9.80.010 to read as follows:

7 **9.80.010 Purpose and Title.**

8 a. This Chapter shall be known as the "Lincoln Minimum Wage Ordinance."

9 b. The City of Lincoln declares the purpose of this ordinance is to establish a minimum wage for  
10 all workers at levels consistent with their health, efficiency and general well-being, and to  
11 safeguard existing minimum wage compensation standards which are adequate to maintain the  
12 health, efficiency and general well-being of workers against the unfair competition of wage  
13 standards that do not provide adequate standards of living.

14 Section 2. That Title 9 of the Lincoln Municipal Code be amended by adding a new  
15 section numbered 9.80.020 to read as follows:

16 **9.80.020 Definitions.**

17 For purposes of the Lincoln Minimum Wage Ordinance, unless the context otherwise requires:

18 Employ shall include to permit to work.

19 Employer shall include any individual, partnership, limited liability company, association,  
20 corporation, business trust, legal representative, or organized group of persons employing four or

1 more employees at any one time except for seasonal employment of not more than twenty weeks  
2 in any calendar year, acting directly or indirectly in the interest of an employer in relation to an  
3 employee, but shall not include the United States, the state, or any political subdivision thereof.

4 **Employee shall include any individual employed by any employer but does not include:**

5 1. Any individual employed in agriculture;

6 2. Any individual employed as a baby-sitter in or about a private home;

7 3. Any individual employed in a bona fide executive, administrative, or professional capacity or  
8 as a superintendent or supervisor;

9 4. Any individual employed by the United States or by the state or any political subdivision  
10 thereof, including any individual incarcerated in any correctional facility;

11 5. Any individual engaged in the activities of an educational, charitable, religious, or nonprofit  
12 organization when the employer-employee relationship does not in fact exist or when the  
13 services rendered to such organization are on a voluntary basis;

14 6. Apprentices and learners otherwise provided by law;

15 7. Veterans in training under supervision of the United States Department of Veterans Affairs;

16 8. A child in the employment of his or her parent or a parent in the employment of his or her  
17 child; or

18 9. Any person who, directly or indirectly, is receiving any form of federal, state, county, or local  
19 aid or welfare and who is physically or mentally disabled and employed in a program of  
20 rehabilitation, who shall receive a wage at a level consistent with his or her health, efficiency,  
21 and general well-being.

22 **Wages shall mean all remuneration for personal services, including commissions and bonuses**  
23 **and the cash value of all remunerations in any medium other than cash.**

1           Section 3.     That Title 9 of the Lincoln Municipal Code be amended by adding a new  
2 section numbered 9.80.030 to read as follows:

3 **9.80.030        Wage; Minimum Rate; Adjustments.**

4 a. Except as otherwise provided in this section, every employer shall pay to each of his or her  
5 employees, without regard to the age of the employee, a minimum wage of fifteen dollars  
6 (\$15.00) per hour on the Effective Date through December 31, 2026.

7 b. The minimum wage established in subsection (a) of this section shall be increased on January  
8 1, 2027, and on January 1 of successive years, by the increase in the cost of living. The increase  
9 in the cost of living shall be measured by the percentage increase, if any, as of August of the  
10 previous year over the level as of August of the year preceding that year in the consumer price  
11 index for all urban consumers (CPI-U) for the Midwest Region, or its successor index, as  
12 published by the U.S. Department of Labor, or its successor agency, with the amount of the  
13 minimum wage increase rounded up to the nearest multiple of five cents. No later than October  
14 15 of each year, commencing October 15, 2026, the Finance Director, or their designee, shall  
15 calculate and publish the minimum wage rate that will take effect the following January 1.

16 c. For persons compensated by way of gratuities such as waitresses, waiters, hotel bellhops,  
17 porters, and shoeshine persons, the employer shall pay wages at the minimum rate of two dollars  
18 and thirteen cents (\$2.13) per hour, plus all gratuities given to them for services rendered. The  
19 sum of wages and gratuities received by each person compensated by way of gratuities shall  
20 equal or exceed the applicable minimum wage rate provided in subsection (a) or (b) of this  
21 section. In determining whether or not the individual is compensated by way of gratuities, the  
22 burden of proof shall be upon the employer.

1 d. Any employer employing student-learners as part of a bona fide vocational training program  
2 shall pay such student-learners' wages at a rate of at least seventy-five percent of the minimum  
3 wage rate which would otherwise be applicable under this section.

4 Section 4. That Title 9 of the Lincoln Municipal Code be amended by adding a new  
5 section numbered 9.80.040 to read as follows:

6 **9.80.040 Posting.**

7 Every employer subject to the provisions of the Lincoln Minimum Wage Ordinance shall keep a  
8 summary of the Ordinance, furnished by the Finance Director, or their designee, without charge,  
9 posted in a conspicuous place on or about the premises wherein any person subject to the  
10 provisions of such Ordinance is employed.

11 Section 5. That Title 9 of the Lincoln Municipal Code be amended by adding a new  
12 section numbered 9.80.050 to read as follows:

13 **9.80.050 Penalty for Violations.**

14 a. Any employer subject to the provisions of the Lincoln Minimum Wage Ordinance who  
15 violates any provision of Section 9.80.030 shall be guilty of a misdemeanor and upon conviction  
16 thereof shall be fined in any sum not to exceed \$500.00. Each day that any violation continues  
17 shall constitute a separate and distinct offense.

