

RESOLUTION NO. 2021-20

A RESOLUTION CONCERNING INITIATIVE BILL 2021-03 WHICH WOULD PROHIBIT RECIPIENTS FROM USING CITY FUNDS TO DISCOURAGE UNIONIZATION EFFORTS

WHEREAS, a sufficient number of qualified electors of the City of Bellingham have proposed an Initiative Bill, previously assigned 2021-03, which would prohibit recipients from using city funds to discourage unionization efforts;

WHEREAS, Initiative Bill 2021-03 would prohibit any person who receives City funds from using those funds to discourage unionization efforts by that person's employees or any other employees, require recipients of City funds to segregate those funds, provide a safe harbor for non-managerial staff to engage in union protected activities, provide for administrative investigations of complaints, establish private enforcement actions, change the City's contracting process, and allow the City to terminate contracts for violations of the prohibition;

WHEREAS, the City Charter and BMC 1.02.070 provide that the City Council may choose to enact the bill, reject the bill, reject the bill and propose another bill dealing with the same subject, defer the bill to the voters, or take no action on the bill;

WHEREAS, RCW 29A.04.330 requires that the City Council pass a resolution on or before August 3, 2021 to allow an initiative to be placed on the general election ballot in November 2021.

NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF BELLINGHAM:

The City Council hereby defers Initiative Bill 2021-03 to the voters. The Finance Director is instructed to deliver the Initiative Bill to the Whatcom County Auditor for submission to the qualified electors for approval or rejection on the November 2, 2021, ballot pursuant to the City Charter and the Bellingham Municipal Code, as well as all paperwork required to ensure that the measure is placed on the ballot in November.

The City Council designates the following community members to serve on the committee "For" the initiative bill to prepare a statement advocating that voters approve the measure:

Peter Pihos, Hannah Fishman, and Betsy Pernotto.

The City Council designates the following community members to serve on the committee "Against" the initiative bill to prepare a statement advocating that voters reject the measure:

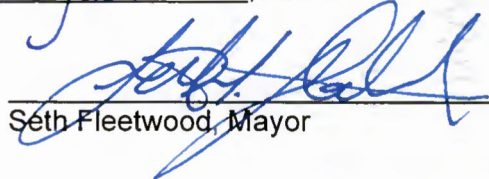
Dan Dunne, Dave Onkels, and TBD.

City of Bellingham
City Attorney
210 Lottie Street
Bellingham, Washington 98225
360-778-8270

PASSED by the Council this 2nd day of August, 2021.

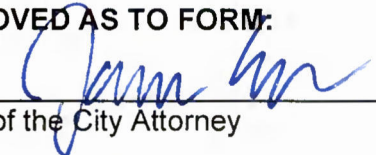

Hannah Stone, Council President

APPROVED by me this 2 day of August, 2021.


Seth Fleetwood, Mayor

ATTEST: 
Andy Asbjornsen, Finance Director

APPROVED AS TO FORM:


Office of the City Attorney

City of Bellingham
City Attorney
210 Lottie Street
Bellingham, Washington 98225
360-778-8270

I, Sarah Jones, am a legal registered voter in Bellingham, Washington.

I herewith submit a proposed initiative petition measure attached as described below:

Neutrality In Labor Campaigns

Shall the voters of the City of Bellingham adopt the following ordinance to the Bellingham Municipal Code that would prohibit recipients of city funds or other resources from using them to discourage unionization by the recipient's employees or any other employees?

Full Text of Ordinance:

AN ORDINANCE OF THE CITY OF BELLINGHAM, WASHINGTON REGARDING UNION NEUTRALITY BY PERSONS RECEIVING GOVERNMENT FUNDS

Whereas, in passing the National Labor Relations Act (NLRA) of 1935, Congress gave workers “the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection ...”

Whereas, Section 1 of the NLRA explicitly recognized “[t]he inequality of bargaining power between employees who do not possess full freedom of association or actual liberty of contract and employers who are organized in the corporate or other forms of ownership association ...”

Whereas, the discouraging of unionization by employers substantially burdens employees’ rights to choose to form a union and collectively bargain.

Whereas, the decisions of the National Labor Relations Board have not fully vindicated the rights of employees to choose to join a union and to collectively bargain.

Whereas, cities and states have the power and moral duty to ensure the vindication of those rights to the fullest extent permitted by law.

Whereas, the economic life of the City of Bellingham depends upon the reduction of inequality through programs that enhance workers’ democratic power through unionization.

Whereas, the City of Bellingham has the power and duty to ensure that its funds are not used by contracted employers to discourage unionization.

Whereas, the city currently places no limitation on the use of its funds to discourage unionization, and as a result city funds have, in fact, been used to discourage unionization.

NOW, THEREFORE, THE CITY OF BELLINGHAM DOES ORDAIN:

Section 1. Purpose and Intent of this Article

1. It is the policy of the City of Bellingham to support resident's rights under Section 7 of the National Labor Relations Act, which entitles employees to freedom of association in the workplace and freedom of choice in who will represent employees in collective bargaining.
2. The intent of this Article is to ensure that city funds are not used to discourage employees from choosing union representation.

