TO: Elizabeth A. Pauli, City Manager

FROM: William C. Fosbre, City Attorney

COPY: Government Performance and Finance Committee
Andy Cherullo, Director of Finance and Committee Executive Liaison

SUBJECT: Minimum Wage and Workers with Disabilities

DATE: November 20, 2018

PRESENTATION TYPE:
Informational Briefing

SUMMARY:
The City Attorney's Office was asked whether the City could require employers to pay the full minimum wage to workers with disabilities. The City Attorney's Office will explain the law, what other jurisdictions are doing in this regard, how this could be implemented in Tacoma, and what impacts it may have.

BACKGROUND:
State law requires employers to pay a minimum wage, currently $11.50/hour, to most employees, except that employers may apply to the state of Washington to pay a lower wage to workers with a disability.

The City of Tacoma also requires a minimum wage, currently $12.00/hour, to be paid to workers in Tacoma. However, the City's code authorizes an exemption from the City's minimum wage requirements for employers who are permitted by the state of Washington to pay workers with a disability less than minimum wage.

This topic was presented generally at the committee meeting on August 7, 2018. At that meeting, committee members requested information on the following, to be reported back at future committee meeting:

- How many Tacoma employers pay their workers with disabilities less than minimum wage?

- How many workers with disabilities earning less than minimum wage work full time?

- What does the state Department of Labor and Industries look for or require to determine a worker has a disability and can be paid less than minimum wage?

City staff will present information on the above areas and also present what a draft ordinance could look like (see attached).

ISSUE:

Whether the City wants to require employers to pay the full minimum wage to workers with disabilities?

ALTERNATIVES:

This is an information briefing only. There are no alternatives presented.

FISCAL IMPACT:

This is an information briefing only. There is no fiscal impact.

RECOMMENDATION:

This is an information briefing only. There is no recommendation.

Chapter 18.20

MINIMUM WAGE

Sections:

* * *

18.20.040   Definitions.

In construing the provisions of this chapter, the following definitions shall be applied. Words in the singular number shall include the plural, and the plural shall include the singular. If specific provisions of law, code, regulation, or rule referred to herein be renumbered or amended, then the reference shall be read to refer to the renumbered and/or amended provision.

"Adverse action" means to discharge, suspend, discipline, transfer, demote, or deny promotion, or threaten to do any of the prior listed actions, by an employer of an employee for any reason prohibited by Section 18.20.090 of this chapter.

"Charging party" means the person aggrieved by an alleged violation of this chapter or the person making a charge on another person's behalf, or the Director, when the Director files a charge.

"City" means the City of Tacoma.

"Director" means the Finance Director, or designee.

"Employ" shall have the same meaning as that term is given pursuant to the Washington Minimum Wage Act.

"Employee" shall have the same meaning as that term is given pursuant to the Washington Minimum Wage Act, and includes a "worker with a disability" under Washington Administrative Code 296-128-055.

"Employer" shall have the same meaning as that term is given pursuant to the Washington Minimum Wage Act.

"Minimum Wage" or "Minimum Wage Rate" shall mean the minimum hourly rates of monetary compensation for work as specified in this chapter.

"Nonprofit Corporation" means any organization recognized as a nonprofit corporation under the provisions of Chapter 24.03 of the Revised Code of Washington ("RCW"), and exempt from the Washington State business and occupation tax pursuant to RCW 82.04.3651.

"Party" includes the person charging or upon whose behalf a charge is made alleging a violation of this chapter, the person alleged or found to have committed a violation of this chapter, and the Director.

"Person" means any individual, receiver, administrator, executor, assignee, trustee in bankruptcy, trust, estate, firm, co-partnership, joint venture, club, company, joint-stock company, business trust, municipal corporation, political subdivision of the state of Washington, corporation, limited liability company, association, society, or any group of individuals acting as a unit, whether mutual, cooperative, fraternal, nonprofit, or otherwise, and the United States or any instrumentality thereof.

"Tip" means a verifiable sum to be presented by a customer as a gift or gratuity in recognition of some service performed for the customer by the employee receiving the tip.

"Wage" shall have the same meaning as that term is given pursuant to the Washington Minimum Wage Act. Tips and employer payments toward a medical benefits plan do not constitute wages for purposes of this Chapter.

"Washington Minimum Wage Act" shall mean Chapter 49.46 of the Revised Code of Washington ("RCW").

* * *

18.20.070 Waivers; exemptions.

Employers issued special certificates pursuant to RCW 49.46.060 are exempt from the requirements of Section 18.20.060 of this chapter to pay minimum wage to those employees who are subject to the certificate(s); provided that, the employer is in compliance with the terms and conditions of the certificate(s) issued; except that an employer with a certificate pursuant to RCW 49.46.060 for a "worker with a disability," as defined in WAC 296-128-055, is not exempt from the requirements of this chapter.

* * *