18 b. Nothing herein shall preclude an individual from filing or pursuing a complaint with the  
19 Nebraska Commissioner of Labor or from pursuing any other remedy allowed by law.

20 Section 6. That Title 9 of the Lincoln Municipal Code be amended by adding a new  
21 section numbered 9.80.060 to read as follows:

1 **9.80.060** **Collective Bargaining.**

2 Nothing in this Ordinance shall be deemed to interfere with, impede or in any way diminish the  
3 right of employees to bargain collectively with their employees through representatives of their  
4 own choosing in order to establish wages or other conditions of work in excess of the applicable  
5 minimum under the provisions of the Lincoln Minimum Wage Ordinance and other law.

6 Section 7. That Title 9 of the Lincoln Municipal Code be amended by adding a new  
7 section numbered 9.80.070 to read as follows:

8 **9.80.070** **Severability.**

9 In the event that any provision of this Ordinance shall be held invalid or unenforceable by any  
10 court of competent jurisdiction, the remaining portions, clauses, and phrases shall not be  
11 affected, but shall remain in full force and effect.

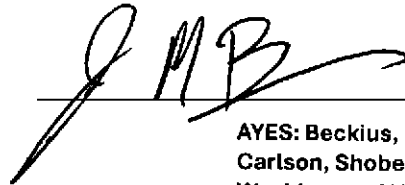
12 Section 8. That Sections 1 through 7 of this Ordinance shall be codified in the  
13 Lincoln Municipal Code as Chapter 9.80 entitled Lincoln Minimum Wage Ordinance.

14 Section 9. That Chapter 9.80 shall go into force and effect on July 18, 2026.

15 Section 10. This ordinance shall be published, within fifteen days after the passage  
16 hereof, in one issue of a daily or weekly newspaper of general circulation in the City, or posted  
17 on the official bulletin board of the City, located on the wall across from the City Clerk's office  
18 at 555 S. 10th Street, in lieu and in place of the foregoing newspaper publication with notice of  
19 passage and such posting to be given by publication one time in the official newspaper by the  
20 City Clerk. This ordinance shall take effect and be in force from and after its passage and  
21 publication or after its posting and notice of such posting given by publication as herein and in  
22 the City Charter provided.

ORDINANCE NO. 21872

Introduced by:



AYES: Beckius, Bowers,  
Carlson, Shobe, Weber,  
Washington; NAYS: Duden.

Approved as to Form & Legality:

  
City Attorney

Approved this 15<sup>th</sup> day of May, 2026:

  
Mayor

PASSED

MAY 11 2026

BY CITY COUNCIL

**ORDINANCE NO. 21872**

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**AN ORDINANCE** Amending Title 9 of the Lincoln Municipal Code relating to Public Peace and Welfare by creating a new Chapter 9.80 entitled "Lincoln Minimum Wage Ordinance" to adopt a minimum wage ordinance.

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**Read First Time** April 27, 2026  
**Read Second Time** May 4, 2026  
**Read Third Time** May 11, 2026  
**Passed** May 11, 2026  
**Published in** Lincoln Journal Star  
**on** May 22, 2026

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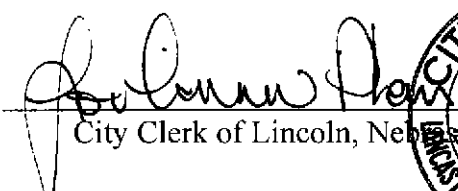
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**CERTIFICATE**

State of Nebraska     )  
                                  ) ss  
County of Lancaster    )

I, the undersigned, City Clerk of the City of Lincoln, Nebraska, do hereby certify that the within ordinance is the original Ordinance No. 21872 as passed by the City Council of said City, as indicated above, and as approved by the Mayor of said City and as the same appears of record in my office and is now in my charge remaining as City Clerk aforesaid.

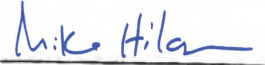
IN WITNESS WHEREOF, I have hereunto set my hand officially and affixed the seal of the City of Lincoln, Nebraska this 13th day of May, 2026.

  
City Clerk of Lincoln, Nebraska



# **EXHIBIT C**

MAY 07 2026



MICHAEL T. HILGERS

NEBRASKA DEPARTMENT OF JUSTICE

Opinion No. 26-003— May 7, 2026

OPINION FOR SENATOR BALLARD AND  
SENATOR RAYBOULD

**Lawfulness of Local Minimum Wage Proposal**

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**Summary:** A city charter is subordinate to the Constitution and laws of statewide concern. Any ordinance passed by a city is thus void if it (1) is inconsistent with state law, and (2) regulates or otherwise interferes with a matter of statewide concern. The City of Lincoln’s proposed local minimum wage would conflict with state minimum wage law, which is a matter of statewide concern. The City thus lacks authority to impose a local minimum wage.

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You have asked for an Attorney General opinion regarding the lawfulness of a proposal the Lincoln City Council is considering that would amend the Lincoln City Charter to adopt a municipal minimum wage (the “Local Wage Proposal”).<sup>1</sup> Specifically, you ask—for the purpose of crafting legislation Senator Ballard intends to introduce next legislative session—whether the Local Wage Proposal conflicts with state law and what measures would be necessary to ensure statewide uniformity in the minimum wage. We conclude the Local Wage Proposal would impermissibly conflict with a law addressing a matter of statewide concern. Accordingly, because the Local Wage Proposal, if enacted, is likely invalid, no new legislative action is necessary to ensure statewide uniformity.