Section 2. Definitions

For the purposes of this Article, the following terms have the following meanings:

1. "Person" means any individual, government agency or entity, corporation, unincorporated association, partnership, or other legal entity.
2. "Receive city funds" means to receive city funds in any form, including a grant, payment under a contract, reimbursement, or other direct payment, and also includes receipt by a subcontractor of payment for performance of any portion of a contract funded with city funds.
3. "City funds" means any money drawn from the City General Fund or any special or trust fund of the city, and any city resources, in the form of goods or services, that are provided to any person. "City funds" also means the value of those goods and services.
4. "Unionization" means organization of employees for the purpose of collective bargaining.
5. A recipient of city funds is deemed to use the city funds by applying the funds to operating expenses, such as employee compensation, supplies, maintenance, or utilities or by applying the funds to capital facilities or equipment.

Section 3. Restriction on Spending City Funds to Discourage Unionization

1. No person who receives city funds shall use those funds in whole or in part to discourage unionization by that person's employees or any other employees.
2. A use of city funds shall be deemed for the purpose of discouraging unionization if it directly or indirectly supports or is in furtherance of:
 - a. any communication in any form that advocates or directly or by implication suggests that employees should vote against representation by a union for purposes of collective bargaining,

- b. hiring or consulting legal counsel or other consultants to advise on how to deter unionization or how to impede a labor organization that represents employees from fulfilling its representation responsibilities,
- c. holding meetings to influence employees not to join or form a labor organization for the purpose of collective bargaining, or
- d. planning or conducting activities by employer supervisors to deter the activities of a labor organization.

Section 4. Required Segregation of City Funds

1. For purposes of this section, each recipient of city funds shall account for the city funds in accordance with the following:
 - a. City funds designated by the city for use for, or to reimburse, a specific expenditure of the recipient shall be accounted for as being allocated to that expenditure.
 - b. City funds that are not so designated shall be allocated on a pro rata basis to all expenditures of the recipient that support or are related to the purpose for which the city funds are received.
2. Each recipient of city funds shall physically and financially segregate its activities that are city-funded from any of the recipient's activities that involve discouragement of unionization.
 - a. In order to meet this requirement, city-funded activities of the recipient shall have objective integrity and independence from any of the recipient's activities that involve discouragement of unionization.
 - b. Separately accounting for city funds shall not suffice to meet this requirement.
 - c. In determining whether activities are financially and physically separate, for purposes of this Section, the following factors shall be considered:
 - i. The existence of separate accounting for state funds and other funds of the recipient.
 - ii. The degree of physical separation of facilities in which city-funded activities occur and facilities in which activities involving the discouragement of unionization occur.

- iii. Whether different personnel are utilized by the recipient for city-funded activities and activities involving the discouragement of unionization.
- iv. The extent to which the city-funded activities and activities involving discouragement of unionization are publicly identified and known to employees of the recipient of city funds.

Section 5. Safe Harbor

Nothing in this section limits the right of individuals who are not supervisors, managers, consultants, attorneys, advisors, or contractors of a recipient of city funds to advocate for or against unionization in the facilities of the recipient to the extent not precluded by applicable law.

Section 6. Enforcement and Remedies--Employees

1. An employee claiming violation of this Article may report such acts to the city.
2. The city shall establish a procedure for receiving and investigating such complaints and may take appropriate enforcement action as provided in Section 7 of this Article.
3. 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 Article.
4. An employee claiming violation of this Article may bring an action against the person who receives city funds in a court of competent jurisdiction and shall be awarded civil damages in amount of twice the prohibited expenditure upon a finding of a violation of this Article. The court shall award reasonable attorney's fees and costs to an employee who prevails in any such enforcement action.
5. The statute of limitations for bringing such action shall be two years from the time of the alleged violation of this Article.

Section 7. Enforcement and Remedies--City

1. Compliance with this Article shall be required in all city contracts to which it applies. Upon award of any service contract covered by this Article, a person who receives city funds shall be required to certify that he or she will comply with the requirements of this Article.
2. City contracts shall inform a person who receives city funds of the provisions of this Article.

3. Upon a finding of violation by the City of Bellingham of the provisions of this Article, a person who receives city funds shall rectify their violation by notifying employees subjected to such violations in writing of their unlawful activities and their rights to join a union free of employer interference and to collectively bargain.
4. If a person who receives city funds fails to rectify their violation within 30 days, the city may terminate the contract and otherwise pursue contractual remedies for breach of contract.
5. If the city finds that a person who receives city funds has violated the provisions of this Article a second time, the city may terminate all contracts with the person who receives city funds already in force, and the person who receives city funds shall be prohibited from contracting with the city for a period of two years.

Section 8. Administrative appeal by service contractor or subcontractor.

An employee or a person who receives city funds may appeal a finding of the city made under this Article 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).

Section 9. Remedies are Not Exclusive

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

Section 10. Severability

The provisions of this Article are severable. If any provision of this section 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.

Proponent Contact Information

Sarah Jones

Name

2821 Northwest Avenue, Bellingham, WA 98225

Physical Address

2821 Northwest Avenue, Bellingham, WA 98225

Mailing Address

(360) 727-1646

Phone

ssagejoness@gmail.com

Email Address

A handwritten signature in black ink, appearing to read "Sage Jones". The signature is written in a cursive, flowing style.

Signature of Proponent

March 2, 2021

Date Signed