

AN INITIATIVE CONCERNING THE FINANCE OF THE CITY OF TACOMA TO REPEAL AND REPLACE THE PAYMENT OF A CITY-WIDE MINIMUM WAGE

I Declaration of Necessity.

WHEREAS the costs of housing, food, medical care and other basic necessities in the city of Tacoma are now beyond the means of many low-wage workers to pay them and; WHEREAS the stated mission of the City of Tacoma is to "enhance the lives of its citizens"; and the stated vision of the City of Tacoma is to "be recognized as a livable and progressive international city"; and the key to livability is a livable wage; and the mark of a progressive city is to strive to improve the welfare of its citizens and; WHEREAS the City of Tacoma has an opportunity to demonstrate that it honors and defends the dignity and economic well-being of its citizens, the people declare that in their considered judgment the health, safety and the general welfare of the citizens of this city require the enactment of this measure. NOW THEREFORE, BE IT ORDAINED, BY THE PEOPLE OF THE CITY OF TACOMA: A New Ordinance is added to the Tacoma Municipal Code as follows:

II TITLE: This ordinance shall be known as the "TACOMA MINIMUM WAGE ORDINANCE."

III Definitions as used in this initiative.

- (1) "Director" means the Director of the Finance Department of the City or any officer, agent or employee of the City designated to act on the Director's behalf.
- (2) "Employer" includes any individual, partnership, association, corporation, business trust or any person or group of persons acting directly or indirectly in the interest of an employer to control the activities and compensation of an employee, but does not include:
  - (a) Any business receiving an exemption under the City of Tacoma Tax Code, 6A.30.090, Exemptions, paragraph V or a credit under 6A.30.066, Small business phased tax credit.
  - (b) Any business located outside the City of Tacoma if gross income as defined in 6A.30.066 remains below the highest dollar amount allowed under 6A.30.066.
- (3) "Employ" means to direct the activities of and compensate an employee for work performed for an employer.
- (4) "Employee" includes any individual, employed by an employer who, in a given week, performs at least two hours of work within the city limits of Tacoma or maintains or reports to an office within the city limits of Tacoma or performs work supervised from an office within the city limits of Tacoma but shall not include:
  - (a) Any individual employed in casual labor in or about a private home, unless performed in the course of the employer's trade, business or profession;
  - (b) Any individual engaged in the activities of an educational, charitable, religious, state or local governmental body or agency or nonprofit organization where the employer-employee relationship does not in fact exist or where the services are offered freely by an employee without coercion by the employer and are not a condition of employment. If the individual receives reimbursement in lieu of compensation for normally incurred out-of-pocket expenses or receives a nominal amount of compensation per unit of voluntary service rendered, an employer-employee relationship is deemed not to exist for the purpose of this ordinance.
- (5) "Ordinance" means the "Tacoma Minimum Wage Ordinance."
- (6) "Wage" means compensation due to an employee by reason of employment, payable in legal tender of the United States or checks on banks convertible into cash on demand at full face value, subject to such deductions, charges or allowances as may be permitted by law. Gratuities received by employees shall not be considered part of the minimum wage.
- (7) "Department" refers to the Finance Department of the City of Tacoma.

IV Minimum Hourly Wage – Adjusted minimum wage based on inflation.

- (1) Beginning on the earliest date allowed by law following the certification of this ordinance, every employer shall pay to each of his or her employee's wages at a rate of not less than fifteen dollars (\$15.00) per hour.
- (2) On September 30, 2016 and on each following September 30th, the Director shall calculate an adjusted minimum wage rate to maintain employee purchasing power by increasing the current year's minimum wage rate by the rate of inflation. The consumer price index for urban wage earners and clerical workers, CPI-W, for the twelve months prior to each September 1st is calculated by the United States Department of Labor. The adjusted minimum wage rate for Tacoma shall be calculated to the nearest cent using the unchained CPI-W for urban wage earners and clerical workers for the Seattle-Tacoma-Bremerton CMSA. If a successor index must be chosen, the most relevant local index will be selected. Each adjusted minimum wage rate calculated under this ordinance takes effect on the following January 1st. If the inflation index is a negative number there will be no change in the minimum wage rate.

V Police Powers granted. – Authority and responsibility to administer, monitor, enforce. – Duty to provide periodic reports.

- (1) This ordinance establishes a minimum wage for workers in Tacoma and enables the City of Tacoma and the Director of the Finance Department of the City to exercise police powers to enforce that minimum wage.
- (2) The Director shall have the authority and responsibility to administer, monitor and enforce compliance with minimum wage requirements under this ordinance.
- (3) Beginning March 31, 2016 and on March 31 of each subsequent year, the Director shall publish an annual report addressed to the Council, the Citizens of Tacoma, and the Minimum Wage Review Commission providing a statistically valid assessment of compliance with this ordinance and detailing related enforcement activity.

VI Rulemaking Authority – Finance Director.

