

ORDINANCE NO. 2002-11-080

AN ORDINANCE OF THE CITY OF BELLINGHAM, WASHINGTON, ADDING A NEW CHAPTER 14.18 TO THE BELLINGHAM MUNICIPAL CODE REQUIRING THAT CITY CONTRACTORS WHO PROVIDE CERTAIN SERVICES PAY A LIVING WAGE TO THEIR EMPLOYEES FOR THOSE HOURS PERFORMING THOSE SERVICES

WHEREAS, the City of Bellingham annually awards service contracts to private contractors or vendors to provide services on behalf of the City; and

WHEREAS, such City expenditures should be spent in a manner that promotes the creation of jobs that allow citizens to support themselves and their families with dignity; and

WHEREAS, the present federal and state minimum wages generate income at a level below the amount required to support a family at a basic level; and

WHEREAS, the state minimum wage law at RCW 49.46.120 specifically allows for local ordinances which are more favorable to employees than the minimum standard provided by that statute; and

WHEREAS, the City Council has been provided information indicating that basic self sufficiency in this community for a single parent with a child would require a full time wage in excess of thirteen dollars per hour; and

WHEREAS, jobs that do not pay living wages result in families who have greater need of social services provided through and paid for by the City and other levels of government; and

WHEREAS, the City has a responsibility to set a community standard that promotes a living wage; and

WHEREAS, the payment of adequate wages to workers for those hours performing services on behalf of the City will promote stability and reduced turnover, resulting higher quality of service; and

WHEREAS the health and welfare of the citizens of Bellingham are benefited and advanced when Bellingham workers are paid a wage that enables them to live above the poverty line;

NOW, THEREFORE, THE CITY OF BELLINGHAM DOES ORDAIN:

A new chapter 14.18 is added to the Bellingham Municipal Code as follows:

14.18.010 DEFINITIONS.

For the purpose of this chapter, the following definitions shall apply:

A. "Service Contract" means a contract or contracts between the City and a service contractor under which the City pays \$10,000.00 or more in a twelve month period; and a Service Contractor agrees to deliver directly to the City one of those services set forth below:

1. Automotive repair and maintenance services
2. Facility and building maintenance services
3. Janitorial and custodial services
4. Landscaping services
5. Laundry services
6. Office and clerical services
7. Parking lot management services
8. Pest control services
9. Recreation services
10. Resident and day shelter services
11. Security services
12. Shuttle transportation services
13. Street and sidewalk cleaning services
14. Towing services

B. "Service Contractor" means an individual or entity who enters into a service contract as defined above with the City.

"Service Contractor" does not include the following:

1. Contractors who have three or fewer employees;
2. Contractors who have been in business for less than one year as of the date of the request for proposal or bid by the City;
3. Contractors who have been awarded grants to perform services under the City Community Development Block Grant program or its successor;
4. Contractors who are non-profit organizations organized under Section 501c(3) of the Internal Revenue Service Code
5. Contractors who supply goods, materials, or services other than those specified in Section 1A above; or
6. Public sector contractors.

C. **"Subcontractor"** means any individual or entity who enters into a subcontract with a Service Contractor to perform all or part of the services in a Service Contract.

"Subcontractor" does not include the following:

1. Subcontractors who have three or fewer employees; or
2. Subcontractors who have been in business for less than one year as of the date of the proposal request by the City.

D. **"Employee"** shall refer to any employee of a Service Contractor, or a Subcontractor, for all employment hours spent directly performing duties required under a Service Contract or a related subcontract.

1. **"Employees"** include those who work for wages or salary for 35 hours or more per week on an ongoing basis.
2. **"Employee"** does not include those who:
 - a. are 17 years old or younger;
 - b. are in positions that are designated for "trainees" or are otherwise part of a training program;
 - c. are in a work study position, internship or are in positions that require student status as a prerequisite to being employed in that position;
 - d. are volunteers;
 - e. are standing by or on-call according to the criteria established by the Fair Labor Standards Act, 29 U.S. C. Section 201 but only for those hours when the employee is actually standing by or on-call;
 - f. are employed by the service contractor but perform duties that do not involve direct performance of those services set forth in paragraph 1(a) above but may instead perform support, supervisory, fiscal or other services indirectly related to the Service Contract; or
 - g. are subject to a bona fide collective bargaining agreement.

14.18.020 LIVING WAGE REQUIREMENTS.

A. All Service Contractors and Subcontractors covered under this Chapter shall pay Employees a "living wage" no less than \$10.00 per hour if Health Benefits are paid for in whole or in substantial part by the employer or \$11.50 per hour if Health Benefits are not so provided.

B. These rates shall be adjusted annually each July 1st, beginning in 2003, by an amount corresponding to the previous year's change in the Implicit Price Deflator.

14.18.030 ASSIGNEES/SUCCESSORS IN INTEREST.

The minimum living wage requirement imposed by this chapter shall be binding upon the assignees and successors in interest of any Service Contract or related subcontract to which this chapter applies.

14.18.040 EFFECTIVE DATE OF APPLICATION OF ORDINANCE.

The living wage requirement imposed by this chapter shall apply to all Service Contracts and related subcontracts entered into, renewed, or extended on or after January 1, 2003.

