

REPORT TO THE CITY COUNCIL



DATE: December 2, 2014

TITLE: (Continued from September 16, 2014)
Proposed Good Wage Ordinance

Prepared by: Steven B. Quintanilla, City Attorney
Sponsors: Russell Betts, Mayor Pro Tem
Joe McKee, Council Member

RECOMMENDATION

Take whatever action the City Council deems appropriate.

BACKGROUND

This ordinance was presented to the City Council at its September 16, 2014 meeting. After considering the matter at the September 16th meeting, the City Council provided the public sixty (60) days to review the ordinance. Since the 60 day period did not expire until November 16, 2014, there was not sufficient time to place the item back on the City Council's agenda in time for its November 18, 2014 regular meeting (the November 18th meeting agenda was posted on November 14th). No comments have been received from the Chamber of Commerce at or prior to the expiration of the 60 day review period.

In addition, some concern was expressed over the application of the ordinance to franchised businesses associated with "retailers" that fall within the scope of the ordinance. In response to these concerns, a couple of revisions were made to the ordinance to clarify that the ordinance is not intended nor shall it apply to franchise businesses. The revisions made are as follows:

"Retailer" shall mean any entity, **other than a franchisee**, that: (i) operates a retail store and (ii) whose annual gross volume of sales or business when added to the annual gross volume of sales or business of its parent corporation and all of its affiliated corporations exceeds \$500,000,000 (exclusive of excise taxes at the retail level that are separately stated).

"Franchisee" shall mean a sole proprietorship or other legal business entity that is independently owned and operated under a franchise agreement with a supplier that is a separate and independent business entity that authorizes the franchisee to utilize the supplier's trademark, logo and business model and permits franchisee to sell, distribute and provide supplier's goods, products and/or services to franchisee's clients, customers and consumers.

FROM ORIGINAL STAFF REPORT

Council Member Joe McKee and Mayor Pro Tem Russell Betts are recommending consideration of an ordinance that would set a "Good Wage Rate" for large retailers that operate retail stores in the City. Under the proposed ordinance, the retailers that will be subject to the ordinance are limited to those which have annual gross volume of sales or business when added to the annual gross volume of sales or business of its parent corporation and all of its affiliated corporations exceeds \$500,000,000 (exclusive of excise taxes at the retail level that are separately stated).

The purpose of the ordinance is to promote good wage employment to help working families make ends meet and to enjoy a decent living and good quality of life, and to provide to the economic well-being of the community.

The proposed Good Wage Rates are as follows:

- January 1, 2015 through December 30, 2015 = **\$10.20 per hour.**
- January 1, 2016 through December 30, 2016 = **\$11.20 per hour.**
- January 1, 2017 through December 30, 2018 = **\$12.20 per hour.**

Commencing January 1, 2018, and for each January 1 of each successive year, the Good Wage Rate will be increased in proportion to the increase during the preceding calendar year in the Consumer Price Index. However, if the state or federal minimum wage rises to the level of any of the Good Wage Rates set forth above, then the Good Wage Rate for the subject period shall automatically increase to an amount equal to two dollars (\$2.00) above the highest of the two minimum wages.

The Good Wage Rate may be credited (reduced) up to a maximum of six dollars (\$6.00) per hour for an employee who receives employer-provided employee benefits, subject to the following: (a) the employee's hourly rate does not fall below the highest of the state or federal minimum wage rates; (b) the retailer utilizes a reasonable methodology that is not inconsistent with any regulations issued by the City to determine the hourly dollar value of the benefits; (c) the retailer prepares at least semi-annually written accounting justifying benefit credit amounts and a written explanation of the retailer's methodology; and (d) the retailer files the accounting and explanation with the City and provides a copy to the employee or employee's designated representative.

