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ORDINANCE _____

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3 AN ORDINANCE relating to wage theft; amending Seattle Municipal Code sections 5.55.230 and
4 12A.08.060; clarifying the definition of theft as it relates to theft of wages; providing a list of
5 circumstances that may be considered in determining whether a person intends to commit wage
6 theft; clarifying the City's jurisdiction in such cases; and allowing the City to refuse to issue,
7 revoke, or refuse to renew business licenses from employers found guilty of wage theft.

8 WHEREAS, research shows that the theft of wages by employers with unscrupulous business practices
9 is a significant problem around the country, with one 2008 study finding that more than two-
10 thirds of 4,387 workers surveyed in low-wage industries experienced at least one pay-related
11 violation in the previous work week amounting to an average loss of 15 percent of weekly
12 earnings; and

13 WHEREAS, the Washington State Department of Labor and Industries issued 615 sustained civil claims
14 against such employers to collections in fiscal year 2009, but frequently lacks the resources to
15 collect upon these claims; and

16 WHEREAS, some predatory business owners apparently consider repeated civil claims from the
17 Department of Labor and Industries a simple cost of doing business; and

18 WHEREAS, encouraging greater compliance with wage laws benefits all workers by ensuring a level
19 playing field in the labor market; and

20 WHEREAS, encouraging greater compliance with wage laws benefits the businesses that already
21 comply with these laws; and

22 WHEREAS, those individuals affected by wage theft are often among the most vulnerable in our city
23 and without access to sufficient resources and time with which to appeal for their unpaid wages;
24 and

WHEREAS, the City of Seattle finds it necessary and appropriate to create a stronger disincentive for
employers to violate wage and hour laws; NOW, THEREFORE,

BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:

Section 1. Subsections A and B of Section 5.55.230 of the Seattle Municipal Code are amended
as follows:

5.55.230 Refusal to issue, revocation ~~Revocation~~ of, or refusal to renew business license.

1 A. The Director, or his or her designee, has the power and authority to refuse to issue, revoke or
2 refuse to renew any business license or amusement device license issued under the provisions of this
3 chapter. The Director, or his or her designee, shall notify such applicant or licensee in writing by
4 certified mail of the refusal to issue, revocation of, or refusal to renew, his or her license and on what
5 grounds such a decision was based. The Director may refuse to issue, revoke or refuse to renew any
6 license issued under this chapter on one or more of the following grounds:

- 7 1. The license was procured by fraud or false representation of fact.
- 8 2. The licensee has failed to comply with any provisions of this chapter.
- 9 3. The licensee has failed to comply with any provisions of SMC Chapters 5.32, 5.35, 5.37, 5.40,
10 5.45, 5.46, 5.48 or 5.52.
- 11 4. The licensee is in default in any payment of any license fee or tax under Title 5 or Title 6.
- 12 5. The property at which the business is located has been determined by a court to be a chronic
13 nuisance property as provided in SMC Chapter 10.09.
- 14 6. The applicant or licensee has been convicted of theft under Section 12A.08.060A4 within the
15 last ten years.
- 16 7. The applicant or licensee is a person subject within the last ten years to a court order entering
17 final judgment for violations of RCW 49.46, 49.48 or 49.52, and the judgment was not satisfied within
18 30 days of the later of either: (1) the expiration of the time for filing an appeal from the final judgment
19 order under the court rules in effect at the time of the final judgment order, or (2) if a timely appeal is
20 made, the date of the final resolution of that appeal and any subsequent appeals resulting in final judicial
21 affirmation of the findings of violations of RCW 49.46, 49.48 or 49.52.
- 22 8. The applicant or licensee is a person subject within the last ten years to a final and binding
23 citation and notice of assessment from the Washington State Department of Labor and Industries for
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violations of RCW 49.46, 49.48 or 49.52, and the citation amount and penalties assessed therewith were not satisfied within 30 days of the date the citation became final and binding.

The period of non-issuance, revocation or non-renewal shall be at least one year, and the licensee or any person (as defined in SMC Section 5.30.040.F) in which the licensee is a principal shall not again be licensed during such period.

