

City of Houston, Texas, Ordinance No. 2013-_____

AN ORDINANCE AMENDING CHAPTERS 1 AND 15 OF THE CODE OF ORDINANCES OF HOUSTON, TEXAS, RELATING TO WAGE THEFT; DECLARING THE POLICY OF THE CITY REGARDING WAGE THEFT; DEFINING CERTAIN TERMS; PROVIDING FOR THE CREATION OF A WAGE THEFT DATABASE AND PROCEDURES RELATING TO ITS USE; PROVIDING SANCTIONS RELATING TO WAGE THEFT; CONTAINING FINDINGS AND OTHER PROVISIONS RELATING TO THE FOREGOING SUBJECT; PROVIDING FOR SEVERABILITY; PROVIDING AN EFFECTIVE DATE; AND DECLARING AN EMERGENCY.

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WHEREAS, wage theft, including the non-payment or underpayment of earned wages owed by employers, is a practice typically inflicted on the weakest and poorest segments of our society, locally, statewide and nationally; and

WHEREAS, those subjected to wage theft are generally without any adequate remedy to redress the injury suffered at the hands of unscrupulous employers; and

WHEREAS, the City Council finds and determines that the City should make every effort to combat wage theft to afford, to the greatest extent possible, a deterrent to those who engage in wage theft; and

WHEREAS, the City Council desires to adopt an ordinance providing for the creation of a wage theft database to identify employers engaging in such practice and to provide sanctions against such employers; **NOW, THEREFORE**,

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF HOUSTON, TEXAS:

Section 1. That the findings contained in the preamble of this Ordinance are determined to be true and correct and are hereby adopted as part of this Ordinance.

Section 2. That Section 1-10(b) of Chapter 1 of the Code of Ordinances, Houston, Texas, is hereby amended by adding a new Item (8) to read as follows:

- “(8) Licenses issued to, or in connection with, any business or occupation the operation of which involves the use of unskilled or minimally-skilled laborers or employees in the usual and customary course of the business or occupation:

- a. A conviction of any offense defined in the Texas Pay Day Act, TEX. LABOR CODE, Sections 61.001, *et seq.*, the Texas Theft of Service Law, TEX. PENAL CODE, § 31.04, or any similar federal, state or other law or regulation relating to the payment of wages for labor performed or services provided;
- b. The assessment of an administrative penalty against an employer upon a determination that the employer has acted in bad faith in not paying, or underpaying, wages, in violation of Section 61.053 of the Texas Pay Day Act; or
- c. Adjudicated by a court of competent jurisdiction as having engaged in wage theft in litigation initiated by an employee against an employer.

A conviction, or the assessment of an administrative penalty, as described in this item shall be grounds for the denial, revocation or nonrenewal of any city permit issued to any business or occupation described in this item for a period of *two* years following the date of such conviction or imposition of the administrative penalty.”

Section 3. That Section 15-1 of Chapter 15 of the Code of Ordinances, Houston, Texas, is hereby amended by redesignating Subsections (d) and (e), respectively, as Subsections (e) and (f) and adding a new Subsection (d) to read as follows:

“(d) It shall be against the public policy of the city to enter into, or to continue or extend, any contract or other transaction or business relationship, including economic development agreements, if it is determined that the proposed or current contracting entity, or any owner, manager or governing person thereof, has been convicted of wage theft, ~~or~~ has been assessed an administrative penalty involving wage theft or has been adjudicated of engaging in wage theft by a court of competent jurisdiction, as set forth in article IV of this chapter.”

[Legal Dept. note – it is assumed that bid and contract documents will be amended to ensure that a determination of wage theft will constitute a material breach of any covered contract]

Section 4. That Chapter 15 of the Code of Ordinances, Houston, Texas, is further amended by adding a new Article IV that reads as follows:

“ARTICLE IV. WAGE THEFT

Sec. 15-61. Definitions. In this section:

Director means the director of the department of administration and regulatory affairs or designee.

Employee and *employer* have the meanings assigned by Texas Labor Code, Section 61.001.

Finance director means the director of the department of finance or designee.

Wage theft complaint means a written complaint alleging any instance of wage theft by an employer.

Wages includes all amounts for labor performed by employees of every description, whether the amount is fixed or ascertained by the standard of time, task, piece, commission basis, or other method of calculation.

