

AN ORDINANCE OF THE CITY OF BELLINGHAM, WASHINGTON REGARDING MINIMUM WAGE FOR EMPLOYEES

WHEREAS, the statewide minimum wage is not sufficient to afford rising rents and costs of living in the City of Bellingham. According the the National Low-Income Housing Alliance’s 2022 Out Of Reach report, a minimum wage worker in the Bellingham Metropolitan Area would have to work 1.4 full-time jobs to afford an average 2-bedroom fair market rental;

WHEREAS, when workers earn insufficient income, they struggle to afford the high costs of housing, childcare, food, and other basic necessities;

WHEREAS, living wages stimulate local consumer demand and support both the resilience of our local economy and long-term community well-being; and

NOW, THEREFORE, THE CITY OF BELLINGHAM DOES ORDAIN:

Section 1. Definitions.

“Adverse action” means any of the following: 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.

“City” means the City of Bellingham, Washington.

“City minimum wage” is to be interpreted according to its ordinary meaning, applying to all hours worked by employees within the geographic boundaries of the City of Bellingham.

“Employee” has the same meaning as in RCW 49.46.010(3)

“Employer” has the same meaning as in RCW 49.46.010(4)

“Wage” has the same meaning as in RCW 49.46.010(7)

Section 2. City Minimum Wage.

A. On May 1st 2024, the City minimum wage shall be set at \$1 above the applicable

Washington State Minimum Wage set under RCW 49.46.

B. On May 1st 2025, the City minimum wage shall be set at \$2 above the applicable Washington State Minimum Wage set under RCW 49.46.

C. Thereafter, each year the City minimum wage shall be adjusted to \$2 dollar above the applicable Washington State minimum wage set under RCW 49.46, effective January 1st each year.

D. Within 90 days of the passage of this measure, the City shall establish and publish the City Minimum Wage. Thereafter, within two weeks of the Washington State Department of Labor and Industries publishing the annual cost-of-living adjustment to the state minimum wage for the following year, the City shall establish and publish the applicable City minimum wage rates for the following year.

Section 3. Retaliation Prohibited.

A. 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. 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, including but not limited to:

1. the right to make inquiries about protections under this chapter;
2. the right to inform others about their rights under this chapter;
3. the right to inform the person's employer, union, or similar organization about an alleged violation of this chapter;
4. the right to inform the person's legal counsel or any other person about an alleged violation of this chapter;
5. the right to bring a civil action for an alleged violation of this chapter;
6. the right to testify in a proceeding under or related to this chapter;
7. the right to refuse to participate in an activity that would result in a violation of city, state, or federal law; and
8. the right to oppose any policy, practice, or act that is unlawful under this chapter.

B. 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.

C. 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.

D. 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.

E. The protections afforded under this section shall apply to any person who mistakenly but in good faith alleges violations of this chapter.

Section 4: Enforcement.

A. 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.

B. 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:

1. Are or were employed by the same employer or employers, whether concurrently or otherwise, at some point during the applicable statute of limitations period;
2. Allege one or more violations that raise similar questions as to liability; and
3. Seek similar forms of relief.
4. 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.

C. 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.

D. Each 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.

E. 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.

F. 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.

G. The City has the authority to issue administrative citations, notices of civil infraction, and to order injunctive relief including reinstatement, restitution, payment of back wages, or other forms of relief.

H. In addition to any other remedy provided by this Ordinance or allowed by law, any employer or their agent violating the requirement under this chapter to pay at least the City minimum wage to its employees shall have committed a civil infraction subject to the following penalties not to exceed the following amounts:

1. For the first offense, a fine of not more than \$500.00 per underpaid employee per pay period;
2. For the second offense, a fine of not more than \$750.00 per underpaid

employee per pay period; and

3. For the third and subsequent offenses, a fine of not more than \$1,000.00 per underpaid employee per pay period.

I. When determining the penalty amount for the civil infraction, the City shall take into account the specific details of the violation, such as the amount of underpaid wages, the duration of the underpayment, the number of employees affected, the presence of any retaliation or adverse action, and whether financial injuries have yet been remedied.

J. 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, Whatcom County, or any city, town, or other incorporated place, or subdivision thereof, or engage outside counsel, to enforce this chapter.

K. 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 Bellingham Municipal Code chapters.

L. The statute of limitations for any enforcement action shall be five (5) years.

Section 5. Exemption for City Employees.

Pursuant to City of Bellingham Charter Title 10.0, requiring that initiatives shall not be initiated fixing the salaries or wages of officers or employees, the City of Bellingham shall be encouraged, but not required to pay the minimum wage established under this Ordinance.

Section 6. Collective Bargaining Not Impaired.

Nothing in this chapter shall be deemed to interfere with, impede, or in any way diminish the right of employees to bargain collectively with their employers through representatives of their own choosing in order to establish wages or other conditions of work in excess of the applicable minimum under the provisions of this chapter.

Section 7. Minimum Standards Supplementary To Other Laws—More Favorable Standards Unaffected.

This chapter establishes minimum standards for wages of all employees in the City, unless exempted herefrom, and is in addition to and supplementary to any other federal, state, or local law or chapter, or any rule or regulation issued thereunder. Any standards relating to wages or

other working conditions established by any applicable federal, state, county, or local law or chapter, or any rule or regulation issued thereunder, which are more favorable to employees than the minimum standards applicable under this chapter, shall not be affected by this chapter and such other laws, or rules or regulations, shall be in full force and effect and may be enforced as provided by law.

Section 8: Severability.

The provisions of this section are severable. If any provision of this Ordinance or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.

Section 9: Codification.

Sections 1 through 8 of this Act constitute a new chapter in Title 6 of the Bellingham Municipal Code.

Section 10: Effective Date.

The effective date of this ordinance shall be 60 days after passage.