

**AN ORDINANCE REGARDING PAYMENT OF A LOCAL MINIMUM WAGE BY
RETAIL ESTABLISHMENTS WITH BUSINESS PREMISES OF 95,000 SQUARE FEET**

WHEREAS, the City has the authority to adopt ordinances and to promulgate rules and regulations pertaining to its government and affairs in order to protect the health, safety and welfare of its citizens; and
WHEREAS, small and medium sized businesses are essential to maintaining the local economy, increasing competition, and quality of employment opportunities for local citizens; and
WHEREAS, wage and health care standards of our community should be maintained and improved, while ensuring a vibrant market for businesses; and
WHEREAS, large retail establishments often adversely affect small to medium sized local businesses and the economy; and
WHEREAS, some large retail establishments pay low wages and offer minimal benefits, which forces other businesses to either do the same or be driven out of business; and
WHEREAS, taxpayers often see increased costs when businesses that provide health care to their employees are replaced by those to do not and instead rely on health clinics and hospitals receiving government funding, and publicly funded programs such as DSHS and Medicaid to provide health care to their employees; and
WHEREAS, to counter these tendencies and to provide for the economic, health and well-being of its citizens, new standards of economic conduct should be established for such large retail establishments; and
WHEREAS, in order to safeguard the public welfare, health, safety and prosperity of all residents of the City of Spokane, it is essential that large retail establishments provide a living wage along with the health and other benefits required for employees to take care of their families; -- Now, Therefore,
The City of Spokane does ordain:

Section 1. The foregoing recitals are incorporated herein as the findings in support of the ordinance.

Section 2. That there is added a new chapter 1.07 Large Retail Establishments to title 1 of the Spokane Municipal Code to read as follows:

**Chapter 1.07
Large Retail Establishments**

1.07.010 Definitions.

- A. "Business" means any natural or artificial person, corporation, partnership, limited partnership, limited liability company, joint venture, sole proprietorship, association, trust or any other entity.
- B. "City" means the City of Spokane.
- C. "City" means the City department or agencies designated by the City to administer this chapter.
- D. "Employee" means any person who in a particular week performs at least sixteen (16) hours of work on the premises of a Large Retail Establishment for either a Large Retail Establishment or for a Subcontractor. This definition includes persons performing work on a full-time, part-time, temporary, or seasonal basis, including independent contractors, contracted workers, contingent workers, and persons made available to work through the services of a temporary services, staffing or employment agency or similar entity.
- E. "Employer" means any Large Retail Establishment or Subcontractor.
- F. "Health Benefits" means payments for medical and/or hospital care, or insurance to provide such payments. Excluded from this definition are payments made pursuant to the Workers' Compensation act [RCW 51 seq.].
- G. "Living Wage" has the meaning set forth in Section 1.07.020.
- H. "Non-Business Areas" mean those parts of a Large Retail Establishment outside the building where business is not conducted, including parking lots, sidewalks, pedestrian areas, outdoor Employee smoking areas, and other outdoor areas where business is not conducted.
- I. "Large Retail Establishment" means any Business that operates a retail store located within the geographic boundaries of the City of Spokane where the premises of the retail store, not including administrative offices where retail sales are not conducted, comprise ninety-five thousand square feet or more.
- J. "Subcontractor" means any Business that performs services on-site for a Large Retail Establishment or for another Subcontractor or that holds a sublease authorizing that party to occupy, use, control, or do business on the property of the Large Retail Establishment.

1.07.020 Living Wage.

- A. Employers shall pay Employees, who have been employed by the Employer for longer than three months, no less than the Living Wage for each hour worked on the premises of a Large Retail Establishment.
- B. Beginning on the effective date of this chapter, the Living Wage shall be an hourly rate of one hundred thirty-five percent of the Washington minimum wage per hour with health benefits or one hundred sixty-five percent without health benefits. These rates will be adjusted annually in conformity with the Washington Minimum Wage Act (RCW 49.46 et. seq.) each, January 1st beginning the year after enactment, and each year thereafter. Except that if any court of competent jurisdiction rules that federal law pre-empts this chapter at least in part on the basis that it includes reference to health benefits, any language in the chapter that mention health benefits shall be deemed void and the minimum wage under this ordinance shall be one hundred thirty-five percent of Washington's minimum wage for as long as that court ruling remains in effect.

1.07.030 Notice, Posting and Payroll Records.

- A. December 1, of each year, Employers shall calculate adjustments to the Living Wage and Benefits Supplement Rate as described in this chapter, and shall begin utilizing the adjusted rate by the subsequent January 1.
- B. Every Employer shall post in a conspicuous place at any workplace or job site where any Employee works the notice issued each year by the City informing Employees of the current Living Wage and Benefits Supplements Rate and of their rights under this chapter. Every Employer shall post such notices in English, Spanish, and any other language spoken by at least five percent of the Employees at the workplace or job site.
- C. Employers shall retain payroll and benefits records pertaining to Employees for a period of four years, and shall allow the City access to such records, with appropriate notice and at a mutually agreeable time, to monitor compliance with the requirements of this Chapter. Where an Employer does not maintain or retain adequate records documenting wages paid or does not allow reasonable access to such records, it shall be presumed that the Employer paid no more than the applicable federal or state minimum wage without benefits, in violation of this chapter, absent clear and convincing evidence otherwise.