Sec. 15-62. Wage theft coordinator; appointment; duties.

(a) *Appointment.* The director shall designate a wage theft coordinator to carry out the duties set forth in this article.

(b) *Duties.* The wage theft coordinator shall:

- (1) Receive and review each wage theft complaint or notice of wage theft complaint submitted pursuant to this article;
- (2) Provide counseling and assistance to any person who alleges wage theft;
- (3) Create and maintain a watch list containing information on any employer named in a wage theft complaint or notice of wage theft complaint and periodically update such list to reflect the results of the inquiry by the coordinator in each complaint. Information in the watch list shall be used for internal purposes only and provided to any department director upon request;

- (4) Provide a monthly update of the watch list to the mayor's office and all city department directors; provided that no monthly report shall be required if no change in such list has occurred since the previous list was provided;
- (5) Monitor council agendas to determine whether any employer named in the watch list is seeking any city contract and, if so, notify the affected director, the city attorney and the mayor's office; and
- (6) Determine whether an employer has met any of the conditions set forth in section 15-63(a) of this Code and, if so, immediately report such information to the finance director, the mayor's office and all other department directors.

Sec. 15-63. Wage theft database; creation; procedures.

(a) *Creation; content.* The finance director shall create and maintain on the city's website a publicly accessible database of all employers, including both prime and sub-contractors, located or operating within the area described in the definition of "local firm" in section 15-82 of this Code that have been:

- (1) Convicted of an offense under Section 61.019, Texas Labor Code or Section 31.04, Texas Penal Code;
- (2) Assessed an administrative penalty under Section 61.053, Texas Labor Code; or
- (3) Adjudicated by a court of competent jurisdiction as having engaged in wage theft.

For purposes of this subsection, a person has been convicted of an offense if the person was adjudged guilty of the offense or entered a plea of guilty or nolo contendere in return for a grant of deferred adjudication, regardless of whether the sentence for the offense was ever imposed or whether the sentence was probated and the person was subsequently discharged from community supervision. In addition, the adjudication by a court of competent jurisdiction that an employer has engaged in wage theft shall be grounds for including the employer in the wage theft database regardless of whether the judgment rendered is final for purposes of appeal.

(b) *Inclusion in database.* No employer shall be included in the database until the finance director has received confirmation from the wage theft coordinator that an employer has met one or more of the conditions set forth in the preceding subsection.

(c) *Identity of employer.* An employer operating as a business entity shall be listed by its corporate or company name, address and type of business organization and all other available information. If the employer is an individual, the person's name, business or residential address, type of business or occupation and all available contact information shall be included.

(d) *Removal from database.* An employer shall be removed from the database if any conviction of wage theft, assessment of a civil penalty involving wage theft, or adjudication of wage theft rendered by a court against an employer, has been annulled, withdrawn, overturned, rescinded or abrogated, and such fact has been confirmed by the wage theft coordinator and forwarded to the finance director.

Sec. 15-64. Wage theft complaints involving city contracts; filing; procedures.

(a) *Filing of complaint.* Any person subjected to wage theft in connection with a city contract may file a written complaint with the wage theft coordinator.

(b) *Information to be included.* A wage theft complaint shall include all information supporting the complaint including the name, address and other information sufficient to identify both the city contract and the employer and/or the person acting for the employer in the instances alleged, the date on or during which the wages were earned and were due to be paid, the amount of the wages alleged to have been withheld or unpaid and any other information reasonably requested by the wage theft coordinator.

(c) *Determination of complaint.* Upon receipt of a wage theft complaint under this section, the wage theft coordinator shall add the employer to the watch list and immediately determine the nature, date and subject of the city contract, notify the director of the department managing such contract of the complaint, meet and confer with the contractor to ascertain the validity of the complaint of wage theft and seek resolution of the matter to the satisfaction of the city and the complainant. All findings and actions by the wage theft coordinator to resolve the wage theft issue

shall be reported to the affected director, the city attorney and the mayor's office.

(d) *Resolution of complaint.* If a wage theft complaint is deemed meritorious and the wage theft coordinator is not successful in fully resolving the complaint, the city attorney, the affected director and the mayor's office shall assist the wage theft coordinator to resolve the matter. If not resolved, the employer named in the complaint shall be subject to the sanctions provided in this article. If the wage theft coordinator finds no merit to the complaint, the employer and the complainant shall be so notified and the employer shall be removed from the watch list.

