



Legislation Text

File #: CB 118865, **Version:** 1

CITY OF SEATTLE

ORDINANCE _____

COUNCIL BILL _____

AN ORDINANCE related to imposing a regulatory fee on businesses based on the number of their employees to fund the regulatory functions of the Office of Labor Standards; and adding a new Chapter 6.210 to Title 6 of the Seattle Municipal Code; and amending Section 6.208.020 of the Seattle Municipal Code.

WHEREAS, in 2014 the City enacted Ordinance 124643 to establish the Office of Labor Standards, and the

functions of that office include administering and enforcing City of Seattle ordinances that regulate business activity including ordinances relating to minimum wage and minimum compensation (Chapter 14.19), paid sick and safe time (Chapter 14.16), use of criminal history in employment decisions (Chapter 14.17), wage and tip compensation requirements (Chapter 14.20), and secure scheduling requirements (Chapter 14.22); and

WHEREAS, in 2015, the City enacted Ordinance 124960, prescribing additional remedies, strengthening procedures to enforce and enhance implementation of ordinances relating to minimum wage and minimum compensation (Chapter 14.19), paid sick and safe time (Chapter 14.16), use of conviction and arrest records in employment decisions (Chapter 14.17), and/or wage and tip compensation requirements (Chapter 14.20), and recognizing that data-driven directed investigations are more effective than complaint-based investigations at creating and maintaining employer compliance with labor standards; and

WHEREAS, swift and robust enforcement of Seattle's labor standards ordinances through investigations by the Office of Labor Standards ensures that employees will receive the benefit of the wages, benefits and other protections established by Seattle's labor standards ordinances, which together enhance wage

equity, create a fair and healthy economy for workers, and curbs violations of civil rights for all workers, which fall disproportionately on people of color and on women; and

WHEREAS, in order to enable the Office of Labor Standards to carry out its functions and duties relating to the regulation of business activity in the City, the City intends to fund the regulatory activities of the Office of Labor Standards through a labor standards fee imposed on businesses in the City; NOW, THEREFORE,

BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:

Section 1. The City finds and declares that a labor standards fee imposed on businesses in the City that is based on the number of a business's employees in the City will allow the City, acting through the Office of Labor Standards, to effectively regulate the businesses operating in the City by the enforcement and administration of City of Seattle ordinances that regulate business activity including ordinances relating to minimum wage and minimum compensation (Chapter 14.19), paid sick and safe time (Chapter 14.16), use of criminal history in employment decisions (Chapter 14.17), wage and tip compensation requirements (Chapter 14.20), and secure scheduling requirements (Chapter 14.22). The City further finds that the labor standards fee created by this ordinance is a fair and practical method of enabling the Office of Labor Standards to carry out its regulatory duties.

Section 2. A new Chapter 6.210 is added to the Seattle Municipal Code as follows:

CHAPTER 6.210 LABOR STANDARDS FEE

6.210.010 General provisions

All of the provisions contained in Chapter 6.202 of the Seattle Municipal Code shall have full force and application with respect to the labor standards fee imposed under the provisions of this Chapter 6.210 except as may be expressly stated to the contrary herein.

6.210.020 Definitions

The definitions contained in Chapter 5.30 shall be fully applicable to this Chapter 6.210 except as may be

expressly stated to the contrary in this Section 6.210.020. The following additional definitions shall apply throughout this Chapter 6.210:

"Business" means any person engaging in business as defined in Section 5.30.030.

"Director" means the Director of Finance and Administrative Services or the Director's designee.

"Employee" means any individual who performs any services for an employer, when the physical location of such services is in whole or in substantial part (at least 50 percent of the time) within the City.

"Employer" means any individual, partnership, association, corporation, business trust, or any entity, person or group of persons, or a successor thereof, that employs another person and includes any such entity or person acting directly or indirectly in the interest of an employer in relation to an employee.

"Return" means any document a person is required by The City of Seattle to file to satisfy a labor standard fee obligation under this Chapter 6.210.

