EVERETT City Council Agenda Item Cover Sheet

Project title: Adopt Ordinance Relating to Changes in the City of Everett's Procurement Policy Regarding Contractors and Service Providers Who Have Engaged in Wage Theft

Council Bill # *interoffice use*

Agenda dates requested:

Briefing & Action	
Proposed action	10/23/24
Proposed action	10/30/24
Consent	
Action	11/06/24
Ordinance	X
Public hearing	
Yes	x No

Budget amendment:
Yes x No

PowerPoint presentation:
Yes x No

Attachments:
Proposed Ordinance

Department(s) involved:
Legal (Drafting/Review)

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Initialed by:

Department head

Administration

Council President

Consideration:	Ordinance Relating to Changes in the City of Everett's Procurement Policy Regarding Contractors and Service Providers Who Have Engaged in Wage Theft
Project:	Ordinance
Preceding action:	N/A
Fund:	N/A

Fiscal summary statement: None

Project summary statement:

For public works contracts, state law (RCW 39.04.350(1)(g)) prohibits the City from awarding to contractors who, during the previous three years, have been found by Labor & Industries or a court to have willfully violated any provision of RCW chapters 49.46 (Minimum wage), 49.48 (Wage Payment), or 49.52 (Wage Deductions). The state law requires bidders to submit a certification to the City that they have no such violations during the past three years, and by state law the City is entitled to rely on those certifications in making an award.

The proposed ordinance adds a section to the City Procurement Policy to add additional protection above the state law "floor" as follows:

- For public works contracts, the state law three-year period is extended to five years. (Note: "public works contracts" refers to all contracts for construction, repair, maintenance, etc.)
- The ordinance says that the five-year period applicable public works contracts will also apply to all other services contracts (such as, for example, professional services agreements) that are in excess of $10,000.
- City staff will verify contractor/service provider certifications by using L&I online employer look-up tools as such tools are available.

Recommendation (exact action requested of Council): Adopt Ordinance Relating to Changes in the City of Everett's Procurement Policy Regarding Contractors and Service Providers Who Have Engaged in Wage Theft.

EVERETT
WASHINGTON

ORDINANCE NO. _____

An ORDINANCE Relating to Changes in the City of Everett's Procurement Policy Regarding Contractors and Service Providers Who Have Engaged in Wage Theft

WHEREAS,

A. The City of Everett is committed to ensuring the best quality of life possible for our residents.

B. The City of Everett is also committed to fiscal responsibility and prudent budgetary practices.

C. Wage theft is a crime and occurs when employers do not pay workers what they are legally entitled to according to the law or their work agreement. Wage theft can come in the form of paying workers less than minimum wage, failing to compensate for overtime, requiring workers to work uncompensated before or after their shifts, taking illegal deductions from wages, misclassifying employees to pay a lower wage, confiscating rightly earned tips, and other forms.

D. The prevalence of wage theft harms workers' quality of life, diminishes their ability to provide for their household, and inhibits their participation in the local economy. It also harms workers and businesses that do follow the law by placing them at a disadvantage if a competitor keeps their costs artificially low because they are withholding payments from their workers.

E. If a worker is subject to wage theft, they may file a complaint with the Department of Labor and Industries to ask for an investigation. In some cases, an employer is found to have willfully engaged in wage theft if they have engaged in, "a knowing and intentional action that is neither accidental nor the result of a bona fide dispute," (RCW 49.48.082(13)).

F. The City of Everett has identified the need to ensure that unscrupulous employers who are willful violators of wage laws are not rewarded with City contracts, and instead should be supporting fair, ethical, and legal business practices that sustain a thriving economy.

G. The City of Everett has determined that the City's Procurement Policy & Federal Emergency Contracting Policy (400-20-04) should be amended to provide additional protections regarding wage theft.

