

# CITY OF BURIEN, WASHINGTON

## RESOLUTION NO. 515

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**A RESOLUTION OF THE CITY OF BURIEN, WASHINGTON, CALLING FOR A SPECIAL ELECTION TO BE HELD ON FEBRUARY 13, 2025, TO ASK BURIEN'S QUALIFIED ELECTORS WHETHER THE PROPOSED INITIATIVE ORDINANCE THAT SETS A MINIMUM WAGE AND TIES FUTURE MINIMUM WAGE INCREASES TO THE CITY OF TUKWILA SHOULD EXIST IN ADDITION TO BURIEN'S MINIMUM WAGE ORDINANCE (BMC CHAPTER 5.15).**

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**WHEREAS**, the Transit Riders Union has submitted to the City of Burien a citizen initiative petition, Initiative Petition No. 24-001, asking Burien to adopt the initiative proponents' ordinance concerning labor standards for workers potentially giving Burien a second minimum wage ordinance in addition to Burien's BMC Chapter 5.15, adopted in March 2024, amended in October 2024, and scheduled to take effect January 1, 2025;

**WHEREAS**, the initiative petition had signatures from at least fifteen percent of Burien's registered voters who were registered to vote in Burien for the last general election;

**WHEREAS**, Burien's City Clerk, with a certificate stating the beginning and ending dates for a sufficiency determination, referred the petition to the King County Department of Elections within three working days of the petition being filed with Burien;

**WHEREAS**, the King County Department of Elections verified the sufficiency of the petition signatures;

**WHEREAS**, the Burien City Council did not adopt the initiative ordinance within twenty days, and intends to place the initiative ordinance before the Burien electorate for consideration at a special election to be held on February 13, 2025;

**WHEREAS**, in October 2024, the Burien City Council has appointed volunteers to serve on committees representing approval and opposition to the initiative ordinance;

**WHEREAS**, the Burien City Attorney has prepared an explanatory statement and the ballot title as required by law to be included in the official local voters' pamphlet; and

**NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF BURIEN, WASHINGTON, DOES RESOLVE AS FOLLOWS:**

Section One. To call a special election on February 13, 2025, for the Burien electorate to

decide whether the proposed initiative ordinance, entitled “An ordinance concerning labor standards for certain employees,” attached as Exhibit A, that sets a minimum wage and ties future minimum wage increases to the city of Tukwila should exist in addition to Burien’s BMC Chapter 5.15, entitled *Minimum Wage Ordinance*.

Section Two. A special election must be held on February 13, 2025, to place before Burien’s qualified electors the following:

Ballot Title:

**Citizen Initiative Measure No. 24-001, called “An ordinance concerning labor standards for certain employees” offers a different minimum wage to Burien’s existing Minimum Wage Ordinance in BMC Chapter 5.15, called “Minimum Wage Ordinance.”**

Initiative 24-001 would permit Burien’s large employers to pay \$21.10 and medium-sized employers to pay \$19.10 an hour, Tukwila’s minimum wage rate, instead of Burien’s \$21.16 and \$20.16 minimum hourly wages, respectively. Tukwila’s small businesses are exempt from its minimum wage ordinance, but the initiative would eliminate Burien’s small business exemption (< 20 employees). Burien’s City Council would lose control over Burien minimum wages and Tukwila voters would control minimum wages in Burien and Tukwila.

Should Initiative Measure 24-001 be enacted into law in Burien?

YES     ☐  
NO       ☐

Section Three. The Burien City Clerk or designee shall file a copy of this resolution with the King County Department of Elections no later than December 13, 2024.

Section Four. The Burien City Clerk will ensure that the proposed ordinance is published once in each of the daily newspapers in the city not less than five nor more than twenty days before the election, or if no daily newspaper is published in the city, publication shall be made in each of the weekly newspapers published in Burien.