6.210.030 Labor standards fee imposed

A. A labor standards fee is imposed upon and shall be collected from every person that engages in business activities within the City.

B. The amount of the labor standards fee due shall be calculated by first determining the number of employees who performed services for a business within the City during the calendar year. All businesses shall then pay the corresponding fee in the amount set forth in this subsection 6.210.030.B based on the total number of the business's employees who were employed by the business during the calendar year:

1. Businesses with fewer than ten employees shall pay a fee of \$26.
2. Businesses with between ten and 25 employees shall pay a fee of \$146.
3. Businesses with between 26 and 50 employees shall pay a fee of \$322.
4. Businesses with between 51 and 100 employees shall pay a fee of \$650.
5. Businesses with between 101 and 200 employees shall pay a fee of \$1,299.
6. Businesses with between 201 and 250 employees shall pay a fee of \$2,065.

7. Businesses with between 251 and 500 employees shall pay a fee of \$3,130.
8. Businesses with between 501 and 1000 employees shall pay a fee of \$6,286.
9. Businesses with between 1001 and 2500 employees shall pay a fee of \$12,913.
10. Businesses with more than 2500 employees shall pay a fee of \$68,415.

C. Temporary employment agencies. The business entity that directly pays a person for temporary work is responsible for paying the labor standards fee, regardless of who is considered the employee's employer for other purposes.

6.210.040 Labor standards fee-When due

The labor standards fee shall be reported and paid on an annual calendar year basis, at the same time as the fourth quarter or annual tax return is due in accordance with Section 5.55.040, and on forms as prescribed by the Director. Persons discontinuing their business activities in Seattle shall report and pay the fee at the same time as their final business tax return is due.

6.210.050 Exemptions from the employee fee

A. The following are exempt from paying the labor standards fee imposed by this Chapter 6.210:

1. Any business having no employees during the calendar year;
2. Businesses that are preempted from regulation under all of the City's labor standards laws pursuant to City ordinances or federal or state constitutional law or statutes; and
3. Volunteers and persons providing services in return for only aid or sustenance from religious or charitable organizations.

6.210.060 Fee in addition to other license fees

The labor standards fee imposed by this Chapter 6.210 shall be in addition to any license fee imposed or levied under any other law, statute, or ordinance whether imposed or levied by the City, State, or other governmental entity or political subdivision.

6.210.070 Use of revenues

The proceeds of the labor standards fee imposed by this Chapter 6.210 shall be used by the Office of Labor Standards to regulate businesses operating in the City through the performance of its regulatory functions under Section 3.14.945, including the enforcement and administration of ordinances relating to minimum wage and minimum compensation (Chapter 14.19), paid sick and safe time (Chapter 14.16), use of criminal history in employment decisions (Chapter 14.17), wage and tip compensation requirements (Chapter 14.20), and secure scheduling requirements (Chapter 14.22).

6.210.080 Receipts to Labor Standards Fee Fund

A new Labor Standards Fee Fund is hereby created in the City Treasury, to which fees received from the labor standards fee imposed by this Chapter 6.210 shall be deposited and from which associated expenditures may be paid for the purposes described in Section 6.210.070. The fees may be temporarily deposited or invested in such manner as may be lawful for the investment of City money and interest and other earnings shall be deposited in the Labor Standards Fee Fund. The Director of Finance is authorized to create other subfunds, accounts, holding accounts, or subaccounts as may be needed to implement the purpose of the Labor Standards Fee Fund.

6.210.080 Director to make rules.

The Director shall have the power and it shall be the Director's duty, from time to time, to adopt, publish, and enforce rules and regulations not inconsistent with this chapter for the purpose of carrying out the provisions of this Chapter 6.210, and it shall be unlawful to violate or fail to comply with, any such rule or regulation.