Under authority of the Nebraska Constitution, the City of Lincoln has adopted a home rule charter, which

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<sup>1</sup> See Attachment A.

gives it authority to regulate local matters even if the Legislature has not expressly delegated authority to regulate them. But home rule charters are still subject to state law, meaning a home-rule ordinance is invalid if it (1) is inconsistent with state law (2) with respect to a matter of statewide concern. The Local Wage Proposal is inconsistent with state law because the Legislature has already comprehensively regulated minimum wage under the Nebraska Wage and Hour Act (the “Wage Act” or the “Act”). The Legislature intended for the Act to create a single statewide minimum wage. The Local Wage Proposal thus regulates a matter of statewide concern. If passed, the Proposal would affect labor markets, prices, and hiring practices beyond Lincoln’s borders. We thus find the Local Wage Proposal likely to be invalid under state law.

Section I of our opinion provides the relevant constitutional background. Section II contrasts Lincoln’s Local Wage Proposal with the State’s Wage Act. Section III outlines the legal standard for determining whether the Local Wage Proposal would be valid under state law. Section IV applies the relevant legal standard to the Local Wage Proposal, and Section V summarizes our opinion.

## I.

We start with a constitutional background of state and municipal authority. When the United States authorized Nebraska to “form for themselves a constitution and state government,”<sup>2</sup> and eventually admitted Nebraska into the Union,<sup>3</sup> the United States recognized the sovereignty of *the State of Nebraska*. The United States did not give the City of Lincoln or other municipalities a

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<sup>2</sup> Enabling Act of Congress, 38 Cong. Ch. 59, 13 Stat. 47 (April 19, 1864).

<sup>3</sup> Nebraska Statehood Act, ch. 36, 14 Stat. 391 (1867).

### *Lawfulness of Local Minimum Wage Proposal*

slice of that sovereignty. Municipalities are “creature[s] of the Legislature,” *Pro. Firefighters of Omaha v. City of Omaha*, 243 Neb. 166, 174 (1993), and are thus entirely subject to the State—they may exercise only those powers the State gives them. *Johnson v. Vill. of Polk*, 319 Neb. 352, 361 (2025); *Obitz v. Airport Auth. of City of Red Cloud*, 181 Neb. 410, 418 (1967).

Nebraska has delegated authority to municipalities over certain matters. The State Constitution gives cities with a population of more than 5,000 inhabitants authority to frame a charter creating a municipal government. Neb. Const. art. XI, § 2. But municipal governments are generally limited in authority. Municipal governments can exercise only those powers expressly granted to them by the Legislature, or those powers necessary or implied within an express power, or powers indispensable to the purposes of the municipality. *Johnson*, 319 Neb. at 361 (citing *Dawson County v. Clark*, 58 Neb. 756, 762 (1899)).

In 1920, the People of Nebraska passed a constitutional amendment that gave larger cities more authority over local affairs. The amendment permitted cities of over 100,000 people to adopt a “home rule charter” by a majority vote of the qualified electors of such city. Neb. Const. art. XI, § 5. A “home rule charter” “render[s] cities independent of state legislation as to all subjects of strictly municipal concern.” *State ex rel. Martin v. Cunningham*, 158 Neb. 708, 710 (1954). In other words, home rule charters can regulate local matters even without express authority from the Legislature. But home rule charters are not without limits. Home rule charters are ultimately “subject to the Constitution and laws of the State.” Neb. Const. art. XI, § 5.

The City of Lincoln has adopted a home rule charter.<sup>4</sup>

## II.

The Local Wage Proposal would amend Lincoln’s home rule charter to create a municipal minimum wage. The Local Wage Proposal sets an initial minimum wage at the same rate as the State’s—\$15 per hour through December 31, 2026. Local Wage Proposal § 3. But the Proposal differs from the Wage Act in two significant ways—the inflation adjustment percentage and the youth minimum wage.

The Local Wage Proposal would annually increase Lincoln’s minimum wage in proportion to cost-of-living as determined by the U.S. Department of Labor’s August-to-August consumer price index (“CPI”).<sup>5</sup> Local Wage Proposal § 3. For reference, CPI increased by 2.8% in the twelve months ending in August 2025,<sup>6</sup> 2.6% for August 2024,<sup>7</sup> and 3.4% for August 2023.<sup>8</sup> For 2026, CPI is

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<sup>4</sup> The full charter is available online at <https://tinyurl.com/msr9xce3>.

<sup>5</sup> Specifically for urban consumers (CPI-U) for the Midwest Region. Local Wage Proposal § 3. The local minimum wage would also be rounded up to the nearest \$.05 benchmark. *Id.*

<sup>6</sup> *Consumer Price Index, Midwest Region — August 2025*, U.S. Bureau of Lab. Stats. (Sept. 11, 2025), <https://perma.cc/M723-MS2B>.

<sup>7</sup> *Consumer Price Index, Midwest Region — August 2024*, U.S. Bureau of Lab. Stats. (Sept. 11, 2024), <https://perma.cc/VE8D-Q53F>.

