

RESOLUTION NO. 20220127-053

WHEREAS, the City of Austin has a strong interest in economic development that grows the middle class and protects the workforce and law-abiding employers; and

WHEREAS, the City of Austin, through the permitting process, has a responsibility to ensure public health and safety, and that construction projects meet legal standards on a worksite; and

WHEREAS, violations of wage and hour, income tax, employment tax, discrimination, safety and workers' compensation laws have become an issue of major concern in the construction industry; and

WHEREAS, in certain circumstances, the nonpayment of workers' wages or the misclassification of an employee as an independent contractor may constitute criminal conduct under Texas law; and

WHEREAS, construction employers who violate those laws harm the workforce within the City of Austin and make it more difficult for them to attain and maintain a middle-class livelihood; and

WHEREAS, such violations of the law put law-abiding construction employers at a competitive disadvantage, thus driving them out of the market;
NOW, THEREFORE,

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF AUSTIN:

The City Manager is directed to initiate development of an ordinance, with stakeholder input, to require:

- certain notices and postings of wage-related information;
- employers to maintain payroll records;
- employers to pay employee wages owed;
- employers to classify an individual as an employee when proper ; and
- employers to refrain from retaliating against any worker who exercises any right or process established by the ordinance.

The ordinance shall establish practices and procedures for the City to:

- Receive public complaints of construction employers who do not comply with the posting, payroll record, wage payment, worker classification, and non-retaliation provisions listed above;
- Assist the complainants in reporting wage theft, worker misclassification, and retaliation to appropriate enforcement agencies for further investigation, including the Texas Workforce Commission, the U.S. Department of Labor Wage and Hour Division, the Internal Revenue Service, the National Labor Relations Board, local law enforcement agencies, and other government entities as appropriate; and
- Utilize City resources to address and prevent incidents of wage theft, worker misclassification, and retaliation on City-permitted construction sites.

BE IT FURTHER RESOLVED:

Staff should establish criminal penalties and a civil complaint procedure for violations of these provisions, to the extent allowable by law.

Staff shall also make recommendations for the ordinance to provide for joint and several liability among contractors and sub-contractors for unpaid wages and penalties.

Staff shall engage with appropriate stakeholders and solicit input on the components of the proposed ordinance, including but not limited to the relevant governmental agencies, local business organizations, organizations representing workers, and non-profits that work on employment law and wage related issues.

The City Manager is directed to return to Council with a draft ordinance for consideration by the end of August 2022.

The ordinance should be drafted as to not conflict with any applicable state or federal law.

BE IT FURTHER RESOLVED:

The City Manager is directed to work with the Civil Rights Officer to identify and, if necessary, develop additional policies, trainings, or procedures to ensure that staff are prepared to receive complaints of wage theft and other employment violations, investigate such complaints as appropriate, and appropriately collaborate with County and District Attorney's Offices to determine whether these complaints merit further investigation and prosecution.

BE IT FURTHER RESOLVED:

The City Manager is directed to convene a working group composed of representatives of local prosecuting agencies, including representatives of the City Law Department, County Attorney's Office, District Attorney's Office, and, as appropriate, other representatives of the City and state and federal labor

enforcement agencies, to develop recommendations for how the City may assist and strengthen existing efforts to address and reduce incidents of wage theft, worker misclassification, and employee retaliation on City-permitted construction sites, including opportunities for the City to:

- support the investigation and resolution of employment violations;
- educate construction employers about City, state, and federal legal requirements;
- improve collaboration and cooperation between the City and other local, state, and federal agencies investigating and enforcing civil and criminal employment violations;
- incentivize construction employers and their subcontractors to comply with City, state, and federal wage, worker classification, and non-retaliation requirements; and
- penalize construction employers who directly or through sub-contractors violate wage, worker classification, and non-retaliation requirements.

The working group shall propose recommendations to ensure that all workers can exercise their rights under the law regardless of immigration status.

The City Manager is directed to return to Council with recommendations for investigative and enforcement procedures and identify a lead department to administer these processes no later than August 2022. The City Manager is directed to identify the resources needed to implement recommendations.

BE IT FURTHER RESOLVED:

The City Manager is directed to develop a proposal for the creation of a publicly available, searchable database on the City of Austin website of final determinations of criminal violations related to nonpayment of wages or other employment related crimes that occurred for work performed in the City of Austin. The searchable website should also list employers who are the subject of a final order from the Texas Workforce Commission related to wage theft; federal labor agencies, including the Department of Labor's Wage & Hour Division, Equal Employment Opportunity Commission, National Labor Relations Board, and Occupational Safety and Health Administration; state courts; and federal courts; and local prosecutors.

BE IT FURTHER RESOLVED:

For the purposes of this database, a final determination shall be a final federal or state agency decision, final court decision, conviction, plea of guilty, order of deferred adjudication community supervision, or final agreement between a defendant and the State.

The database should include the name of the employer; the name of the owner, president, or registered agent; the employer's business address; and the date of the final determination.

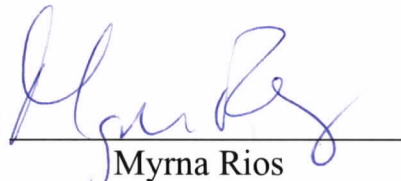
The proposal should include an appeal process for those who believe they were wrongly included in the database because they do not have a final determination of labor violations. Those who are successful in the appeal process shall be removed from the database.

The proposal shall require that an employer be removed from the database five years after the most recent final determination.

The proposal should prohibit the City from procuring services from an employer who appears on the database or otherwise has a final determination of a labor violation for five years after the most recent final determination. If the City has an existing contract awarded prior to the effective date of this resolution with an employer who has a final determination, the City may terminate the contract if allowed by contract terms.

ADOPTED: January 27, 2022

ATTEST:


Myrna Rios
City Clerk