

**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.**

\* \* \* \* \*

**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) Occupational licenses or permits issued to, or in connection with, any business or occupation the operation of which involves the use or employment of unskilled or minimally-skilled laborers or employees in the usual and customary course of the business or occupation, such as restaurants or food services, dance halls,

game rooms, kennels and similar businesses or occupations regulated by this Code:

- a. A conviction of the offense defined in the Texas Pay Day Act, Texas Labor Code, Section 61.019; or
- b. A conviction of Theft of Service defined in Texas Penal Code, Section 31.04(a)(4).

A conviction described in this item shall be grounds for the denial, revocation or nonrenewal of any occupational license or permit issued to any business or occupation described in this item for a period of five years following the date of such conviction.”

**Section 3.** That Section 15-1 of Chapter 15 of the Code of Ordinances, Houston, Texas, is hereby amended by re-designating 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 a proposed or current contracting entity or person is an employer that has been convicted of wage theft, has been assessed an administrative penalty involving wage theft, has been adjudicated of engaging in wage theft by a court of competent jurisdiction or is the subject of an unresolved complaint involving a city contract, as set forth in article IV of this chapter.”

**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:

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

*Inspector General or IG* means the person in charge of the Office of the Inspector General created by Executive Order No. 1-39.

*Wages* means compensation owed by an employer for labor or services rendered by an employee, whether computed on a time, task, piece, commission or other basis.

*Wage theft* means action by an employer that, with intent to avoid payment for a service that the employer knows is provided only for compensation, intentionally or knowingly secures the performance of the service by agreeing to provide compensation and, after the service is rendered, fails to make full payment after receiving notice demanding payment.

*Wage theft complaint* means a written complaint filed within 90 days of the date the wage theft occurred alleging any instance of wage theft by an employer who is a party to a city contract.

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

(a) *Appointment.* The IG 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 submitted pursuant to this article;
- (2) If a city contract is involved, maintain a record of complaints alleging wage theft by an employer;
- (3) Determine whether an employer named in a wage theft complaint 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;
- (4) Monitor council agendas to determine whether an employer seeking any city contract is either listed in the database or is the subject of an unresolved complaint under section 15-64(d) of this Code and, if so, notify the affected director, the city attorney and the mayor's office; and
- (5) If no city contract is involved, assist and advise persons with complaints regarding employers that do not hold city contracts by providing them with information regarding

available remedies and such other assistance as the coordinator may deem appropriate.

**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 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(a)(4), 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; notice to employer.* No employer shall be included in the database until the finance director has:

- (1) Received confirmation from the wage theft coordinator that an employer has met one or more of the conditions set forth in the preceding subsection;
- (2) Provided written notice of a wage theft complaint to the employer named in such complaint; and
- (3) Allowed the employer ten business days from the date of the finance director's notice to protest the employer's inclusion in such database and provide the finance director any documentary or other evidence to demonstrate that the employer should not be included in the wage theft database.

(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 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:

- (1) A 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; or
- (2) More than five years has elapsed since the date of the employer's most recent conviction, adjudication, or assessment of civil penalty relating to wage theft.

**Sec. 15-64. Wage theft complaints regarding city contracts.**

(a) *Filing of complaint.* Any person subjected to wage theft by a city contractor may file a wage theft complaint with the wage theft coordinator, according to the procedures set forth in this section.

(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 the employer and/or the person acting for the employer in the instances alleged, the date(s) 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, the nature and type of work or project if the wage theft occurred in connection with a city contract, if known, and any other information reasonably requested by the wage theft coordinator.

(c) *Determination of complaint; notice to employer; procedures.* Upon receipt of a wage theft complaint, the wage theft coordinator shall provide the employer written notice of the complaint, take immediate action to determine the facts and circumstances alleged and, depending on his findings, take further action as provided in the following subsection. The wage theft coordinator shall provide appropriate reporting to the affected director and the city attorney concerning each complaint.

(d) *Resolution of complaint.* If a wage theft complaint is deemed meritorious and the wage theft coordinator has confirmed that a city contract is involved, he shall notify the director of the department managing such contract and contact the employer to seek a resolution of the complaint. If the matter is resolved to the satisfaction of the complainant, the city and the employer, the complaint shall be closed. If not resolved, the complainant shall be referred to the Texas Workforce Commission, and the employer may be subject to sanctions under section 15-65 of this Code.

(e) *Retaliation prohibited.* No city contractor shall retaliate against any person who has filed a wage theft complaint in good faith pursuant to this section. If the wage theft coordinator determines that retaliation has occurred, the employer shall be subject to the sanctions provided in this article. For purposes of this provision, *retaliation* means action to discharge from employment, discipline or otherwise punish an employee for filing a wage theft complaint in good faith.

(f) *Action by directors.* Prior to submitting any contract for council action, a director shall forward to the wage theft coordinator the names of all proposed contracting parties. The wage theft coordinator shall, within ten business days of his receipt of such information, advise the director whether any employer so named appears in the wage theft coordinator's records and, if so, the director proposing the contract shall inquire of the employer as to the basis for its inclusion in such records. No department shall take any adverse action against an employer based solely on the filing of a wage theft complaint under this article.

#### **Sec. 15-65. Sanctions.**

(a) *Existing city contracts.* If, at the time an employer is included in the wage theft database or is the subject of a meritorious complaint under section 15-64(d) of this Code that has not been resolved to the satisfaction of the complainant, the city and the employer, despite the efforts of the wage theft coordinator, and 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 and wage theft coordinator shall notify the city attorney and the director of the contracting department. The city attorney and affected director shall take appropriate action to: (i) terminate the existing contract, (ii) refer the matter to the administrative official for debarment as provided in this chapter, or (iii) take such other action appropriate to serve the best interests of the city.

(b) *Refusal to issue, revocation of, or refusal to renew occupational license or permit.* If an employer included in the wage theft database currently holds, or wishes to apply for or renew, an occupational license or permit issued by the city (such as restaurants or food services, dance halls, game rooms, kennels and similar businesses or occupations regulated by this Code), the appropriate director or other licensing official or board shall, for a period of five years following the employer's inclusion in the wage theft database, revoke or refuse to issue or renew any such occupational license or permit, provided such action is based upon the employer's conviction of an offense as set forth in Section 1-10(b)(8) of this Code. 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(b)(8) 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."

**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 \_\_\_\_\_, 2013.**

\_\_\_\_\_  
Mayor of the City of Houston

Prepared by Legal Dept. \_\_\_\_\_  
RDC:asw 8/28/2013 Senior Assistant City Attorney  
Requested by David M. Feldman, City Attorney  
L.D. File No. 01113000001001