<sup>8</sup> *Consumer Price Index, Midwest Region — August 2023*, U.S. Bureau of Lab. Stats. (Sept. 13, 2023), <https://perma.cc/CED8-HRJR>.

### *Lawfulness of Local Minimum Wage Proposal*

increasing at around 3%.<sup>9</sup> At that rate, under the Local Wage Proposal, Lincoln’s minimum wage for 2027 would be \$15.45 per hour.

The statewide Wage Act previously used the same inflation percentage. *See* Neb. Rev. Stat. § 48-1203(2) (Cum. Supp. 2024). But under L.B. 258, passed in the most recent legislative session, the Act’s inflation percentage will be a fixed annual rate of 1.75%. L.B. 258, § 1, 109th Leg., 2d Sess. (2026) (enacted). Under this formula, the 2027 statewide minimum wage will be \$15.26, nearly \$0.20 less per hour than what it is estimated to be under the Local Wage Proposal.

The Local Wage Proposal also sets out a different standard than the Wage Act for paying minors. The Act, as amended by L.B. 258, provides that “an employer may pay a youth [(14–16 years old)] a minimum wage of thirteen dollars and fifty cents per hour.” L.B. 258 § 1. The Local Wage Proposal provides no similar exception—youth are paid at the standard minimum wage.<sup>10</sup>

We next turn to the standard for determining whether the Local Wage Proposal’s differences with state law would render it invalid.

### III.

As discussed, the Constitution gives home rule cities like Lincoln authority to govern their own affairs, including on matters not expressly delegated to them by the Legislature. But home rule charters remain “subject to

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<sup>9</sup> *Consumer Price Index, Midwest Region — March 2026*, U.S. Bureau of Lab. Stats. (April 10, 2026), <https://perma.cc/D83S-4VYE>.

<sup>10</sup> Except that children working for their own parents are not subject to the Local Wage Proposal. Local Wage Proposal § 2.

the Constitution and laws of the State.” Neb. Const. art. XI, § 5. So a home-rule ordinance that “is repugnant to, or inconsistent with” state law is invalid. *State v. Albarenga*, 313 Neb. 72, 83 (2022).

The Nebraska Supreme Court has adopted a two-part inquiry to determine whether a home-rule ordinance meets this standard and is therefore preempted. The first part asks whether the ordinance is actually “inconsistent with[] State law.” *Id.* The central question is whether the home rule charter has created “a conflict of authority” with state law. *Axberg v. City of Lincoln*, 141 Neb. 55, 58 (1942). If it has, the Court then determines whether the conflict is over a matter of “state-wide concern” or only “local municipal concern.” *Cunningham*, 158 Neb. at 710. A state statute prevails over a conflicting home rule charter on matters of “state-wide concern.” *Id.* But a home rule charter prevails over a conflicting state statute with respect to matters of “municipal concern.” *Id.*

Thus, the Local Wage Proposal would be invalid if it (1) is inconsistent with state law *and* (2) regulates a matter of statewide concern. *See Albarenga*, 313 Neb. at 84.

#### IV.

Applying this standard, we conclude that the Local Wage Proposal would likely violate state law. We find that the Local Wage Proposal (1) is inconsistent with the State’s minimum wage statutes and (2) regulates a matter of statewide concern.

#### A.

The first inquiry is whether Lincoln’s minimum wage would be inconsistent with state law—particularly,

### *Lawfulness of Local Minimum Wage Proposal*

the Wage Act. See Neb. Rev. Stat. §§ 48-1201 to -1209. We find would be.

The Nebraska Supreme Court has recognized three ways (borrowed from federal preemption jurisprudence) that a municipal law can be inconsistent with state law: (1) express preemption, (2) field preemption, and (3) conflict preemption. *Albarenga*, 313 Neb. at 84 (2022). Express preemption occurs where a state statute explicitly states that it preempts any municipal law on the same subject matter. We have found no such provision under state law with respect to minimum wage.<sup>11</sup> Thus, we turn our attention to the latter two categories—field preemption and conflict preemption.

#### 1.

We find the Local Wage Proposal is field preempted by state law. Field preemption occurs when the Legislature has passed “a comprehensive scheme of legislation” such that it can be “inferred” that the legislature intended it to preempt local laws. *Hauptman, O'Brien, Wolf & Lathrop, P.C. v. Auto-Owners Ins. Co.*, 310 Neb. 147, 154 (2021). The Legislature has provided such a comprehensive wage scheme in the Wage Act.

The Wage Act enshrines the Legislature’s holistic judgment about how to structure wages across the State. It sets a general minimum wage “at levels consistent with

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<sup>11</sup> As noted, your opinion request indicates that you are crafting and Senator Ballard plans to introduce legislation in the next legislative session designed to preserve a uniform statewide minimum wage. While we think a municipal minimum wage is already preempted by current state law, adding express preemption language to the Wage Act (e.g., “This Act shall preempt any municipal law regulating wages”) would remove any lingering doubt.

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[workers’] health, efficiency and general well-being.” Neb. Rev. Stat. § 48-1201 (Reissue 2021). The Act also provides targeted exemptions—including for agricultural employees, babysitters, and apprentices—and sets a lower rate for minors, tipped employees, and student-learners. Neb. Rev. Stat. §§ 48-1202, 1203. It also requires employers to post notices of employees’ wage rights and creates enforcement mechanisms. *Id.* §§ 48-1205, -1206.