"Benefits" that may be used as credits include: healthcare, retirement security, disability, death, life insurance, childcare, legal services, public transportation, paid-parking assistance at locations not owned by retailer, education and training at accredited institutions. Benefit credits, however, may not include any payments that are required by any federal, state or local law, or that are deducted from an employee's wages or otherwise paid for or reimbursed by the employee.

Each year, every retailer must certify under penalty of perjury in a writing filed with the City that it has paid all its employees the good wage rates pursuant to the ordinance.

By December 1 of each year, the City will publish and make available to retailers an official notice suitable for posting in the workplace informing employees of the applicable Good Wage Rate for the upcoming year and their rights under the ordinance. The notice must be posted by every retailer in conspicuous and accessible areas of the workplace that are frequented by all employees in a manner that allows all employees to easily see and read the notice. The notice must be translated into any language that at least five percent of the retailer's employees read and/or speak as their predominant language, the content of which shall be subject to prior approval by the City. The notice must also be provided to each current employee and the each newly hired employee at the time of hire, in the language predominantly read and/or spoken by the subject employee.

The ordinance will not apply to employees covered by a bona fide collective bargaining agreement with a bona fide labor organization if that agreement expressly waives compliance with the ordinance. All other waivers will be presumed to be against public policy, voidable and unenforceable.

Retailers will be required to retain payroll records pertaining to its employees for a period of four (4) 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 ordinance; otherwise, where a retailer does not maintain or retain adequate records documenting wages paid or does not allow the City reasonable access to such records, the employee's account of how much he or she was paid shall be presumed to be accurate, absent clear and convincing evidence demonstrating otherwise.

It will be unlawful for a retailer or any of its supervisors, managers, contractors, agents or other representatives to discriminate in any manner or take adverse action against any employee in retaliation for exercising any rights protected under the ordinance, including without limitation to any of the following: (1) the right to file a complaint or inform any person about any party's alleged noncompliance with the ordinance and (2) the right to inform any person of his or her potential rights under the ordinance and to assist him or her in asserting such rights.

An employee or any other person may report to the City in writing any suspected violation of the ordinance. The City will be responsible for investigating any possible violations of the ordinance and it will have the authority to inspect workplaces, interview persons and request the City Attorney to subpoena books, papers, records, or other items relevant to the enforcement of the ordinance.

Any retailer or any retailer's supervisor, manager, contractor or agent who violates any provision of the ordinance may be subject to the following:

- Notice of Violation, which is essentially a warning.
- Administration Citation with fines commencing at **\$250.00** for the first citation; **\$500.00** for a second citation; and **\$1,000.00** for a third and any subsequent citation
- Infraction Citation with fines commencing at **\$500.00** for a first conviction; **\$750.00** for a second conviction; **\$1,000.00** for the third conviction; **\$1,500.00** for a fourth and subsequent convictions.
- Public Nuisance.
- Permit Modification, Suspension and Revocation.
- Injunctive Relief to enjoin any violation or continuing violation of the ordinance.
- Double Back Pay for each and every employee harmed by any violation plus attorneys' fees, court costs and any damages or other relief, including without limitation equitable relief, deemed appropriate by a court of competent jurisdiction.

Every violation of the ordinance against any one employee shall be deemed an independent and separate violation from any other violation of the ordinance by a retailer, its supervisors, managers, contractors, agents or other representatives against any other employee.

Moreover, any person aggrieved by a violation of the ordinance or any entity which has a member aggrieved by any violation of the ordinance will have standing to bring a civil action in a court of competent jurisdiction against any retailer, its supervisors, managers, contractors, agents or other representatives who has violated any provision of the ordinance. However, nothing in the ordinance, may be construed to limit an aggrieved party's right to bring legal action for a violation of any other laws concerning wages, hours, or other standards or rights nor

shall exhaustion of remedies under this ordinance be a prerequisite to the assertion of any other employee rights.

It is important to note again that franchised businesses are exempt from the provisions of this ordinance, as described above.

EXHIBIT(S)

- 1) Ordinance