B. Within 30 days from the date that the notice of refusal to issue, revocation or refusal to renew notice was mailed to the applicant or licensee, the applicant or licensee may appeal such refusal to issue, revocation or refusal to renew by filing a written notice of appeal (“petition”) setting forth the grounds therefor with the Office of the Hearing Examiner. The applicant or licensee 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. The hearing shall be conducted in accordance with the procedures for hearing contested cases in the Seattle Administrative Code (Chapter 3.02 of the Seattle Municipal Code). The Hearing Examiner shall set a date for hearing said appeal and notify the licensee by mail of the time and place of the hearing. After the hearing thereon the Hearing Examiner shall, after making appropriate findings of fact and conclusions of law, affirm, modify, or overrule the refusal to issue, revocation or refusal to renew, and issue or reinstate the license. The Hearing Examiner may impose any terms upon the issuance or continuance of the license that he or she may deem advisable. No refusal to issue, revocation of, or refusal to renew a license issued pursuant to the provisions of this chapter shall take effect until 30 days after the mailing of the notice thereof by the Director, and if appeal is taken as herein prescribed, the refusal to issue, revocation or refusal to renew shall be stayed pending final action by the Hearing Examiner. All licenses that are revoked or refused to be renewed by the Director shall be surrendered to the City on the effective date of such revocation or refusal to renew. No business license shall be renewed and no new license shall be issued to the licensee or to any person (as defined by SMC

1 Subsection 5.30.040F) in which the licensee is a principal for a period of one year where the license has
2 been revoked or not renewed by a decision of the Director pursuant to this Section 5.55.230. The
3 decision of the Hearing Examiner shall be final. The licensee and/or the Director may seek review of
4 the decision of the Hearing Examiner in the Superior Court of Washington in and for King County
5 within fourteen (14) days from the date of the decision.

6 * * *

7 Section 2. Section 12A.08.060 of the Seattle Municipal Code is amended as follows:

8 **12A.08.060 Theft.**

9 A. A person is guilty of theft if:

- 10 1. He or she steals the property of another; or
11 2. By deception or by other means to avoid payment for services, he or she intentionally obtains
12 services which he or she knows to be available only for compensation; or
13 3. Having control over the disposition of services of others to which he or she is not entitled, he
14 or she knowingly diverts those services to his or her own benefit or to the benefit of another not entitled
15 thereto; or
16 4. He or she knowingly secures the performance of services by agreeing to provide
17 compensation and, after the services are rendered, fails to make full and complete payment, with intent
18 to avoid payment for services.

19 B. For purposes of subsection A4 of this Section 12A.08.060, among the circumstances that may
20 be considered in determining whether the person intends to avoid payment for services are that he or
21 she:

- 22 1. agrees to pay the person providing the services immediately upon completion of the services,
23 but fails to do so; or
24

1 2. fails to pay the person at the time of an agreed-upon payday or at the end of the regular
2 payment interval required by state and federal statutes; or

3 3. agrees to pay the person providing the services at a specified time and place after completion
4 of the services, but fails to appear at that time or place; or

5 4. agrees to pay the person providing the services a specified amount upon completion of the
6 services, but pays or offers a lesser amount; or

7 5. pays the person providing the services with a check that is not honored by the bank or other
8 depository upon which it is drawn because of insufficient funds or a stop-payment order; or

9 6. in retaliation for asserting any claim to wages, communicates to the person providing the
10 services, directly or indirectly, explicitly or implicitly, the willingness to inform a government employee
11 that the person is not lawfully in the United States, or threatens, intimidates, or takes any other adverse
12 action against the person; or

13 7. fails to respond within fifteen days to any written communication that makes a demand for
14 unpaid wages from the person providing the services or any other person or entity writing on that
15 person's behalf.

16 Proof of any of these circumstances is not required for theft under subsection A4 of this Section
17 12A.08.060 nor do any of these circumstances conclusively prove theft under subsection A4 of this
18 Section 12A.08.060.