NOW, THEREFORE, THE CITY OF EVERETT DOES ORDAIN:

Section 1. A new Section is added to the City of Everett Procurement Policy entitled "Wage Theft Protections" as follows:

WAGE THEFT PROTECTIONS

The City recognizes that state law regarding public works contracts (RCW 39.04.350(1)(g) and (2)) provides certain wage theft protections as follows:

> RCW 39.04.350(1)(g): "Before award of a public works contract, a bidder must meet the following responsibility criteria to be considered a responsible bidder and qualified to be awarded a public works

project. The bidder must: . . . . Within the three-year period immediately preceding the date of the bid solicitation, not have been determined by a final and binding citation and notice of assessment issued by the department of labor and industries or through a civil judgment entered by a court of limited or general jurisdiction to have willfully violated, as defined in RCW 49.48.082, any provision of chapter 49.46, 49.48, or 49.52 RCW."

RCW 39.04.350(2): "Before award of a public works contract, a bidder shall submit to the contracting agency a signed statement in accordance with chapter 5.50 RCW verifying under penalty of perjury that the bidder is in compliance with the responsible bidder criteria requirement of subsection (1)(g) of this section. A contracting agency may award a contract in reasonable reliance upon such a sworn statement."

The City has determined that, in addition to the state law requirements, it will implement the following wage theft protections:

Public Works Contracts. In its bid solicitations for public works contracts, the City will, unless the project funding source requires otherwise, include (by supplemental responsibility criterion under RCW 39.04.350(3) or other provision) a bidder responsibility requirement that is substantively the same as RCW 39.04.350(1)(g) and (2), except that the applicable time period shall be the five-year period immediately preceding the date of the bid solicitation.

Other Services Contracts. With respect to contracts or purchase orders for services other than public works (such as, for example, professional services agreements) in excess of $10,000, the City will as practical apply a responsibility/qualification requirement for willful wage violations substantively the same as RCW 39.04.350(1)(g) and (2). The procuring City department will as practical require that the City-service provider contract or the City-issued purchase order contain a provision stating that the service provider, by executing the contract or accepting the purchase order, certifies that it has not, within the preceding five-year period, been determined by a final and binding citation and notice of assessment issued by the department of labor and industries or through a civil judgment entered by a court of limited or general jurisdiction to have willfully violated, as defined in RCW 49.48.082, any provision of chapter 49.46, 49.48, or 49.52 RCW. The City may reasonably rely on such certifications.

Substantially Identical Enitity. The bidder and service provider certification(s) will provide that the certification(s) cover any entity, however organized, with substantially identical operations, corporate, or management structure as bidder or service provider.

City Validation. To the extent practical, City staff will independently validate verifications and certifications from contractors and service providers by using online employer-lookup tools provided by the Washington Department of Labor and Industries. City staff is not required to maintain file records of validations.

Untrue Certifications. Submission of an untrue certification by a bidder or service provider is cause for contract termination.

Section 2. The City Clerk and the codifiers of this Ordinance are authorized to make necessary

corrections to this Ordinance including, but not limited to, the correction of scrivener's/clerical errors, references, ordinance numbering, section/subsection numbers, and any internal references.

Section 3. The City Council hereby declares that should any section, paragraph, sentence, clause or phrase of this ordinance be declared invalid for any reason, it is the intent of the City Council that it would have passed all portions of this ordinance independent of the elimination of any such portion as may be declared invalid.

Section 4. The enactment of this Ordinance shall not affect any case, proceeding, appeal or other matter currently pending in any court or in any way modify any right or liability, civil or criminal, which may be in existence on the effective date of this Ordinance.

Section 5. It is expressly the purpose of this Ordinance to provide for and promote the health, safety and welfare of the general public and not to create or otherwise establish or designate any particular class or group of persons who will or should be especially protected or benefited by the terms of this Ordinance. It is the specific intent of this Ordinance that no provision or any term used in this Ordinance is intended to impose any duty whatsoever upon the City or any of its officers or employees. Nothing contained in this Ordinance is intended nor shall be construed to create or form the basis of any liability on the part of the City, or its officers, employees or agents, for any injury or damage resulting from any action or inaction on the part of the City related in any manner to the enforcement of this Ordinance by its officers, employees or agents.

_____
Cassie Franklin, Mayor

ATTEST:

_____
City Clerk

PASSED: _____

VALID: _____

PUBLISHED: _____

EFFECTIVE DATE: _____