14.18.050 PREVAILING WAGE POSITIONS.

In circumstances where a Services Contract also requires the Service Contractor or Subcontractor to pay its employees prevailing wages, the Service Contractor or Subcontractor shall pay its employees at the contractually prescribed prevailing wage rate or the minimum living wage payable under this Chapter, whichever is higher.

14.18.060 RETALIATION AND DISCRIMINATION PROHIBITED.

No Service Contractor or Subcontractor shall retaliate or discriminate against any employee in his or her terms and conditions of employment for reporting a possible violation of this Chapter to the City; for participating in any legal or administrative proceeding in respect to this chapter; for seeking civil remedies to enforce his or her rights conferred by this Chapter; or for otherwise asserting his or her rights under this Chapter.

14.18.070 EXEMPTIONS.

The City Council may grant an exemption to the requirements of this chapter upon making a written finding either that:

- A. Compliance with the living wage will cause economic hardship to the City or its citizens; or
- B. The exemption is in the best interests of the City due to unforeseen or special circumstances including but not limited to a declared natural disaster.

14.18.080 ENFORCEMENT AND REMEDIES – EMPLOYEE

- A. An employee claiming violation of this chapter may report such acts to the City.
- B. The City shall establish a procedure for receiving and investigating such complaints and may take appropriate enforcement action as provided in Section 9 below.
- C. To the extent permitted by law, any complaints received shall be treated as confidential upon request made at the time of the complaint unless disclosure is deemed necessary by the City for enforcement of this Chapter.
- D. An employee claiming violation of this chapter may bring an action against the service contractor and subcontractor and shall be awarded back pay for all wages lost upon a finding of a violation of this chapter. The Court shall award reasonable attorney's fees and costs to an employee who prevails in any such enforcement action.
- E. The statute of limitations for bringing such action shall be two years from the time of the alleged violation of this chapter.

14.18.090 ENFORCEMENT AND REMEDIES --CITY

- A. Compliance with this chapter shall be required in all City contracts to which it applies. Upon award of any Service Contract covered by this chapter, the Service Contractor shall be required to certify that he or she will comply and will require all subcontractors to comply with the requirements of this Chapter.
- B. Such contracts shall provide that upon a violation of the provisions of this chapter, a Service Contractor or Subcontractor who is out of compliance for the first time shall have thirty days to come into compliance including the payment of any back wages required. If the Service Contractor or Subcontractor remains out of compliance after thirty days, the City may terminate the contract and otherwise pursue contractual remedies for breach of contract.

C. Within 10 days of any request by the City, the Service Contractor or Subcontractor shall provide satisfactory proof of compliance with the living wage provisions of this Chapter in the form of payroll records, benefit records, or other appropriate evidence.

D. If the City finds that a Service Contractor or Subcontractor has violated the provisions of this chapter a second time, the City may terminate all contacts with the Service Contractor already in force, and the Contractor or Subcontractor shall be prohibited from contracting with the City for a period of two years.

14.18.100 ADMINISTRATIVE APPEAL BY SERVICE CONTRACTOR OR SUBCONTRACTOR

A. Service Contractor or Subcontractor may appeal the finding of the City made under Section 9 (D) above by requesting a hearing before the Hearing Examiner. The appeal notice shall be in writing; shall be submitted to the Office of the Hearing Examiner with a copy to the Director of Public Works; and shall be received by the City within 30 days of the date the City delivers or sends notice of its decision. The decision of the Hearing Examiner on appeal shall be final subject only to judicial appeal as provided by BMC 2.56.050 (B).

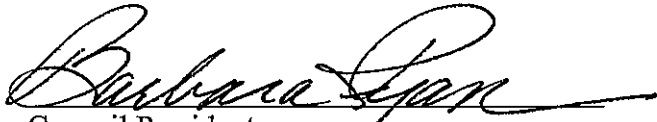
14.18.110 REMEDIES ARE NOT EXCLUSIVE

Nothing contained in this Chapter shall be construed to limit in any way, the remedies, legal or equitable, which are available for violations of this Chapter.

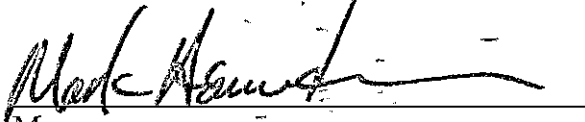
14.18.120 SEVERABILITY

Any provision of this Chapter which is found by a court of competent jurisdiction to be invalid, void, or illegal shall in no way affect, impair, or invalidate any other provision contained in the Chapter and such other provisions shall remain in full force and effect.

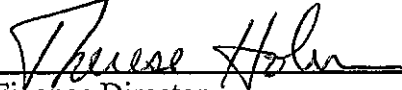
PASSED by Council this 18th day of NOVEMBER, 2002.


Council President


APPROVED by me this 26th day of November, 2002.


Mayor

ATTEST:


Finance Director

APPROVED AS TO FORM:


Office of the City Attorney

Published:

NOVEMBER 22, 2002