6.210.090 Payment methods-Mailing returns or remittances-Time extension-Deposits-Recording payments-Payment must accompany return-NSF checks

A. Labor standard fees shall be paid to the Director in United States currency by bank draft, certified check, cashier's check, personal check, money order, cash, or by wire transfer or electronic payment if such wire transfer or electronic payment is authorized by the Director. If payment so received is not paid by the bank on which it is drawn, the person, by whom such payment is tendered, shall remain liable for payment of the fee

and for all legal penalties, the same as if such payment had not been tendered. Acceptance of any sum by the Director shall not discharge the fee due unless the amount paid is the full amount due.

B. A return or remittance which is transmitted to the City by United States mail shall be deemed filed or received on the date shown by the cancellation mark stamped by the post office upon the envelope containing it. The Director may allow electronic filing of returns or remittance from any business. A return or remittance that is transmitted to the City electronically shall be deemed filed or received according to procedures set forth by the Director.

C. If a written request therefor is received prior to the due date, the Director, for good cause, may grant, in writing, additional time within which to make and file returns.

D. The Director shall keep full and accurate records of all funds received or refunded. The Director shall apply payments first against all penalties, then interest owing, and finally upon the labor standard fee, without regard to any direction of the business.

E. For any return not accompanied by a remittance of the labor standard fee shown to be due thereon, the business shall be deemed to have failed or refused to file a return and shall be subject to the penalties and interest provided in this Chapter 6.210.

F. Any payment made that is returned for lack of sufficient funds or for any other reason will not be considered received until payment by certified check, money order, or cash of the original amount due, plus a "non-sufficient funds" (NSF) charge of \$20 is received by the Director.

G. The Director is authorized, but not required, to mail return forms to businesses, but failure of the business to receive any such forms shall not excuse the business from filing returns and making payment of the fees, when and as due under this Chapter 6.210.

6.210.100 Records to be preserved-Examination-Inspection-Estoppel to question fee assessment

A. Every person liable for any fee imposed by this Chapter 6.210 shall keep and preserve, for a period of five years after filing a return, such records as may be necessary to determine the amount of any fee for

which the person may be liable; which records shall include copies of all federal income tax and state tax returns and reports made by the person. All books, records, papers, invoices, and payroll information, and other data, including federal income tax and state tax returns, and reports needed to determine the accuracy of any fees due, shall be open for inspection or examination at any time by the Director or a duly authorized agent. Every person's business premises shall be open for inspection or examination by the Director or a duly authorized agent.

B. If a person does not keep the necessary books and records within the City, it shall be sufficient if such person:

1. Produces within the City such books and records as may be required by the Director; or
2. Bears the cost of examination by the Director's agent at the place where such books and records are kept; provided that the person electing to bear such cost shall pay in advance to the Director the estimated amount thereof including round-trip fare, lodging, meals and incidental expenses, subject to adjustment upon completion of the examination.

C. Any person who fails, or refuses a Department request, to provide or make available records, or to allow inspection or examination of the business premises, shall be forever barred from questioning in any court action, the correctness of any assessment of fees made by the City based upon any period for which such records have not been provided, made available or kept and preserved, or in respect to which inspection or examination of the business premises has been denied. The Director is authorized to determine the amount of the fees payable by obtaining facts and information upon which to base the estimate of the fee due. Such fee assessment shall be deemed prima facie correct and shall be the amount of fee owing the City by the business. The Director shall notify the business by mail of the amount of fee so determined, together with any penalty and interest fees due; the total of such amounts shall thereupon become immediately due and payable.

6.210.110 Penalty and interest for failure to pay

A. If a report or payment of a labor standard fee due under this Chapter 6.210 is received between one

and 30 days after the date the fee becomes due, there shall be added to the amount due a penalty of ten percent of the fees owing or \$30, whichever is greater. If the payment is received more than 30 days after the date it becomes due, there will be added to the amount due a penalty of 20 percent of the fees owing or \$50, whichever is greater.

B. Any labor standard fee required by this Chapter 6.210 that is not paid by the due date shall be subject to interest that is calculated in the same manner as described in subsection 5.55.090.B pertaining to deficiency tax assessments. Nothing in this subsection shall be construed to deem any fees required under this Chapter 6.210 to be a tax.