The Nebraska Supreme Court has held a home-rule ordinance invalid in the face of a similarly comprehensive state statute. In *City of Omaha Hum. Rels. Dep’t ex rel. Guy v. City Wide Rock & Excavating Co.*, 201 Neb. 405, 408 (1978), the Court held that the Nebraska Fair Employment Act preempted Omaha’s fair employment practices ordinance because the state law was “a comprehensive law” on the same subject matter. The Fair Employment Act is similar in scope to the Wage Act. Both set out a general purpose, *compare* Neb. Rev. Stat. § 48-1101.01 *with id.* § 48-1201, have discreet definitions, *compare id.* § 48-1102, *with id.* § 48-1202, regulate employment conditions, *compare id.* § 48-1104, *with id.* § 48-1203(1), provide exceptions, *compare id.* §§ 48-1102, 1103, *with id.* § 48-1203(3), (4), and L.B. 258 § 1, *supra*, and create enforcement mechanisms, *compare id.* § 48-1116–19, *with id.* § 48-1206. The Court in *City Wide Rock* concluded that the Legislature’s scheme left no room for municipalities to adopt their own labor regulations. 201 Neb at 408; *accord Midwest Emps. Council, Inc. v. City of Omaha*, 177 Neb. 877, 887 (1964); *see also* Op. Att’y Gen. No. 12-009, 2012 WL 1649760 (May 3, 2012) (opining that municipalities cannot expand protected classifications for purposes of the Fair Employment Practices Act). So too here—the Wage Act is comprehensive and was not intended to leave room for municipal wage laws.

Legislative history supports that the Legislature did not intend for municipalities to enter the minimum

### *Lawfulness of Local Minimum Wage Proposal*

wage field. *See Midwest Emps.*, 177 Neb. at 887 (reviewing Legislative history to analyze whether the Legislature intended state law to occupy the field of fair employment practices). Prior to the passage of L.B. 258 in this year's legislative session, Nebraska's minimum wage increased annually according to the CPI. Neb. Rev. Stat. § 48-1203(2) (Cum. Supp. 2024). L.B. 258 amended that provision to create a fixed 1.75% rate. L.B. 258 § 1. When Senator Raybould introduced L.B. 258, she explained that the intention of the fixed rate was "to provide certainty to businesses across the state who are required to comply with this mandate." Transcript, L.B. 258, Business and Labor Committee, 109th Leg., 1st Sess. 58 (Feb. 24, 2025). The bill was meant to avoid "larger than expected increases to the minimum wage rates" that create "extreme impacts on employers," as happened in other states "with wages tied to CPI increases." *Id.* at 59.

Just before the bill crossed the finish line, Senator Raybould again explained on the floor that she intended the bill to replace the fluctuating CPI inflation percentage with "something that is fixed and predictable." Floor Debate, L.B. 258, 109th Leg., 2d Sess. 3 (Feb. 5, 2026). She explained that it was important for businesses "to be able to predict ... who they can hire and how many they can hire." *Id.* Senator Hansen explained the bill's modest inflation percentage would protect low-skill jobs: "[A] high minimum wage law is, in reality, a law that requires employers to discriminate against workers with low skills." *Id.* at 26. And Senator Clouse explained that the youth minimum wage gave small businesses "room for options" to "help them create ... jobs instead of than killing the jobs." *Id.* at 24.

Similar comments from the Legislative history abound. But the import is clear: The Legislature created the fixed growth percentage and youth minimum wage to give employers predictability and to protect jobs for minors

and low-skill workers. The Local Wage Proposal would frustrate these purposes by reverting Lincoln to a variable inflation rate and by eliminating the youth minimum wage.

It may be suggested that Neb. Rev. Stat. § 48-1208 (Reissue 2021) shows that the Legislature did not intend to occupy the field of minimum wage. That statute provides that “[any] standards relating to minimum wage ... in effect on October 23, 1967, by or under any other law of this state, which are more favorable to employees than those applicable to such employees under the [Wage Act], ... shall continue in full force and effect.” But that statute protected only laws in effect in 1967 when the Wage Act was passed. The Legislature was aware of those laws and did not intend to upend them. The Legislature could have applied the same protection to *any* law—including those later in time—that set a higher minimum wage than the Act. It did not. Further, the protection applies only to wages set by “other laws of this *state*.” While municipal ordinances are no doubt laws “within” the State, they are not necessarily laws “of” the State. And when the Legislature intends to include “municipal ordinances” within a statute’s ambit, it expressly includes them. *See, e.g.*, Neb. Rev. Stat. § 48-1124 (Reissue 2021); *id.* § 74-594 (Reissue 2018). The Legislature simply did not authorize municipalities to replace the minimum wage set by the Act.

In sum, we find that the Legislature intended the comprehensive Wage Act to occupy the field of minimum wage law in Nebraska.