1.07.040 Prohibition against Retaliation, Reduction of Benefits

It shall be unlawful for an Employer or any other party to discriminate in any manner or take adverse action against any person in retaliation for exercising rights protected under this chapter or for informing other Employees of any legal rights under federal, state or local law, to the extent that such protection is permitted by federal, state or local law. Rights protected under this chapter include, but are not limited to: the right to file a complaint or inform any person about any party's alleged noncompliance with this chapter or any other federal, state or local law; and the right to inform any person or his or her potential rights under this chapter or other law and to assist him or her in asserting such rights. Protections of this chapter shall apply to any person who mistakenly, but in good faith, alleges noncompliance with this chapter or any other law. Taking adverse action against a person within ninety days of the person's exercise of rights protected under this chapter shall raise a rebuttable presumption of having done so in retaliation for the exercise of such rights.

No Employer may fund wage or benefits increases required by this chapter, or otherwise respond to the requirements of this chapter, by reducing the health insurance, pension, vacation, or other non-wage benefits of any of its employees.

1.07.050 Implementation and Enforcement.

- A. *Implementation.* The City shall be authorized to coordinate implementation and enforcement of this chapter and may promulgate appropriate guidelines or rules for such purposes. Any guidelines or rules promulgated by the City shall have the force and effect of law and may be relied on by Employers, employees and other parties to determine their rights and responsibilities under this chapter. Any guidelines or rules may establish procedures for ensuring fair, efficient and cost-effective implementation of this chapter, including supplementary procedures for helping to inform Employees of their rights under this chapter, for monitoring Employer compliance with this chapter, and for providing administrative hearings to determine whether an Employer or other person has violated the requirements of this chapter.
- B. *Enforcement.* The City is authorized to take appropriate steps to enforce this chapter. The City may investigate any possible violations of this chapter by an Employer or other person. Where the City has reason to believe that a violation has occurred, it may order any appropriate temporary or interim relief to mitigate the violation or maintain the status quo pending completion of a full investigation or hearing. Where the City, after a hearing that affords a suspected violator due process, determines that a violation has occurred, it may order any appropriate relief including, but not limited to, reinstatement of the payment of any back wages or benefits unlawfully withheld. In addition, a violation of this chapter shall be a class 2 civil infraction for each Employee or person whose rights under this chapter were violated for each day or portion thereof that the violation occurred or continued. Where prompt compliance is not forthcoming, the City may take any appropriate enforcement action to secure compliance, including initiating a civil action and/or, except where prohibited by state or federal law, instructing City agencies or departments to revoke or suspend any registration certificates, permits or licenses held or requested by the Employer or person until such time as the violation is remedied. In order to compensate the City for the costs of investigating and remedying the violation, the City may also order the violating Employer or person to pay to the City a sum of not more than one hundred dollars for each day or portion thereof for each Employee or person as to whom the violation occurred or continued. Such funds shall be allocated to the City and shall be used to offset the cost of implementing and enforcing this chapter. An Employee or other person may report to the City in writing any suspected violation of this chapter. The City shall encourage reporting pursuant to this subsection by keeping confidential, to the maximum extent permitted by applicable laws, the name and other identifying information of the Employee or person reporting the violation. Provided, however, that with the authorization of such person, the City may disclose his or her name and identifying information as necessary to enforce this chapter or for other appropriate purposes.
- C. *Civil Enforcement.* The City Attorney, any person aggrieved by a violation of this chapter, any entity a member of which is aggrieved by a violation of this chapter, or any membership organization that represents workers, may bring a civil action in a court of competent jurisdiction against an Employer or other person violating this chapter and, upon prevailing, shall be entitled to such legal or equitable relief as may be appropriate to remedy the violation including within the jurisdiction of the court, without limitation, the payment of any back wages unlawfully withheld, the payment of an additional sum as liquidated damages in the amount of one hundred dollars to each Employee or person whose rights under this chapter were violated for each day or portion thereof that the violation occurred or continued, reinstatement in employment, compensatory damages and/or declaratory and injunctive relief, and shall be awarded reasonable attorneys' fees and costs. An Employer shall be jointly liable for violations of this chapter by its subcontractors. The Mayor may authorize any City Department to assist the City Attorney in investigating potential violations and enforcing this ordinance.

1.07.060 Waiver Through Collective Bargaining.

All or any portion of the applicable requirements of this chapter shall not apply to employees covered by a bona fide collective bargaining agreement to the extent that such requirements are expressly waived in the collective bargaining agreement in clear and unambiguous terms that expressly make reference to this chapter. Except that if any court of competent jurisdiction rules that federal law pre-empts this ordinance at least in part on the basis that it includes reference to collective bargaining, this paragraph shall be deemed void without affecting the rest of the ordinance as long as the court ruling remains in effect.

1.07.070 Relationship to Other Requirements.

This chapter provides for payment of minimum wage and benefits by Large Retail Establishments and shall not be construed to preempt or otherwise limit or affect the applicability of any other law, regulation, retirements, policy or standard that provides for payment of higher or supplemental wages or benefits, or that extends broader protections on behalf of the public or employees.

Section 3. Effective Date

This Ordinance shall become effective ninety days after it is adopted. This Ordinance is intended to have prospective effect only.

Section 4. Severability.

If any part or provision of this Ordinance, or the application of this Ordinance to any person or circumstance, is held invalid, the remainder of this Ordinance, including the application of such part or provisions to other persons or circumstances, shall not be affected by such a holding and shall continue in full force and effect. To this end the provisions and Ordinance are severable.

Section 5. All ordinances, resolutions, motions or orders in conflict with this ordinance are hereby repealed to the extent of such conflict.