Sec. 15-65. Notice of wage theft complaint; no city contract involved; filing; procedures.

(a) *Filing of complaint.* Any person subjected to wage theft not involving a city contract may file a notice of wage theft complaint with the wage theft coordinator.

(b) *Information to be included.* A notice of wage theft complaint shall include all information supporting the complaint including the name, address and other information sufficient to identify the employer and/or the person acting for the employer in the instances alleged, the date on or during which the wages were earned and were due to be paid, the amount of the wages alleged to have been withheld or unpaid and any other information reasonably requested by the wage theft coordinator.

(c) *Assistance to complainant.* Upon receipt of a notice of wage theft complaint under this section, the wage theft coordinator shall add the employer named therein to the watch list, assist and advise the complainant concerning available remedies and provide the complainant such further assistance as the coordinator deems appropriate to deter further instances of wage theft by the employer.

(d) *Removal from watch list.* An employer named in a notice of wage theft complaint filed under this section shall be removed from the watch list if (i) the complainant fails to file a wage theft claim with the Texas Workforce Commission within 45 days of the filing of the notice under this section or (ii) a complaint is filed but later dismissed by such agency.

Sec. 15-66. Sanctions.

(a) *General policy on contracting.* The city shall not enter into any contract with an employer included in the wage theft database and no

director shall submit a contract for council action or approval prior to a review of both the current database and the watch list provided in this article. A director proposing a contract with an employer found on the watch list shall determine the basis for the employer's inclusion on such list prior to submission of the contract for council action, and shall confer with the wage theft coordinator, the city attorney and the mayor's office, as appropriate.

(b) *Policy regarding existing city contracts.* If, at the time an employer is included in the wage theft database, the employer is then serving as a contractor, subcontractor or as a goods or materials supplier in connection with any contract let by the city, the finance director shall notify the city attorney and the director of the contracting department of such inclusion and such officials shall take appropriate action to either terminate the existing contract, refer the matter to the administrative official for debarment as provided in this chapter or take such other action appropriate to serve the best interests of the city.

(c) *Refusal to issue, revocation of, or refusal to renew license or permit.* If an employer included in the wage theft database currently holds, or wishes to apply for, or renew a license or permit issued by the city, the appropriate director or other licensing official or board shall, for a period of two years following the employer's inclusion in the wage theft database, refuse to issue, revoke or refuse to renew any such business license or permit. In such cases, the licensing official or board shall notify the employer in writing by certified mail of the refusal to issue, revocation of, or refusal to renew, the license or permit and shall cite the violation of this article and section 1-10 of this Code as the grounds on which such decision was made. The employer shall have all applicable rights of appeal or contest relating to the refusal to issue or renew or to the revocation of a license or permit under this section.

(d) The revocation or denial of any license or permit as provided in this section shall not prohibit the imposition of any civil or criminal penalty nor shall the imposition of a civil or criminal penalty by the city prohibit the revocation, renewal or denial of any license or permit under this article."

Section 5. That, if any provision, section, subsection, sentence, clause, or phrase of this Ordinance, or the application of same to any person or set of circumstances, is for any reason held to be unconstitutional, void or invalid, the validity of the remaining portions of this Ordinance or their application to other persons or sets

of circumstances shall not be affected thereby, it being the intent of the City Council in adopting this Ordinance that no portion hereof or provision or regulation contained herein shall become inoperative or fail by reason of any unconstitutionality, voidness or invalidity of any other portion hereof, and all provisions of this Ordinance are declared to be severable for that purpose.

Section 6. That there exists a public emergency requiring that this Ordinance be passed finally on the date of its introduction as requested in writing by the Mayor; therefore, this Ordinance shall be passed finally on such date and shall take effect at 12:01 a.m. on the sixtieth day next following the date of its passage and approval by the Mayor.

PASSED AND APPROVED this ____ day of _____, 201_.

Mayor of the City of Houston

Prepared by Legal Dept. _____
RDC:asw 7/22/2013 Senior Assistant City Attorney
Requested by David M. Feldman, City Attorney
L.D. File No. 01113000001001