6.210.120 Time in which assessment of fees may be made

The Director shall not assess, or correct an assessment for, additional fees, penalties, or interest due more than four years after the close of the calendar year in which they were incurred, except that the Director may issue an assessment:

A. Against a person who is not currently registered or licensed or has not filed a return as required by this Chapter 6.210 for fees due within the period commencing ten years prior to the close of the calendar year in which the person was contacted in writing by the Director;

B. Against a person that has committed fraud or who misrepresented a material fact; or

C. Against a person that has executed a written waiver of such limitations.

6.210.130 Overpayment-Credit or refund-Interest rate-Statute of limitations

A. If, upon receipt of an application for a refund, or during an audit or examination of the person's records, the Director determines that the fee paid is in excess of that properly due, the excess amount shall be credited to the person's account or shall be refunded to the person. Except as provided in subsection 6.210.130.B, no refund or credit shall be made for fees paid more than four years prior to the beginning of the calendar year in which the refund application is made or examination of records is completed.

B. The execution of a written waiver shall extend the time for applying for, or making, a refund or credit

of any fees paid during, or attributable to, the years covered by the waiver if, prior to the expiration of the waiver period, an application for refund of such fees is made by the person or the Director discovers that a refund or credit is due.

C. Interest calculation on refunds or overpayments. The Director shall compute interest on refunds or credits of amounts paid or other recovery allowed a person in accordance with subsection 5.55.100.E pertaining to tax overpayments. Nothing in this subsection shall be construed to deem any fee required under this Chapter 6.210 to be a tax.

6.210.140 Cancellation of penalties

The Director may cancel any penalties imposed by Section 6.210.110 according to the standards and procedures in subsection 5.55.100.E pertaining to tax overpayments. Nothing in this Section 6.210.140 shall be construed to deem any fee required under this Chapter 6.210 to be a tax.

6.210.150 Review of Director's assessment or denial of refund

A. Any person, except one who has failed to comply with Section 6.210.110, aggrieved by the amount of the fee or penalty assessed by the Director, or by the denial of a refund by the Director, may, having paid any fee, interest or penalty owing, appeal the Director's deficiency assessment or refund denial to the Hearing Examiner by filing a petition for review with the Office of the Hearing Examiner pursuant to Section 6.210.160. The petition or complaint shall be filed within 30 days from the date that the assessment or denial notice was mailed to the business, or within the period covered by any extension of said due date granted in writing by the Director. The Director may extend the due date for filing an appeal with the Hearing Examiner or a refund suit with the Superior Court only if the business, within the 30 day period, makes written application showing good cause why an extension is necessary.

B. The Director's assessment or refund denial shall be regarded as prima facie correct, and the person shall have the burden to prove that the fee assessed or paid by the person is incorrect, either in whole or in part, and to establish the correct amount of fee.

C. The methods for obtaining review of the Director's assessment or refund denial set forth in this Section 6.210.150 and Section 6.210.160 are exclusive, and must be strictly complied with.

6.210.160 Appeal to the Hearing Examiner

A. A person electing to appeal to the Hearing Examiner pursuant to Section 6.210.150 must provide a copy of the petition to the Director and the City Attorney on or before the date the petition is filed with the Hearing Examiner. If no such petition is filed with the Hearing Examiner and provided to the Director and City Attorney within the 30 day period, and a complaint is not filed, the assessment covered by the notice shall become final and no refund request may be made for the audit period covered in that assessment.

B. The petition shall set forth the reasons why the assessment should be reversed or modified. If the appeal is from the denial of a refund, the petition shall set forth the amount of refund or credit believed to be due.

C. The Hearing Examiner shall fix the time and place of the hearing and notify the business thereof. The hearing shall be conducted in accordance with the procedures for hearing contested cases in Chapter 3.02.