**3.**

We also find that at least part of the Local Wage Proposal—and perhaps all of it—is conflict preempted by state law. Conflict preemption occurs when “a local law actually conflicts with state law.” *Hauptman*, 310 Neb. at

### *Lawfulness of Local Minimum Wage Proposal*

154. “[T]he fact that a local law is more stringent than state law does not by itself lead to conflict preemption.” *Butler Cnty. Dairy, L.L.C. v. Butler Cnty.*, 285 Neb. 408, 436 (2013). Thus, “where both an ordinance and a statute are prohibitory and the only difference between them is that the ordinance goes further in its prohibition,” there is no conflict. *Id.* On the other hand, when state law is not merely prohibitory, but instead blesses a particular practice, a municipality cannot “forbid what the legislature has expressly licensed, authorized, or required.” *Butler Cnty. Dairy*, 285 Neb. at 436–37 (quoting *Phelps, Inc. v. City of Hastings*, 152 Neb. 651, 657 (1950)); accord *Johnson*, 319 Neb. at 366–67.

In at least one respect, the Local Wage Proposal forbids what state law blesses. The Local Wage Proposal does not provide a youth minimum wage. Employers must pay teenagers the same rate they pay adults. The Wage Act, on the other hand, now expressly authorizes employers to pay 14–16 year-olds a lower minimum wage: “[A]n employer *may* pay a youth minimum wage of [\$13.50].” L.B. 258 § 1 (emphasis added). But paying a 15-year-old \$13.50 per hour would violate the Local Wage Proposal. The Local Wage Proposal thus forbids what the Wage Act expressly authorizes.

We also think that it is an open question whether the Local Wage Proposal’s general minimum wage is conflict preempted by the Wage Act. The plain text of the Wage Act is affirmative, not prohibitive. It provides that employers “shall pay ... a minimum wage.” Neb. Rev. Stat. § 48-1203(2). Of course, the implied flip side is that an employer “shall not” pay less than the minimum wage. But the statute’s affirmative phrasing is arguably an express authorization for employers to pay *at* the minimum wage. See *Ky. Restaurant Ass’n v. Louisville/Jefferson Cnty. Metro Gov.*, 501 S.W.3d 425, 428 (Ky. 2016) (holding a similarly worded Kentucky statute granted express

authority to pay the state minimum wage and local ordinance setting a higher minimum wage was invalid because it “prohibits what the [state] statute expressly permits”); *Wholesale Laundry Bd. of Trade, Inc. v. City of New York*, 17 A.D.2d 327, 329 (N.Y. Sup. Ct. App. Div. 1963) (invalidating local minimum wage because it “forbids a hiring at a wage which the state law permits and so prohibits what the state law allows” and noting that “[s]emantic exercises in this connection cannot change the concept”). In other words, by saying “you must pay *at least* X,” the statute is (at least arguably) expressing that “you are *authorized to pay* X.” *See id.*

The expressed purpose of the Wage Act supports this interpretation. The purpose of the Act is not only “to establish a minimum wage for all workers,” but also “to *safeguard existing minimum wage compensation standards* which are adequate to maintain the health, efficiency and general well-being of workers.” Neb. Rev. Stat. § 48-1201 (emphasis added). By establishing a minimum wage, the Legislature determined the rate that was “adequate to maintain the health, efficiency and general well-being of workers.” Thus, the Local Wage Proposal may directly conflict with state law when it forbids employers from paying a rate the Legislature determined to be “adequate to maintain the health, efficiency and general well-being of workers.”

4.

In sum, we find that the Local Wage Proposal is field preempted by the Wage Act because the Legislature intended the Act to occupy the field of minimum wage. That finding alone is sufficient to find the Local Wage Proposal is inconsistent with state law. But we also find the Local Wage Proposal’s youth minimum wage (or lack thereof) is conflict preempted by the Act. The Proposal’s

### *Lawfulness of Local Minimum Wage Proposal*

general minimum wage may also be conflict preempted by the Act. The Proposal is thus inconsistent with state law.

#### **B.**

The next inquiry is whether the minimum wage is a “matter of statewide concern.” Even if the Local Wage Proposal is inconsistent with state law, it is still valid if it governs a matter of only municipal concern and not statewide concern. *See* p. 6, *supra*. A law regulates a matter of statewide concern when it “involv[es] a public need or policy” affecting “the people of the state.” *Omaha Parking Auth. v. City of Omaha*, 163 Neb. 97, 104 (1956). We are confident that the appropriate minimum wage is a matter of statewide concern.

The Nebraska Supreme Court has already twice held that “labor relations and practices” or “fair employment practices” “are matters of statewide concern and not of purely local concern.” *City Wide Rock*, 201 Neb. at 408; *Mw. Emps. Council*, 177 Neb. at 886. Thus, Omaha ordinances that attempted to regulate fair employment practices were invalid. *See City Wide Rock*, 201 Neb. at 408; *Midwest Emps. Council*, 177 Neb. at 886; *see also* Op. Att’y Gen. No. 12-009 (opining that municipalities cannot expand protected classifications for purposes of the Fair Employment Practices Act). The minimum wage falls within the same field as “labor relations and practices” and “fair employment practices.” Like other laws regulating fair employment practices, a minimum wage “is designed to address a statewide concern for the health and welfare of workers.” *Marquez v. City of Long Beach*, 32 Cal.App.5th 552, 567 (2019); *see also id.* at 570–73.<sup>12</sup>

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<sup>12</sup> Case law in other jurisdictions is split on the question of whether municipal minimum wages are valid in the face of a state minimum wage law. *Compare, e.g., Marquez*, 32 Cal.App.5th at 570–78 (attempt to pay municipal employees less

The Court has also held that laws regulating traffic signals, street congestion, eminent domain procedures, gambling, and education are all matters of statewide concern. *Albarenga*, 313 Neb. at 84; *Van Patten v. City of Omaha*, 167 Neb. 741, 747–48 (1959); *Omaha Parking Auth.*, 163 Neb. at 98; *State ex rel. Hunter v. The Araho*, 137 Neb. 389, 400 (1940); *Carlberg v. Metcalf*, 120 Neb. 481, 488 (1930). Each of those subjects is arguably more locally concerned than the minimum wage.