Section Five. The Burien City Council appoints the following individuals to serve on committees representing approval and opposition to the proposed initiative ordinance:

Committee Advocating Approval (Pro)	Committee Advocating Rejection (Con)
1. Jennifer Fichamba	1. Arturo Cortez De Bonar
2. Kelsey Vanhee	2. Enrique Arias
3. Stephen Lamphear	3. Eric Papczun

Section Six. The Burien Citizen Initiative Measure No. 24-001 “Explanatory Statement,” below, is adopted and the City Clerk shall send it to the King County Department of Elections to be

added to the King County Voters' Pamphlet:

If enacted, the Initiative would require Burien employers to pay employees at Tukwila's minimum wage rate – at least \$21.10 for large and \$19.10 for medium-sized employers (with annual \$1.00 increases for two years) while Burien's existing minimum wage rate requires minimum wages of at least \$21.16 and \$20.16 an hour, respectively. Although Tukwila's ordinance exempts small businesses, the Initiative would eliminate Burien's small business exemption (< 20 employees) intended to protect and keep small businesses in Burien which could result in higher prices for Burien customers.

The Initiative does not encourage the hiring of learners, apprentices, and mentally or physically challenged persons, and does not specifically prohibit wage theft. The Initiative prohibits tips and medical benefits from being counted as minimum wages, whereas Burien defers to employers and employees to make the best decisions for themselves. Though the Initiative and Burien's ordinance differ regarding tips and medical benefits, they are similar but not identical as both permit minimum wage enforcement for violations, prohibit retaliation, and require some amount of records retention.


Because Burien has a minimum wage law, and Measure 24-001 is not a referendum, if enacted, Burien would have two minimum wage laws. This will likely result in confusion and potentially expensive litigation. Additionally, Burien residents, workers, businesses, and the Burien City Council would lose the right to determine minimum wage-related laws based on RCW 35.17.340, since petition ordinances cannot be repealed or amended except by a vote of the people. Tukwila would control Burien's minimum wage.

Explanatory Statement Drafted/Reviewed by: G. Newsom II, Burien City Attorney

Section Seven. Effective Date. This resolution shall take effect immediately upon passage by the Burien City Council.

ADOPTED BY THE CITY COUNCIL OF THE CITY OF BURIEN, WASHINGTON, AT A REGULAR MEETING THEREOF THIS 4<sup>TH</sup> DAY OF NOVEMBER 2024.

CITY OF BURIEN

  
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Kevin J. Schilling, Mayor

ATTEST/AUTHENTICATED:

  
\_\_\_\_\_  
Heather Dumlao, City Clerk, CMC

Approved as to form:



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Garmon Newsom II, City Attorney

Filed with the City Clerk: October 31, 2024  
Passed by the City Council: November 4, 2024  
Resolution No. 515

## EXHIBIT A

## **AN ORDINANCE concerning labor standards for certain employees.**

### **Section 1. Findings.**

1. The people of the City of Burien hereby adopt this citizen initiative addressing labor standards for certain employees, for the purpose of ensuring that, to the extent reasonably practicable, people employed in Burien have good wages and access to sufficient hours of work.
2. The statewide minimum wage is not sufficient to afford rising rents and costs of living in Washington State. According to the National Low Income Housing Coalition's Out of Reach 2023 report, a King County worker making the state's minimum wage would need to work 103 hours a week to afford a one-bedroom apartment at Fair Market Rent.
3. When working families earn insufficient income due to low wages and involuntary under employment, they struggle to pay for basic necessities like health care, childcare, and groceries, and they are more likely to be evicted and become homeless.
4. Burien's neighboring cities of SeaTac, Seattle, and Tukwila enacted higher minimum wages in 2013, 2014, and 2022, and voters in the City of Renton approved a higher minimum wage in 2023, but until now Burien's wage has remained significantly lower.

### **Section 2. Intent.**

It is the intent of the people to establish fair labor standards and protect the rights of workers by: (1) ensuring that employees in the City of Burien receive a minimum wage comparable to employees in neighboring cities of Tukwila, SeaTac, and Seattle; (2) requiring employers to offer additional hours of work to qualified part-time employees before hiring new employees to fill those hours; and (3) adopting enforcement requirements.