D. The Hearing Examiner may, by subpoena, require the attendance of any person at the hearing, and may also require the person to produce pertinent books and records. Any person served with such a subpoena shall appear at the time and place therein stated and produce the books and records required, if any, and shall testify truthfully under oath administered by the Hearing Examiner as to any matter required of the person pertinent to the appeal; and it shall be unlawful for the person to fail or refuse to do so. The City Attorney shall seek enforcement of a Hearing Examiner subpoena in an appropriate court.

E. The Hearing Examiner shall ascertain the correct amount of the fee, interest or penalty due either by affirming, reversing, or modifying an action of the Director. Reversal or modification is proper if the Director's assessment or refund denial violates the terms of this Chapter 6.210 or other applicable law.

6.210.170 Judicial review of the Hearing Examiner's decision

A. The person who has appealed to the Hearing Examiner under Section 6.210.150, or the Director, may

obtain judicial review of the decision of the Hearing Examiner by applying for a Writ of Review in the King County Superior Court within 14 days from the date of the decision in accordance with the procedure set forth in chapter 7.16 RCW, other applicable law and court rules.

B. The decision of the Hearing Examiner shall be final and conclusive unless review is sought in compliance with this Section 6.210.170.

6.210.180 Unlawful actions-Violation-Penalties

A. It shall be unlawful for any person subject to the provisions of this Chapter 6.210:

1. To violate or fail to comply with any of the provisions of this Chapter 6.210 or any lawful rule or regulation adopted by the Director;
2. To make any false statement on any return;
3. To aid or abet any person in any attempt to evade payment of a fee;
4. To refuse admission to the Director to inspect the premises and/or records as required by this Chapter 6.210 or to otherwise interfere with the Director in the performance of the Director's duties imposed by this Chapter 6.210;
5. To fail to appear or testify in response to a subpoena issued pursuant to Section 3.02.120 in any proceeding to determine compliance with this Chapter 6.210;
6. To testify falsely in any investigation, audit or proceeding conducted pursuant to this Chapter 6.210;
7. In any manner, to hinder or delay the City or any of its officers in carrying out the provisions of this Chapter 6.210.

B. Each violation of Section 6.210.180 is a Class 1 civil infraction as contemplated by chapter 7.80 RCW, for which the penalty is \$250 plus statutory assessments. Each day a person is in violation of this Section 6.210.180 is a separate violation and the monetary penalties shall accumulate. A civil infraction under these sections shall be processed in the manner contemplated by chapter 7.80 RCW and notices of infraction for such

violations may be issued by law enforcement officers or the Director.

C. Prosecution pursuant to this Section 6.210.180 shall not be commenced more than four years after the Director knew or should have known that the act(s) constituting the offense occurred. The penalties and punishments established by this Section 6.210.180 shall be in addition to all other penalties provided by law.

6.210.190 Public Disclosure-Confidentiality-Information sharing

Except as required by the Public Records Act, chapter 42.56 RCW, or other applicable state or federal law, the Director and all other City employees and representatives shall not disclose returns or other information provided by a business to the Director under this Chapter 6.210, except that the Director may disclose such returns and other information:

A. For official purposes only, to the Mayor or City Attorney, or to any City agency, or to any member of the City Council or their authorized designees dealing with matters of, revenue, trade, or commerce;

B. As needed in any proceeding before the hearing examiner or court involving the fees imposed by this Chapter 6.210 or a violation of the provisions thereof;

C. As needed in any proceeding before the hearing examiner or court involving enforcement of the provisions of the Seattle Municipal Code enforced by the Office of Labor Standards; and

D. As statistics so classified as to prevent the identification of individual returns or reports of items thereof.

Section 3. Subsection 6.208.020.A of the Seattle Municipal Code, which section was last amended by Ordinance 125135, is amended as follows:

6.208.020 Denial, revocation of, or refusal to renew business license

A. In addition to any other powers and authority provided under this Title 6, the Director, or the Director's designee, has the power and authority to deny, revoke, or refuse to renew any business license issued under the provisions of this Chapter 6.208. The Director, or the Director's designee, shall notify such applicant or licensee in writing by mail of the denial, revocation of, or refusal to renew, the license and on what grounds

such a decision was based. The Director may deny, revoke or refuse to renew any license issued under this Chapter 6.208 on one or more of the following grounds:

1. The license was procured by fraud or false representation of fact.
2. The licensee has failed to comply with any provisions of this Chapter 6.208 or Chapter 6.210.
3. The licensee has failed to comply with any provisions of Chapters 5.32, 5.35, 5.40, 5.45, 5.46, 5.48, 5.50, or 5.52.
4. The licensee is in default in any payment of any license fee or tax under Title 5 or Title 6.
5. The property at which the business is located has been determined by a court to be a chronic nuisance property as provided in Chapter 10.09.
6. The applicant or licensee has been convicted of theft under subsection 12A.08.060.A.4 within the last ten years.
7. The applicant or licensee is a person subject within the last ten years to a court order entering final judgment for violations of chapters 49.46, 49.48, or 49.52 RCW, or 29 U.S.C. 206 or 29 U.S.C. 207, and the judgment was not satisfied within 30 days of the later of either:
 - a. the expiration of the time for filing an appeal from the final judgment order under the court rules in effect at the time of the final judgment order; or
 - b. if a timely appeal is made, the date of the final resolution of that appeal and any subsequent appeals resulting in final judicial affirmation of the findings of violations of chapters 49.46, 49.48, or 49.52 RCW, or 29 U.S.C. 206 or 29 U.S.C. 207.
8. The applicant or licensee is a person subject within the last ten years to a final and binding citation and notice of assessment from the Washington State Department of Labor and Industries for violations of chapters 49.46, 49.48, or 49.52 RCW, and the citation amount and penalties assessed therewith were not satisfied within 30 days of the date the citation became final and binding.
9. Pursuant to subsections 14.16.100.A.4, 14.17.075.A, 14.19.100.A.4, and 14.20.080.A.4, the

applicant or licensee has failed to comply within 30 days of service of any settlement agreement, any final order issued by the Division Director of the Office of Labor Standards within the Office for Civil Rights, or any final order issued by the Hearing Examiner under Chapters 14.16, 14.17, 14.19 and 14.20, for which all appeal rights have been exhausted, and the Division Director of the Office of Labor Standards within the Office for Civil Rights has requested that the Director deny, refuse to renew, or revoke any business license held or requested by the applicant or licensee. The denial, refusal to renew, or revocation shall remain in effect until such time as the violation(s) under Chapters 14.16, 14.17, 14.19, and 14.20 are remedied.

10. The business is one that requires an additional license under this Title 6 and the business does not hold that license.

11. The business has been determined under a separate enforcement process to be operating in violation of law.

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Section 4. Report to Council. In order to assist the Council in reviewing the amount of the fees imposed by this Chapter 6.210, by July 31 of each year, the Director of the Office of Labor Standards shall provide a written report to the Council concerning its enforcement and administrative activities relating to the City's labor standards ordinances and the costs of those activities, including an analysis of the costs associated with the enforcement and administration of each labor standard ordinance.

Section 5. The provisions of this ordinance are declared to be separate and severable. The invalidity of any clause, sentence, paragraph, subdivision, section, or portion of this ordinance, or the invalidity of its application to any person or circumstance, does not affect the validity of the remainder of this ordinance or the validity of its application to other persons or circumstances.

Section 6. Sections 1 through 4 of this ordinance shall take effect on January 1, 2018.

Section 7. This ordinance shall take effect and be in force 30 days after its approval by the Mayor, but if

not approved and returned by the Mayor within ten days after presentation, it shall take effect as provided by Seattle Municipal Code Section 1.04.020.

Passed by the City Council the _____ day of _____, 2016, and signed by me in open session in authentication of its passage this _____ day of _____, 2016.

President _____ of the City Council

Approved by me this _____ day of _____, 2016.

Edward B. Murray, Mayor

Filed by me this _____ day of _____, 2016.

Monica Martinez Simmons, City Clerk

(Seal)