

**ORDINANCE NO. 20100729-047**

**AN ORDINANCE AMENDING TITLE 4 OF THE CITY CODE TO ADD A NEW CHAPTER 4-5 RELATING TO WORKING CONDITIONS AT CONSTRUCTION SITES; CREATING AN OFFENSE AND IMPOSING A MAXIMUM PENALTY OF \$500 FOR EACH OFFENSE; AND DECLARING AN EMERGENCY.**

**BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF AUSTIN:**

**PART 1.** Title 4 (*Business Regulation and Permit Requirements*) of the City Code is amended to add a new Chapter 4-5 to read:

**CHAPTER 4-5. WORKING CONDITIONS AT CONSTRUCTION SITES.**

**§ 4-5-1 DEFINITIONS.**

- (1) CONSTRUCTION SITE means a site or structure for which a building permit or site plan has been issued under Title 25 (*Land Development Code*) for an existing or proposed use.
- (2) CONSTRUCTION ACTIVITY means all work associated with construction, including but not limited to work involving the alteration, demolition, building, excavation, maintenance, and renovation of structures or sites.
- (3) DEPARTMENT means the department designated by the city manager.
- (4) EMPLOYEE means any person employed by the employer.
- (5) EMPLOYER means an individual, partnership, association, corporation, business trust, or any person or group of persons who directly or indirectly, through an agent, or any other person or employee, exercises control over the wages, hours or working conditions of any person.
- (6) ESTABLISHMENT means a single physical location to which employees report each day.
- (7) HOURS WORKED means the time during which an employee is subject to the control of an employer and includes all the time the employee is required or permitted to work, whether or not required to do so.
- (8) REST BREAK means a break from work within working hours, during which an employee may not work. The term excludes any regular meal period provided by the employer.

**§ 4-5-2 REST BREAK REQUIRED.**

- (A) Except as provided in Subsection (B), an employee performing construction activity at a construction site is entitled to a rest break of not less than ten (10) minutes for every four (4) hours worked. No employee may be required to work more than 3.5 hours without a rest break.
- (B) An employee is not entitled to rest breaks under Subsection (A) of this section on any day that the employee works less than 3.5 hours or spends more than half of his or her work time engaged in non-strenuous labor in a climate-controlled environment.
- (C) An employer shall provide rest breaks in accordance with the requirements of this section. A rest break shall be scheduled as near as possible to the midpoint of the work period.

**§ 4-5-3 SIGNAGE REQUIRED.**

- (A) A sign describing the requirements of Section 4-5-2 (*Rest Break Required*) in English and Spanish shall be posted by the employer in each establishment subject to Section 4-5-2 in a conspicuous place or places where notices to employees are customarily posted.
- (B) The department shall prescribe by rule the size, content, and location of signs required under Subsection (A) of this section.

**§ 4-5-4 CRIMINAL PENALTY.**

- (A) A person commits a Class C misdemeanor if the person:
  - (1) fails to provide a rest break as required under Section 4-5-2 (*Rest Break Required*); or
  - (2) fails to post signage required under Section 4-5-3 (*Signage Requirements*).
- (B) Proof of a culpable mental state is not required to prove an offense under this chapter.
- (C) Each day that a violation occurs or continues is a separate offense.

**§ 4-5-5 CIVIL REMEDIES.**

- (A) The city council has determined that this chapter is necessary to protect health, life, and property and to preserve the good government, order, and security of the City and its inhabitants.

- (B) A person who continues to violate this chapter after being notified of the offense in writing by an authorized City representative is subject to a civil penalty of not less than \$100 or more than \$500 for each day the violation occurs.
- (C) The City may file suit to enforce this chapter or collect a civil penalty.
- (D) The City may seek to enjoin violations of this chapter.

**§ 4-5-6 CUMULATIVE REMEDIES.**

The remedies authorized under this article are cumulative. If the City files a civil or criminal action, it is not precluded from pursuing any other action or remedy.

**PART 2.** The council finds that the need to ensure employee rest breaks at construction sites constitutes an emergency. Because of this emergency, this ordinance takes effect immediately on its passage for the immediate preservation of the public peace, health, and safety.

**PASSED AND APPROVED**

\_\_\_\_\_ July 29 \_\_\_\_\_, 2010      §  
    §  
    §  
    \_\_\_\_\_ *Lee Leffingwell*  
    Lee Leffingwell  
    Mayor

**APPROVED:** \_\_\_\_\_ *Karen M. Kennard*  
    Karen M. Kennard  
    Acting City Attorney

**ATTEST:** \_\_\_\_\_ *Shirley A. Gentry*  
    Shirley A. Gentry  
    City Clerk