### **Section 3. Large Employers Shall Pay Minimum Wages Comparable to Those in Neighboring Cities.**

1. Starting 30 days after the effective date, and through the end of that calendar year, every large employer must pay to each employee an hourly wage of not less than the "large employer minimum wage rate" in effect in the City of Tukwila pursuant to Tukwila Municipal Code Section 5.63.
2. On each January 1 thereafter, the hourly minimum wage must increase by the annual rate of inflation to maintain employee purchasing power.
3. By October 15 of each calendar year, the city manager or designee must establish and publish the applicable hourly minimum wage for the following year using the annual rate of inflation.
4. For purposes of this chapter, the annual rate of inflation means 100 percent of the annual average growth rate of the bi-monthly Seattle-Tacoma-Bellevue Area Consumer Price Index for Urban Wage Earners and Clerical Workers, termed CPI-W, for the 12-

month period ending in August, provided that the percentage increase shall not be less than zero.

5. An employer must pay to its employees:

- a. All tips and gratuities; and
- b. All service charges as defined under RCW 49.46.160 except those that, pursuant to RCW 49.46.160, are itemized as not being payable to the employee or employees servicing the customer.

Tips and service charges paid to an employee are in addition to, and may not count towards, the employee's hourly minimum wage.

6. Small and medium employers shall have a phase-in period as provided in section four and thereafter must pay the full minimum wage established in this section.

**Section 4. Medium and Small Employers Shall Have a Multiyear Phase-In Period.**

1. Starting 30 days after the effective date, and through the end of that calendar year, medium employers must pay their employees an hourly minimum wage rate as established in section three minus two dollars per hour. The two-dollar reduction must decrease annually by one dollar on January 1 of each year thereafter until the reduction is zero.
2. Starting 30 days after the effective date, and through the end of that calendar year, small employers must pay their employees an hourly minimum wage rate as established in section three minus three dollars. The three-dollar reduction must decrease annually by fifty cents on January 1 of each year thereafter until the reduction is zero.

**Section 5. Coverage and Employer Classifications.**

1. Employers must pay employees at least the minimum wage established by this chapter for each hour worked within the City.
2. Employer classification for the current calendar year will be calculated based upon the average number of employees during all weeks in the previous calendar year in which the employer had at least one employee. For employers that did not have any employees during the previous calendar year, classification will be based upon the average number of employees during the most recent three months of the current year. In this determination, all employees will be counted, regardless of their location, and including employees who worked in full-time employment, part-time employment, joint employment, temporary employment, or through the services of a temporary services or staffing agency or similar entity.
3. For the purposes of employer classification, separate entities will be considered a single employer if they form an integrated enterprise or they are under joint control by one of those entities or a separate entity. The factors to consider in making this assessment include, but are not limited to:

- a. Degree of interrelation between the operations of multiple entities;
- b. Degree to which the entities share common management;
- c. Centralized control of labor relations; and
- d. Degree of common ownership or financial control over the entities.

#### **Section 6. Part-Time Employees Shall Have Fair Access to Additional Hours.**

1. Before hiring additional employees or subcontractors, including hiring through the use of temporary services or staffing agencies, large and medium employers must offer additional hours of work to existing employees who, in the employer's good faith and reasonable judgment, have the skills and experience to perform the work, must notify all such employees when additional hours are available, and must use a reasonable, transparent, and nondiscriminatory process to distribute the hours of work among those existing employees. This requirement applies even if the number of additional hours is more than any one existing employee can work and those hours must be distributed among multiple existing employees.
2. This section shall not be construed to require any employer to offer an employee work hours if the employer would be required to compensate the employee at time-and-a-half or other premium rate under any law or collective bargaining agreement, nor to prohibit any employer from offering such work hours.
3. This section takes effect 180 days after the effective date.

#### **Section 7. Retaliation Prohibited.**

1. No employer or any other person shall interfere with, restrain, or deny the exercise of, or the attempt to exercise, any right protected under this chapter.
2. No employer or any other person shall take any adverse action against any person because the person has exercised in good faith the rights under this chapter. Such rights include but are not limited to the right to make inquiries about the rights protected under this chapter; the right to inform others about their rights under this chapter; the right to inform the person's employer, union, or similar organization, and/or the person's legal counsel or any other person about an alleged violation of this chapter; the right to bring a civil action for an alleged violation of this chapter; the right to testify in a proceeding under or related to this chapter; the right to refuse to participate in an activity that would result in a violation of city, state, or federal law; and the right to oppose any policy, practice, or act that is unlawful under this chapter.
3. For the purposes of this section, an adverse action means any action taken by a person that would dissuade a reasonable person from exercising any right protected by this chapter. Adverse actions include, but are not limited to, denying a job or promotion, demoting, terminating, failing to rehire after a seasonal interruption of work, threatening, penalizing, retaliating, engaging in unfair immigration-related practices, filing a false report with a government agency, changing an employee's status to nonemployee,



decreasing or declining to provide additional work hours when they otherwise would have been offered, scheduling an employee for hours outside of their availability, or otherwise discriminating against any person for any reason prohibited by this chapter.