19 C. In any prosecution under this section-Section 12A.08.060, it is an affirmative defense that the
20 property or services were openly obtained under a claim of title made in good faith, even though the
21 claim be untenable.

22 D. Theft involving services may be deemed to have been committed either at the place where
23 the agreement was made regarding the services or at the place where the services were performed.
24

E. Within 14 days after the conviction of a person of theft under subsection A4 of this Section

1 12A.08.060, the clerk of the court shall forward to the Director of the Department of Financial and
2 Administrative Services a docket of the case record.

3 Section 3. If any provision of this ordinance or its application to any person or circumstance is
4 held invalid, the remainder of the ordinance or the application of the provision to other persons or
5 circumstances is not affected.

6 Section 4. This ordinance shall take effect and be in force thirty (30) days from and after its
7 approval by the Mayor, but if not approved and returned by the Mayor within ten (10) days after
8 presentation, it shall take effect as provided by Municipal Code Section 1.04.020.

9 Passed by the City Council the ____ day of _____, 2011, and signed by me in open
10 session in authentication of its passage this ____ day of _____, 2011.

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12
13 _____
President _____ of the City Council

14 Approved by me this ____ day of _____, 2011.

15 _____
Mike McGinn, Mayor

16 Filed by me this ____ day of _____, 2011.

17 _____
18 City Clerk
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FISCAL NOTE FOR NON-CAPITAL PROJECTS

Department:	Contact Person/Phone:	CBO Analyst/Phone:
Legislative	Nate Van Duzer/206-684-8806	N/A

Legislation Title: AN ORDINANCE relating to wage theft; amending Seattle Municipal Code sections 5.55.230 and 12A.08.060; clarifying the definition of theft as it relates to theft of wages; providing a list of circumstances that may be considered in determining whether a person intends to commit wage theft; clarifying the City’s jurisdiction in such cases; and allowing the City to refuse to issue, revoke, or refuse to renew business licenses from employers found guilty of wage theft.

Summary of the Legislation:

The ordinance would add the following elements to the Seattle Municipal Code:

- Under SMC 12A.08.060 (Theft), a new subsection (A4) clarifies that knowingly securing services for payment and intentionally avoiding full payment for these services is an element of the crime of theft, a gross misdemeanor.
- A list of specific circumstances is added to the SMC that may be considered in determining whether a defendant intended to commit wage theft. Similar lists of circumstances are used in the SMC sections for prostitution loitering (12A.10.010) and drug-traffic loitering (12A.20.050).
- An additional clarification is added to the SMC so that it is clear that wage theft can occur either at the place where the agreement for service was made or at the location where the services are performed, a change necessary to make the City law applicable in those cases where an offer of employment is made and accepted inside the city limits of Seattle yet the work is performed outside the City, or vice versa.
- Under SMC 5.55.230 (Business licenses), the City’s Director of Finance and Administrative Services would be empowered to refuse to issue, revoke or withhold a Seattle business license to individuals who
 - are convicted of wage theft under new section 12A.08.060A4, or
 - are subject to a final and binding citation and notice of assessment for wage violations from the State Department of Labor and Industries AND have not satisfied the judgment within 30 days, or
 - have been assessed civil liability by a court under Washington state wage laws in RCW 49.46, 49.48 or 49.52 AND have not satisfied the judgment within 30 days.



Background:

In Washington State, claims of wage theft are handled under the civil processes of the State Department of Labor and Industries. While many citations are issued for violations of state wage laws and regulations and 615 sustained claims sent to collections in fiscal year 2009, the department lacks sufficient resources to actively collect lost wages on behalf of victimized workers. If employers do not pay voluntarily, they often never pay. Improvements to state law and processes were adopted in 2010, but these changes, while certainly appropriate, have not changed the reality for many of the workers who are taken advantage of by their employer. The problem of wage theft is significant enough to warrant enhanced City efforts to recover wages for these workers and to deter other employers from committing wage theft.

Please check one of the following:

This legislation does not have any financial implications.
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It is expected that any criminal enforcement and prosecutions under the amended law would be handled within existing resources.

This legislation has financial implications. (Please complete all relevant sections that follow.)

