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 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, the following businesses or occupations:

TYPE OF PERMIT	CODE REFERENCE*
Ambulance Permits	4-1 thru 4-19
Antique Dealers, Precious Metals Dealers, Resale Media & Clothing Dealers	7-16 thru 7-50
Automotive body repair shop	21-166(a)(1)
Automotive Parts Rebuilder	8-16, 8-51, *et seq*
Automotive Rebuilder and Dismantler	8-16, 8-51, *et seq*
Automotive Repair Facility	8-16, 8-51, *et seq*
Automotive Storage Lot Operator	8-16, 8-51, *et seq*
Body Shop Facility With Storage Privileges	8-16, 8-51, *et seq;* 20-166(a)(1)
Carnival Amusement	5-16 thru 5-45
Charter Bus Operator	46-211(a)
Common Market	7-108(a)
Concrete crushing site	21-167, *et seq*
Dance Hall	5-71, *et seq*
Dealer - Vehicles, Parts, Accessories	8-16, 8-51, *et seq*
Drain Layer	47-221; Plumbing Code § 104
Dealer In Motor Vehicles	8-16, 8-51, *et seq*
Dry cleaning plant	21-166(a)(3); Fire Code 105.6.12
Farmers Market	20-186, *et seq*
Food Dealers (restaurants, street vendors, etc.)	20-36 thru 20-44
Gas dispensing site	21-166(a)(2)
House Mover	10-84
House Repair or Resale Lot	10-49(e)
Jitney Permit	46-321 thru 46-370
Kennel License	6-121 thru 6-126
Limousine Permit	46-331, *et seq*
Low Speed Shuttle Permit	46-391, *et seq*
Metal Recycler/Secondhand Metal Dealers and Resellers	7-51 thru 7-80
Mini Warehouse	27-1 thru 27-6
Parking Facility	8-16, 8-51, *et seq*
Pedicab Permit	46-141 thru 46-190
Retail Supply Dealer	8-16, 8-51, *et seq*
School Vehicles	46-276 thru 46-320
Secondhand Reseller	7-57(b)
Sexually Oriented Businesses	28-81 thru 28-150

TYPE OF PERMIT	CODE REFERENCE*
Sidewalk Sales and Performances (food; merchandise)	40-261 thru 40-280
Skeet club/shooting gallery	5-139
Storage Lot	8-16, 8-51, *et seq*
Street Vendors	22-1 thru 22-50
Swimming Pools	43-31 thru 43-39
Taxicabs	46-16 thru 46-140
Tire transporter	21-198(c)
Used Parts & Used Accessory Dealer	8-16, 8-51, *et seq*
Used vehicle sales lot	21-166(a)(4)
Valet Parking Services	26-371 thru 26-452
Vehicle Immobilization Service	26-651, *et seq*
Wholesale Auto Jobber & Supply Dealer	8-16, 8-51, *et seq*

* All references are to the numbered sections of the City's Code of Ordinances unless otherwise specified.

a. A conviction of either criminal offense defined in the Texas Pay Day Act, Texas Labor Code, Section 61.019*;* or

b. A conviction of the criminal offense of theft of service defined in Texas Penal Code, Section 31.04(a)(4).

For purposes of this item, *conviction* means that a final adjudication of guilt relating to a criminal offense described in this item has been entered for which no further appeal is available and the conviction 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 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 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, or has been adjudicated in a civil action of engaging in wage theft by a court of competent jurisdiction, 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 article:

Adjudicated or *adjudication* means a judgment by a civil court, in a civil action brought under the Texas Theft Liability Act or the Texas Pay Day Act, finding that an employer failed to pay wages for which judgment no appeal is available.

Commission means the Texas Workforce Commission.

Contract or *city contract* means any contract let by the city for the construction of any public improvement or the purchase of goods or services.

Conviction or *convicted* means, for purposes of this article, a final adjudication of guilt relating to a criminal offense for which no further appeal is available.