4. No employer or any other person shall communicate to a person exercising rights protected under this chapter, directly or indirectly, the willingness to inform a government employee that the person is not lawfully in the United States, or to report, or to make an implied or express assertion of a willingness to report, suspected citizenship or immigration status of the person or a family member of the person to a federal, state, or local agency because the person has exercised a right under this chapter.
5. It shall be a rebuttable presumption of retaliation if an employer or any other person takes an adverse action against a person within 90 days of the person's exercise of any right protected in this chapter. However, in the case of seasonal work that ended before the close of the 90-day period, the presumption also applies if the employer fails to rehire a former employee at the next opportunity for work in the same position. The employer may rebut the presumption with clear and convincing evidence that the adverse action was taken for a permissible purpose.
6. Standard of Proof. Proof of retaliation under this chapter shall be sufficient upon a showing that an employer or any other person has taken an adverse action against a person and the person's exercise of rights protected in this chapter was a motivating factor in the adverse action, unless the employer can prove that the action would have been taken in the absence of such protected activity.
7. The protections afforded under this section shall apply to any person who mistakenly but in good faith alleges violations of this chapter.

## **Section 8. Enforcement.**

1. Any person or class of persons that suffers financial injury as a result of a violation of this chapter or is the subject of prohibited retaliation under this chapter, or any other individual or entity acting on their behalf, may bring a civil action in a court of competent jurisdiction against the employer or other person violating this chapter and, upon prevailing, shall be awarded reasonable attorney fees and costs and such legal or equitable relief as may be appropriate to remedy the violation including, without limitation, the payment of any unpaid wages plus interest due to the person and liquidated damages in an additional amount of up to twice the unpaid wages; compensatory damages; and a penalty payable to any aggrieved party of up to \$5,000 if the aggrieved party was subject to prohibited retaliation. For the purposes of this section, an aggrieved party means an employee or other person who suffers tangible or intangible harm due to an employer or other person's violation of this chapter. Interest shall accrue from the date the unpaid wages were first due at the higher of twelve percent per annum or the maximum rate permitted under RCW 19.52.020.
2. For purposes of determining membership within a class of persons entitled to bring an action under this section, two or more employees are similarly situated if they: a. Are or were employed by the same employer or employers, whether concurrently or

- otherwise, at some point during the applicable statute of limitations period; b. Allege one or more violations that raise similar questions as to liability; and c. Seek similar forms of relief.
- d. Employees shall not be considered dissimilar solely because their claims seek damages that differ in amount, or their job titles or other means of classifying employees differ in ways that are unrelated to their claims.
3. Each employer must retain records as required by RCW 49.46.070, as well as such information as the City may require to confirm compliance with this chapter. If an employer fails to retain such records, there shall be a presumption, rebuttable by clear and convincing evidence, that the employer violated this chapter for the periods and for each employee for whom records were not retained.
  4. Employers must permit authorized City representatives access to work sites and relevant records for the purpose of monitoring compliance with the chapter and investigating complaints of noncompliance, including production for inspection and copying of employment records. The City may designate representatives, including city contractors and representatives of unions or worker advocacy organizations, to access the worksite and relevant records.
  5. Complaints that any provision of this chapter has been violated may also be presented to the City Attorney, who is hereby authorized to investigate and, if they deem appropriate, initiate legal or other action to remedy any violation of this chapter.
  6. The City has the authority to issue administrative citations and to order injunctive relief including reinstatement, restitution, payment of back wages, or other forms of relief.
  7. The City may, in the exercise of its authority and performance of its functions and services, agree by contract or otherwise to participate jointly or in cooperation with Washington State, King County, or any city, town, or other incorporated place, or subdivision thereof, or engage outside counsel, to enforce this chapter.
  8. The remedies and penalties provided under this chapter are cumulative and are not intended to be exclusive of any other available remedies or penalties, including existing remedies for enforcement of Burien Municipal Code chapters.
  9. The statute of limitations for any enforcement action shall be five (5) years.

