

# City of Tukwila

Washington

Resolution No. 2049

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF TUKWILA, WASHINGTON, CALLING FOR A SPECIAL ELECTION TO BE HELD CONCURRENT WITH THE GENERAL ELECTION OF NOVEMBER 8, 2022, TO PLACE BEFORE THE QUALIFIED ELECTORS OF THE CITY THE PROPOSITION OF WHETHER AN ORDINANCE ENTITLED "ORDINANCE CONCERNING LABOR STANDARDS FOR CERTAIN EMPLOYEES" BE ADOPTED.**

**WHEREAS**, an initiative petition requesting that the City Council adopt an ordinance entitled "An Ordinance Concerning Labor Standards for Certain Employees" has been submitted to the City (attached hereto as Exhibit A); and

**WHEREAS**, the King County Department of Elections verified the number and correctness of signatures on the petition and issued a Certificate of Sufficiency dated June 28, 2022; and

**WHEREAS**, the City Council has decided to defer the proposal to the voters;

**NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF TUKWILA, WASHINGTON, HEREBY RESOLVES AS FOLLOWS:**

**Section 1.** The City Council finds it necessary to call a special election to be held in the City of Tukwila at the time of the General Election of November 8, 2022, on the proposition of whether an ordinance entitled "An Ordinance Concerning Labor Standards for Certain Employees" should be adopted.

**Section 2.** The City of Tukwila hereby calls for an election on November 8, 2022, to place before the qualified electors of the City the following proposition:

**Ballot Title:**

**Proposition No. 1**

City of Tukwila Proposition No. 1 concerns labor standards for certain employees.

This Ordinance requires certain employers, as defined by the ordinance, to pay employees an hourly minimum wage comparable to equivalent

employees in the city of SeaTac and adjusted annually for inflation. Tips and qualifying service charges shall be retained by employees and may not count toward the hourly minimum wage. Additionally, covered employers must offer additional hours of work to existing employees before hiring new employees or subcontractors.

Should this Ordinance be enacted into law?

YES.....

NO.....

**Section 3.** The City Clerk or designee is authorized and directed to file a copy of this resolution with the King County Department of Elections no later than 4:30 p.m. on August 2, 2022.

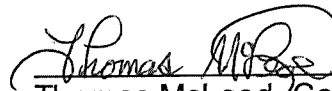
**Section 4.** Pursuant to RCW 29A.32.280 the names of committee members appointed by the City Council to prepare arguments advocating both approval and rejection of the measure shall be provided to the Director no later than 4:30 p.m. on August 2, 2022.

PASSED BY THE CITY COUNCIL OF THE CITY OF TUKWILA, WASHINGTON, at a Regular Meeting thereof this 18<sup>th</sup> day of July, 2022.

ATTEST/AUTHENTICATED:

Signed via SeamlessDocs.com  
*Christy O'Flaherty*  
Key: 7f04617b77da16b0dcdca6f079e4e70

Christy O'Flaherty, MMC, City Clerk



Thomas McLeod, Council President

APPROVED AS TO FORM BY:



Office of the City Attorney

Filed with the City Clerk: 7-12-22  
Passed by the City Council: 7-18-22  
Resolution Number: 2049

Attachment: Exhibit A, "An Ordinance Concerning Labor Standards for Certain Employees"

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

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

1. The people of the City of Tukwila 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 Tukwila have good wages and access to sufficient hours of work.
2. The City of Tukwila is one of largest job centers in Washington State, including thousands of retail and food service jobs at and around the Westfield Southcenter Mall. Wages and working conditions in Tukwila contribute to setting the standard for the entire region.
3. 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 2021 report, a worker making Washington's minimum wage would have to work 70 hours each week to afford a modest one-bedroom rental home at Fair Market Rent.
4. When working families earn insufficient income due to low wages and involuntary under-employment, they struggle to pay for basic necessities like health care, child care, and groceries, and they are more likely to be evicted and become homeless.
5. Tukwila's neighboring cities of SeaTac and Seattle enacted higher minimum wages in 2013 and 2014, but until now Tukwila has not followed suit.

### **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 the vast majority of employees in the City of Tukwila receive a minimum wage comparable to employees in neighboring cities of SeaTac and Seattle; (2) requiring covered 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. Effective July 1, 2023, every large employer shall pay to each employee an hourly wage of not less than the 2022 "living wage rate" in the City of SeaTac, established pursuant to SeaTac Municipal Code Section 7.45.050, adjusted for 2023 by the annual rate of inflation.
2. On January 1, 2024, and on each January 1 thereafter, the hourly minimum wage shall increase by the annual rate of inflation to maintain employee purchasing power.
3. By December 31, 2022, and by October 15 of each year thereafter, the Finance Department shall 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.

#### **Section 4. Other Covered Employers Shall Have a Multiyear Phase-In Period.**

Other covered employers shall phase in the new minimum wage, as follows:

1. Effective July 1, 2023, other covered employers shall pay employees not less than the hourly minimum wage established under Section 3 minus Two Dollars (\$2) per hour.
2. Effective July 1, 2024, other covered employers shall pay employees not less than the hourly minimum wage established under Section 3 minus One Dollar (\$1) per hour.
3. Effective July 1, 2025, and thereafter, all covered employers shall pay employees not less than the hourly minimum wage established under Section 3.

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

1. Covered 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. Employer classification for the current calendar year will be calculated based upon the gross revenue for the previous year. For employers that did not have gross revenue during the previous calendar year, annual gross revenue will be calculated from the gross revenue during the most recent three months of the current year.
4. 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, covered 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, and shall use a reasonable, transparent, and nondiscriminatory process to distribute the hours of work among those 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.

### **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 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. "Adverse action" for an employee may involve any aspect of employment, including pay, work

hours, responsibilities, or other material change in the terms and conditions of employment.

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 covered employer shall 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 shall 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 Tukwila 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 TMC Chapter 5.04 as follows:

1. The Finance Director may deny, suspend, or revoke any license under this chapter for violation of this ordinance.
2. The Finance Director must deny, suspend, or revoke any license under this chapter for repeated intentional violations of this ordinance.
3. Any action by the Finance Director under this section shall be subject to the procedures and requirements of TMC subsections 5.04.110.C and 5.04.110.D and Section 5.04.112, 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 Tukwila.

“Covered employer” means an employer that either (1) employs at least 15 employees regardless of where those employees are employed, or (2) has annual gross revenue over \$2 million.

“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 covered employer and whether a covered employer is a large 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 all employers that employ more than 500 employees, regardless of where those employees are employed, and all franchisees associated with a franchisor or a network of franchises with franchisees that employ more than 500 employees in aggregate.



“Other covered employer” means a covered employer that does not qualify as a large employer.

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

“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 180 days after the effective date, the City shall 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 shall seek feedback from worker organizations and covered 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 Tukwila Municipal Code.

**Section 15. Election date.** In the event that the election on this measure takes place later than November 8, 2022, the Finance Department must establish and publish the initial minimum wage within 30 days of the effective date.

**Section 16. 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.