The Director shall have the power to make rules pursuant to 6A.10.160, Director to make rules, provided that such rules or regulations do not allow any employer to pay a wage less than the Tacoma minimum wage to any employee unless exempted by the definition of an employee or employer in this ordinance.

VII Minimum Wage Review Commission

- (1) Beginning in April of 2016 and each subsequent April an independent citizen commission shall be formed and named the Tacoma Minimum Wage Review Commission. The commission will consist of seven members, five of whom are to be selected by lot by the County Auditor from eligible City of Tacoma voters in each of the City's Council districts. One member from City of Tacoma residents with labor issues management experience is to be appointed by the Mayor and confirmed by the City Council and one member with labor issues resolution experience is to be selected by the Pierce County Central Labor Council after being nominated from City of Tacoma residents by member unions. All members must show proof of residency in the City of Tacoma upon appointment and maintain such residency for the duration of their service on the Commission.
- (2) Every year, the Commission will review the Director's Report and certify that adequate resources are being allocated to administration and enforcement of the ordinance. If the Commission finds that funding and/or staffing is inadequate, the Commission is authorized to direct the City Council to rectify the situation.
- (3) Every five years, the Commission will review the minimum wage and assess whether the base minimum wage needs to be increased beyond scheduled cost-of-living increases. The Commission will present its findings and recommendations to the City Council for action.

VIII Notification of employers.

- (1) By November 1 of each year, the Department shall publish and make available to Employers a bulletin announcing the adjusted minimum wage rate for the upcoming year, which shall take effect on January 1. In conjunction with this bulletin, the Department shall by November 1 of each year publish and make available to employers, in all languages spoken by more than five percent of the work force in the City, a notice suitable for posting by employers in the workplace informing employees of the current minimum wage rate and of their rights under this ordinance.
- (2) Every employer shall post in a conspicuous place at any workplace or job site where any employee works the notice published each year by the Department informing employees of the current minimum wage rate and of their rights under this ordinance. Every employer shall post such notices in any language spoken by at least five percent of the employees at the work-place or job site. Every employer shall also provide each employee at the time of hire with the employer's name, address and telephone number in writing.

IX Investigation—Services of federal and state agencies -- Employer's records -- Industrial homework.

- (1) The Director or his or her designated representatives may investigate and gather data regarding the wages, hours and other conditions and practices of employment of any employer subject to this ordinance and may enter and inspect such places and such records and make such transcriptions thereof, question such employees and investigate such facts, conditions, practices or matters as he or she may deem necessary or appropriate to

determine whether any person has violated any provision of this ordinance or which may aid in the enforcement of the provisions of this ordinance.

- (2) With the consent and cooperation of federal and/or state agencies charged with the administration of federal and state labor laws, the Director may, for the purpose of carrying out his or her functions and duties under this ordinance, utilize the services of federal and state agencies and their employees and, notwithstanding any other provision of law, may reimburse such federal and state agencies and their employees for services rendered for such purposes.
- (3) Every employer subject to any provision of this ordinance or of any order issued under this ordinance shall make, keep and preserve such records of the persons employed by him or her and shall preserve such records for a period of at least ten years.
  - (a) These records shall contain at a minimum, each employee's name, address, rate of pay, the amount paid each pay period, hours worked each day, each work week and such other information as the Director shall prescribe by regulation.
  - (b) Such records shall be open for inspection or transcription by the Director or his or her authorized representative at any reasonable time and such reasonable time shall be within 15 days of the Director's request for disclosure.
  - (c) The employer shall make reports therefrom to the Director as he or she shall prescribe by regulation.
  - (d) The employer shall furnish to the Director or to his or her authorized representative on demand a sworn statement attesting to the accuracy and completeness of such records and information upon forms prescribed or approved by the Director.
- (4) The Director is authorized to make such regulations regulating, restricting or prohibiting industrial homework as are necessary or appropriate to prevent the circumvention or evasion of and to safeguard the minimum wage rate prescribed in this ordinance.

X Claims against employer—Assignment of wage claim-reporting violations.

- (1) An employee of an employer as defined in this ordinance or anyone advocating in the employee's interest may file a complaint. This involves providing information showing work hours and rates of pay. The Director and any designee of the Director employed by the Department may initiate an investigation even when no complaint has been filed. All claims must be investigated by the City Finance Department or if appropriate, forwarded to the Washington State Department of Labor & Industries for investigation. In order to protect claimants from retaliation the Department shall maintain the claimant's anonymity unless and until disclosure is required by law. Claimants shall be notified of the status of their claim within 30 calendar days and further updates provided upon request until the claim is resolved by the Director. In addition to filing a complaint with the department, a worker may have other remedies under the law.
- (2) Any employer who pays any employee less than wages to which such employee is entitled under or by virtue of this ordinance, shall be liable to such employee affected for the full amount of such wage rate, less any amount actually paid to such employee by the employer and for costs and such reasonable attorney's fees as may be allowed by the court. Any agreement between such employee and the employer to work for less than such wage rate shall be no defense to such action.
- (3) Upon obtaining information indicating an employer may be committing a violation under this ordinance and when, in the judgment of the Director, the claims are valid and enforceable in the courts, the Director shall:
  - (a) Order the payment of all wages owed the workers and institute actions necessary for the collection of the sums determined owed; and
  - (b) Report, with evidentiary documentation, to the City Attorney to support criminal prosecution.
  - (c) For persons who are financially unable to employ counsel the Director may take assignments of wage claims and prosecute actions for the collection of wages.