At bottom, there can be little doubt that a minimum wage is not a purely municipal concern. The effects of the Local Wage Proposal would no doubt spill beyond Lincoln’s borders. Competitors in nearby labor markets will have to compete for labor with elevated Lincoln wages. The prices of goods and services originating in Lincoln but consumed elsewhere in the State will rise as labor costs rise. And businesses that operate in both Lincoln and other cities will be forced to reconsider their compensation policies across markets. The tendrils of Lincoln’s minimum wage

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than state minimum wage, relying on city charter’s express authorization to set wage rate for its workers, was unlawful because minimum wage law was a matter of statewide concern), and *Ky. Restaurant*, 501 S.W.3d at 430 (higher local minimum wage preempted); *with Coop. Home Care, Inc. v. City of St. Louis*, 514 S.W.3d 571, 583–87 (Mo. 2017) (wage ordinance not preempted by state minimum wage law), and *Visiting Homemaker Serv. v. Bd. of Chosen Freeholders*, 883 A.2d 1074, 1080 (N.J. Super. Ct. App. Div. 2005) (statutory amendment specifically authorizing higher local minimum wage overcame preemption argument). Critically, the outcome in these cases was heavily dependent on the language of that state’s constitution and the relevant minimum wage statutes, as well as the state’s history with respect to municipal authority. Thus, we find Nebraska caselaw far more salient to answering the question posed.

*Lawfulness of Local Minimum Wage Proposal*

would radiate across the State. The minimum wage is thus a matter of statewide concern.

V.

Given that the Local Wage Proposal is inconsistent with state law under both field preemption and conflict preemption, and because that the Proposal regulates a matter of statewide concern, we conclude that the Local Wage Proposal, if enacted, would be preempted by the Wage Act and thus be invalid and unenforceable.

MICHAEL T. HILGERS  
*Attorney General of Nebraska*

**Attachment A**  
**(Local Wage Proposal)**

ORDINANCE NO. \_\_\_\_\_

1 AN ORDINANCE amending Title 9 of the Lincoln Municipal Code relating to Public  
2 Peace and Welfare by creating a new Chapter 9.80 entitled "Lincoln Minimum Wage Ordinance"  
3 to adopt a minimum wage ordinance.

4 BE IT ORDAINED by the City Council of the City of Lincoln, Nebraska:

5 Section 1. That Title 9 of the Lincoln Municipal Code be amended by adding a new  
6 section numbered 9.80.010 to read as follows:

7 **9.80.010 Purpose and Title.**

8 a. This Chapter shall be known as the "Lincoln Minimum Wage Ordinance."

9 b. The City of Lincoln declares the purpose of this ordinance is to establish a minimum wage for  
10 all workers at levels consistent with their health, efficiency and general well-being, and to  
11 safeguard existing minimum wage compensation standards which are adequate to maintain the  
12 health, efficiency and general well-being of workers against the unfair competition of wage  
13 standards that do not provide adequate standards of living.

14 Section 2. That Title 9 of the Lincoln Municipal Code be amended by adding a new  
15 section numbered 9.80.020 to read as follows:

16 **9.80.020 Definitions.**

17 For purposes of the Lincoln Minimum Wage Ordinance, unless the context otherwise requires:

18 Employ shall include to permit to work.

19 Employer shall include any individual, partnership, limited liability company, association,  
20 corporation, business trust, legal representative, or organized group of persons employing four or

1 more employees at any one time except for seasonal employment of not more than twenty weeks  
2 in any calendar year, acting directly or indirectly in the interest of an employer in relation to an  
3 employee, but shall not include the United States, the state, or any political subdivision thereof.

4 **Employee** shall include any individual employed by any employer but does not include:

5 1. Any individual employed in agriculture;

6 2. Any individual employed as a baby-sitter in or about a private home;

7 3. Any individual employed in a bona fide executive, administrative, or professional capacity or  
8 as a superintendent or supervisor;

9 4. Any individual employed by the United States or by the state or any political subdivision  
10 thereof, including any individual incarcerated in any correctional facility;

11 5. Any individual engaged in the activities of an educational, charitable, religious, or nonprofit  
12 organization when the employer-employee relationship does not in fact exist or when the  
13 services rendered to such organization are on a voluntary basis;

14 6. Apprentices and learners otherwise provided by law;

15 7. Veterans in training under supervision of the United States Department of Veterans Affairs;

16 8. A child in the employment of his or her parent or a parent in the employment of his or her  
17 child; or

18 9. Any person who, directly or indirectly, is receiving any form of federal, state, county, or local  
19 aid or welfare and who is physically or mentally disabled and employed in a program of  
20 rehabilitation, who shall receive a wage at a level consistent with his or her health, efficiency,  
21 and general well-being.