Employee means an individual who is employed by an employer for compensation. The term does not include a person related to the employer or the employer's spouse within the first or second degree by consanguinity or affinity, as determined under Chapter 573, Government Code, or an independent contractor.

Employer means a person who employs one or more employees~~,~~ as set forth in Texas Labor Code, Section 61.001(4)(A).

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

Wages means compensation owed by an employer to an employee for labor or services rendered by the employee to the employer, whether computed on a time, task, piece, commission or other basis, but shall exclude any deduction authorized by section 61.018, Texas Labor Code.

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 payment after receiving notice demanding payment.

Sec. 15-62. Wage theft complaint involving city contracts; procedures.

(a) A person employed in connection with a city contract who has a good faith belief that he is the victim of wage theft may file a wage theft complaint with the Inspector General on a form prescribed by the IG.

(b) The IG shall first determine whether a wage theft complaint alleges wage theft as defined in this article and, if the complaint is found deficient in that regard, shall dismiss the complaint. A complaint shall likewise be dismissed, and the complainant referred to the Commission, if no city contract is involved in the complaint. No record shall be maintained relating to any complaint dismissed under this section.

(c) If the IG is satisfied that a complaint alleges sufficient facts to support further inquiry, the complaint shall be investigated in a manner consistent with similar investigations of employee misconduct or other matters by a person trained in employment law, including the taking of sworn statements from the complainant and the employer's personnel and the inspection of relevant records.

(d) Upon completion of the investigation of a wage theft complaint, the IG shall determine whether the complaint is meritorious and sustain or dismiss the complaint.

(e) In the event a wage theft complaint is sustained, the IG shall affirmatively seek to resolve the complaint via payment of wages due the complainant by the employer.

(f) The city or the employer may request that the complaint be resolved by mediation.

(g) If no resolution is achieved, the complainant shall be referred to the Commission unless the same claim is then on file with that agency. The matter shall also be referred to the city attorney for appropriate action in the best interests of the city.

(h) Should the IG determine, with respect to a wage theft complaint, that the complainant also filed the same complaint with the Commission, the IG shall seek to determine status of the complaint at the Commission and, if it appears that the Commission may conclude its action on that complaint within a reasonable period of time, may abate his

review or investigation pending the final resolution of the complaint by the Commission.

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

(a) 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 a criminal 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 and such order has become final and non-appealable; or

(3) Adjudicated by a court of competent jurisdiction as having engaged in wage theft and such judgment has become final and non-appealable.

(b) For purposes of this section, any conviction of an employer for wage theft occurring within the five year period preceding the effective date of this article or at any time thereafter shall be cause for inclusion in the database. No assessment of an administrative penalty relating to wage theft or adjudication of wage theft by a civil court prior to the effective date of this article shall be a basis for including an employer in the database.

(c) No employer shall be included in the database unless:

(1) The finance director has received confirmation from the Inspector General that an employer has met at least one of the criteria set forth in the preceding subsection; or

(2) The employer named in such complaint has received 30 days' written notice of the city's intent to place its name in the database and has failed to demonstrate that the criteria for placement on the database have not been met.

(d) An employer shall be removed from the database if more than five years has elapsed since the date of the employer's most recent conviction, adjudication, or assessment of administrative penalty relating to wage theft, as set forth in subsection (a) of this section.

Sec. 15-64. Retaliation prohibited; adverse action.

(a) No city contractor shall retaliate against any person who has filed a wage theft complaint in good faith pursuant to this article. If the Inspector General 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.

(b) 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) 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 city contract, the finance director and Inspector General shall notify the city attorney who may take appropriate action to serve the best interests of the city, including the use of remedies provided by the city's contract with the employer.

(b) If an employer included in the wage theft database currently holds, or wishes to apply for or renew, an occupational license or permit listed in section 1-10(b)(8) of 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 set forth in section 1-10(b)(8) of this Code.

(c) Each 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 pursuant to the preceding subsection 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 10/11/2013 Senior Assistant City Attorney
Requested by David M. Feldman, City Attorney
L.D. File No. 01113000001001