XI Prohibited acts of employer—Penalty.

- (1) Any employer who pays or agrees to pay wages at a rate less than the rate applicable under this ordinance shall, upon conviction therefore, be guilty of:
  - (a) Theft under RCW 9A.56.050—Theft in the third degree if the unpaid wages of all affected employees does not exceed seven hundred and fifty dollars; or
  - (b) Theft under RCW 9A.56.040—Theft in the second degree if the unpaid wages of all affected employees exceeds seven hundred fifty dollars but does not exceed five thousand dollars; or
  - (c) Theft under RCW 9A.56.030—Theft in the first degree if the unpaid wages of all affected employees exceeds five thousand dollars.
- (2) If any of the penalties in subsection (1), immediately above, are disallowed by the courts, the employer shall pay a civil penalty of \$100.00 per day per employee for the first violation or \$500.00 per day per employee for the second violation or \$1,000.00 per day per employee for subsequent violations. All penalty monies collected are to be evenly divided between the affected employees and the Department to defray the cost of enforcement. Further, the violator shall be subject to such further penalties as set forth herein. The civil penalty may be assessed and collected by use of all appropriate legal remedies.
- (3) If the penalties cited in subsections (1) and (2) immediately above are disallowed by the courts the employer shall be subject to the maximum penalty allowed by law.
- (4) Any employer who obstructs, hinders or delays the director or his or her authorized representatives in the performance of his or her duties in the enforcement of this ordinance or refuses to admit the director or his or her authorized representatives to any place of employment or fails to make, keep and preserve any records as required under the provisions of this ordinance or falsifies any such record or refuses to make any record accessible to the director or his or her authorized representatives upon demand or refuses to furnish a sworn statement of such record or any other information required for the proper enforcement of this ordinance to the director or his or her authorized representatives upon demand or otherwise violates any provision of this ordinance or of any regulation issued under this ordinance shall be deemed in violation of this ordinance and shall, upon conviction therefore, except as defined otherwise above, be guilty of a gross misdemeanor.
- (5) It shall be unlawful for an employer or any other party to discriminate in any manner or take adverse action against any person in retaliation for exercising rights protected under this ordinance. Rights protected under this ordinance include, but are not limited to: the right to file a complaint or inform any person about any party's alleged noncompliance with this ordinance, the right to inform any person of his or her potential rights under this ordinance and to assist him or her in asserting such rights. Protections of this ordinance shall apply to any person who mistakenly, but in good faith, alleges noncompliance with this ordinance. Any employer who discharges or in any other manner discriminates or retaliates against any employee because such employee has made any complaint to his or her employer or because such employee has caused to be instituted or is about to cause to be instituted any proceeding under or related to this ordinance or because such employee has testified or is about to testify in any such proceeding shall be deemed in violation of this ordinance and shall, upon conviction therefore, be guilty of a gross misdemeanor. Taking adverse action against a person within ninety (90) days of the person's exercise of rights protected under this ordinance shall raise a rebuttable presumption of having done so in retaliation for the exercise of such rights.

XII City Authorized to Consider Compliance.

City officials are hereby authorized to consider, to the maximum extent permitted by law, an employer's record of noncompliance with this ordinance in making decisions on City contracts, land use approvals and other entitlements to expand or operate within the City. The City is authorized to either deny approval or include conditions for approval ensuring future compliance by investigating complaints of noncompliance with this ordinance and rendering City decisions on the merits of such complaints. The City is authorized to award the same relief in its proceedings as a court may award. Pursuit of such administrative remedy shall not be a prerequisite for pursuing a private action under this Ordinance.

XIII Ordinance establishes minimum standards and is supplementary to other laws—More favorable standards unaffected.

This ordinance establishes a minimum standard for wages and working conditions of all employees in this city unless exempted herein and is in addition to and supplementary to any other federal or state law or ordinance or any rule or regulation issued under such law or ordinance, provided such law, ordinance, rule or regulation does not allow any employer to pay a wage less than the Tacoma minimum wage to any employee not explicitly exempted by the definition of an employee or employer in this ordinance. Any standards relating to wages, hours or other working conditions established by any applicable federal or state law or ordinance or any rule or regulation issued thereunder which are more favorable to employees than the minimum standards applicable under this ordinance or any rule or regulation issued hereunder, shall not be affected by this ordinance and such other laws, rules or regulations shall be in full force and effect and may be enforced as provided by law.

XIV Severability.

If any provision of this ordinance or the application thereof to any person or circumstances, is held invalid, the remainder of the ordinance and the application thereof to other persons or circumstances shall not be affected thereby.