22 **Wages** shall mean all remuneration for personal services, including commissions and bonuses  
23 and the cash value of all remunerations in any medium other than cash.

1           Section 3.     That Title 9 of the Lincoln Municipal Code be amended by adding a new  
2 section numbered 9.80.030 to read as follows:

3 **9.80.030     Wage; Minimum Rate; Adjustments.**

4 a. Except as otherwise provided in this section, every employer shall pay to each of his or her  
5 employees, without regard to the age of the employee, a minimum wage of fifteen dollars  
6 (\$15.00) per hour on the Effective Date through December 31, 2026.

7 b. The minimum wage established in subsection (a) of this section shall be increased on January  
8 1, 2027, and on January 1 of successive years, by the increase in the cost of living. The increase  
9 in the cost of living shall be measured by the percentage increase, if any, as of August of the  
10 previous year over the level as of August of the year preceding that year in the consumer price  
11 index for all urban consumers (CPI-U) for the Midwest Region, or its successor index, as  
12 published by the U.S. Department of Labor, or its successor agency, with the amount of the  
13 minimum wage increase rounded up to the nearest multiple of five cents. No later than October  
14 15 of each year, commencing October 15, 2026, the Finance Director, or their designee, shall  
15 calculate and publish the minimum wage rate that will take effect the following January 1.

16 c. For persons compensated by way of gratuities such as waitresses, waiters, hotel bellhops,  
17 porters, and shoeshine persons, the employer shall pay wages at the minimum rate of two dollars  
18 and thirteen cents (\$2.13) per hour, plus all gratuities given to them for services rendered. The  
19 sum of wages and gratuities received by each person compensated by way of gratuities shall  
20 equal or exceed the applicable minimum wage rate provided in subsection (a) or (b) of this  
21 section. In determining whether or not the individual is compensated by way of gratuities, the  
22 burden of proof shall be upon the employer.

1 d. Any employer employing student-learners as part of a bona fide vocational training program  
2 shall pay such student-learners' wages at a rate of at least seventy-five percent of the minimum  
3 wage rate which would otherwise be applicable under this section.

4 Section 4. That Title 9 of the Lincoln Municipal Code be amended by adding a new  
5 section numbered 9.80.040 to read as follows:

6 **9.80.040 Posting.**

7 Every employer subject to the provisions of the Lincoln Minimum Wage Ordinance shall keep a  
8 summary of the Ordinance, furnished by the Finance Director, or their designee, without charge,  
9 posted in a conspicuous place on or about the premises wherein any person subject to the  
10 provisions of such Ordinance is employed.

11 Section 5. That Title 9 of the Lincoln Municipal Code be amended by adding a new  
12 section numbered 9.80.050 to read as follows:

13 **9.80.050 Penalty for Violations.**

14 a. Any employer subject to the provisions of the Lincoln Minimum Wage Ordinance who  
15 violates any provision of Section 9.80.030 shall be guilty of a misdemeanor and upon conviction  
16 thereof shall be fined in any sum not to exceed \$500.00. Each day that any violation continues  
17 shall constitute a separate and distinct offense.

18 b. Nothing herein shall preclude an individual from filing or pursuing a complaint with the  
19 Nebraska Commissioner of Labor or from pursuing any other remedy allowed by law.

20 Section 6. That Title 9 of the Lincoln Municipal Code be amended by adding a new  
21 section numbered 9.80.060 to read as follows:

1 **9.80.060** **Collective Bargaining.**

2 Nothing in this Ordinance shall be deemed to interfere with, impede or in any way diminish the  
3 right of employees to bargain collectively with their employees through representatives of their  
4 own choosing in order to establish wages or other conditions of work in excess of the applicable  
5 minimum under the provisions of the Lincoln Minimum Wage Ordinance and other law.

6 Section 7. That Title 9 of the Lincoln Municipal Code be amended by adding a new  
7 section numbered 9.80.070 to read as follows:

8 **9.80.070** **Severability.**

9 In the event that any provision of this Ordinance shall be held invalid or unenforceable by any  
10 court of competent jurisdiction, the remaining portions, clauses, and phrases shall not be  
11 affected, but shall remain in full force and effect.

12 Section 8. That Sections 1 through 7 of this Ordinance shall be codified in the  
13 Lincoln Municipal Code as Chapter 9.80 entitled Lincoln Minimum Wage Ordinance.

14 Section 9. That Chapter 9.80 shall go into force and effect on July 18, 2026.

15 Section 10. This ordinance shall be published, within fifteen days after the passage  
16 hereof, in one issue of a daily or weekly newspaper of general circulation in the City, or posted  
17 on the official bulletin board of the City, located on the wall across from the City Clerk's office  
18 at 555 S. 10th Street, in lieu and in place of the foregoing newspaper publication with notice of  
19 passage and such posting to be given by publication one time in the official newspaper by the  
20 City Clerk. This ordinance shall take effect and be in force from and after its passage and  
21 publication or after its posting and notice of such posting given by publication as herein and in  
22 the City Charter provided.

ORDINANCE NO. \_\_\_\_\_

Introduced by:

\_\_\_\_\_

Approved as to Form & Legality:

\_\_\_\_\_  
City Attorney

Approved this ____ day of _____, 2026:  _____ Mayor
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