**Section 9.** A new section is added to BMC Chapter 5.05 as follows:

1. The city manager or designee may deny, suspend, or revoke any license under this chapter for violation of this ordinance.
2. The city manager or designee must deny, suspend, or revoke any license under this chapter for repeated intentional violations of this ordinance.
3. Any action by the city manager or designee under this section shall be subject to the procedures and requirements of BMC subsections 5.05.150, as well as other due process rights that a court may require.

## **Section 10. Definitions.**

For the purposes of this chapter, the following terms shall have the following meanings: “City” means the City of Burien.

“Effective date” is the effective date of this ordinance.

“Employee” is defined as set forth in RCW 49.46.010. An employer bears the burden of proof that the individual is, as a matter of economic reality, in business for oneself rather than dependent upon the alleged employer.

“Employer” is defined as set forth in RCW 49.46.010.

“Employer classification” includes the determination of whether an employer is a large employer, a medium employer, or a small employer.

“Franchise” means an agreement, express or implied, oral or written by which:

1. A person is granted the right to engage in the business of offering, selling, or distributing goods or services under a marketing plan prescribed or suggested in substantial part by the grantor or its affiliate;
2. The operation of the business is substantially associated with a trademark, service mark, trade name, advertising, or other commercial symbol; designating, owned by, or licensed by the grantor or its affiliate; and
3. The person pays, agrees to pay, or is required to pay, directly or indirectly, a franchise fee. The term, “franchise fee” is meant to be construed broadly to include any instance in which the grantor or its affiliate derives income or profit from a person who enters into a franchise agreement with the grantor.

“Hour worked within the City” is to be interpreted according to its ordinary meaning, including all hours worked within the geographic boundaries of the City, excluding time spent in the City solely for the purpose of travelling through the City from a point of origin outside the City to a destination outside the City, with no employment-related or commercial stops in the City except for refueling or the employee’s personal meals or errands.

“Large Employer” means an employer that employs more than 500 employees, regardless of where those employees are employed, including all franchisees associated with a franchisor or a network of franchises with franchisees that employ more than 500 employees in aggregate.

“Medium employer” means an employer that employs more than 15 employees but not more than 500 employees, regardless of where those employees are employed, including all franchisees associated with a franchisor or a network of franchises with franchisees that

employ more than 15 but not more than 500 employees in aggregate.

“Service charge” is defined as set forth in RCW 49.46.160(2)(c).

“Small employer” means an employer that employs 15 or fewer employees, regardless of where those employees are employed.

“Tips” 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” is defined as set forth in RCW 49.46.010.

### **Section 11. Other Legal Requirements.**

This ordinance shall not be construed to preempt, limit, or otherwise affect the applicability of any other law, regulation, requirement, policy, or standard that provides for greater wages or compensation; and nothing in this ordinance shall be interpreted or applied so as to create any power or duty in conflict with federal or state law.

### **Section 12. Rulemaking.**

Within 150 days after the effective date, the City must adopt rules and procedures to implement and ensure compliance with this chapter, which shall require employers to maintain adequate records and to annually certify compliance with this chapter. The City must seek feedback from worker organizations and employers before finalizing the rules and procedures.

### **Section 13. Constitutional Subject.**

For constitutional purposes, this measure’s subject “concerns labor standards for certain employers.” *See Filo Foods, LLC v. City of SeaTac*, 183 Wash. 2d 770, 783, 357 P.3d 1040, 1047 (2015) (upholding this statement of subject for an initiative that set a minimum wage and addressed employees’ access to hours).

**Section 14. Codification.** All sections of this ordinance except section 9 shall be codified in a new chapter of the Burien Municipal Code.

**Section 15. Severability.** The provisions of this ordinance are declared to be separate and severable. If any clause, sentence, paragraph, subdivision, section, subsection, or portion of this ordinance, or the application thereof to any employer, employee, or circumstance, is held to be invalid, it shall not affect the validity of the remainder of this ordinance, or the validity of its application to other persons or circumstances.