

ORDINANCE NO. 20221201-031

AN ORDINANCE AMENDING CITY CODE TITLE 4 (*BUSINESS REGULATION AND PERMIT REQUIREMENTS*) BY ESTABLISHING WAGE THEFT STANDARDS IN THE CITY; AND AUTHORIZING THE CHIEF PROCUREMENT OFFICER TO TAKE ACTION AGAINST A CITY CONTRACTOR THAT VIOLATES THE TERMS OF ITS CITY CONTRACT.

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

PART 1. Findings:

- (A) The City has an interest in economic and workforce development and ensuring that workers receive full payment for the services they provide to employers;
- (B) Violations of wage laws by employers within the City harm workers and the City's ability to grow its economy and its workforce, and such activity constitutes criminal conduct in some cases;
- (C) This ordinance addresses the public policies provided by council in Resolution No. 20220127-053.

PART 2. Title 4 of the City Code is amended by adding a new Chapter 4-22 to read:

CHAPTER 4-22 WAGE THEFT.

§ 4-22-1 DEFINITIONS.

In this chapter:

- (A) ATTORNEY REPRESENTING THE STATE means a district attorney, criminal district attorney, or county attorney performing the duties of a district attorney.
- (B) CONTRACT or CITY CONTRACT means any contract let or executed by the City for the construction of public improvements or the purchase of goods or services.
- (C) EMPLOYER has the meaning defined by section 61.001 (*Definitions*) of the Texas Labor Code, unless a wage theft adjudication results from a finding by the Wage and Hour Division of the United States Department of Labor, in which case it shall have the meaning defined by 29 U.S.C. § 203.
- (D) LABOR ORGANIZATION means a labor organization and its agent, including an organization, agency, or employee representation committee,

group, association, or plan in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours, or other terms or conditions of employment, and any conference, general committee, joint or system board, or joint council which is subordinate to a national or international labor organization.

- (E) OFFER means a complete and signed response to a solicitation issued by the City, including a quotation, a bid, a proposal, or a statement of qualifications.
- (F) RETALIATION means any action by an employer to discharge from employment, discipline, or otherwise punish an employee for filing a wage theft complaint under this chapter in good faith.
- (G) WAGE THEFT means any action by an employer that secures performance of a service by agreeing to provide compensation for the service and, after the service is rendered, fails to make full payment.
- (H) WAGE THEFT ADJUDICATION means:
 - (1) A final adjudicated criminal conviction of, or a plea of guilty or *nolo contendere* to, the following offenses:
 - (a) Section 61.019 (*Failure to Pay Wages; Criminal Penalty*) of the Texas Labor Code for failure to pay wages;
 - (b) Section 31.03 (*Theft*) of the Texas Penal Code, if the offense involves wages unlawfully appropriated by an employer from an individual hired or contracted by an employer;
 - (c) Section 31.04 (*Theft of Service*) of the Texas Penal Code, if the offense involves a service rendered by an individual hired or contracted by an employer; or
 - (d) Section 162.032 (*Misapplication of Trust Funds*) of the Texas Property Code, if the offense involves a beneficiary who labored for an employer;
 - (2) Final injunctive relief granted in district court under section 61.020 (*Failure to Pay Wages; Attorney General Action*) of the Texas Labor Code for repeated failures to pay wages;
 - (3) A final order under subchapter D (*Wage Claims*) of chapter 61 (*Payment of Wages*) of the Texas Labor Code;

(4) A final administrative penalty issued against an employer under section 61.053 (*Bad Faith; Administrative Penalty*) of the Texas Labor Code;

(5) A final finding by the Wage and Hour Division of the United States Department of Labor that an employer owes back wages for violations of the Fair Labor Standards Act, 29 U.S.C. § 201, *et seq.*, or the Davis-Bacon Act, 40 U.S.C. § 3141, *et seq.*;

(6) A final order or judgment in favor of an employee issued by a court of competent jurisdiction with a finding that an employer violated chapter 62 (*Minimum Wage*) of the Texas Labor Code or the Fair Labor Standards Act, 29 U.S.C. § 201, *et seq.*;

(7) A final agreement between an employer and an attorney representing the state that includes a finding that the employer engaged in wage theft.

(I) WAGE THEFT COORDINATOR means the person designated by the city manager under Section 4-22-2 (*Wage Theft Coordinator*) of this chapter.

(J) WAGE THEFT DATABASE means the database specified in section 4-22-3 (*Wage Theft Database*) of this chapter containing information identifying employers within the City who have a record of wage theft adjudication.

§ 4-22-2 WAGE THEFT COORDINATOR.

(A) The city manager shall designate a Wage Theft Coordinator to carry out the duties of this chapter.

(B) The Wage Theft Coordinator is authorized to:

(1) create and maintain a database that contains information identifying employers within the City that have a record of wage theft adjudication;

(2) educate and inform employers and the public concerning federal and state labor and wage laws; the provisions of this chapter; the role of the United States Department of Labor, the Texas Workforce Commission, the district attorney and county attorney, and the City in enforcing those laws; and the procedures for making complaints of violations of those laws;

- (3) create a verification program indicating which employers have completed a training program designed by the Wage Theft Coordinator on federal and state wage laws and the requirements of this chapter;
- (4) refer complaints of wage theft made under section 4-22-4 (*Complaints*) of this chapter to the appropriate investigative and enforcement authorities;
- (5) coordinate with the Chief Procurement Officer to ensure that notice of the provisions of this chapter are included in solicitation and contract documents and that employers performing work under City contracts are advised of the requirements of this chapter;
- (6) determine whether an employer under a City contract has a record of wage theft adjudication or is included in the wage theft database; and
- (7) provide an annual report to council regarding the wage theft database and educational efforts related to state and federal labor and wage laws.

§ 4-22-3 WAGE THEFT DATABASE.

- (A) An employer doing business within the City that has a record of wage theft adjudication shall be identified in a wage theft database maintained by the Wage Theft Coordinator, except as provided by this chapter.
- (B) No employer shall be included in the wage theft database until the Wage Theft Coordinator has:
 - (1) confirmed that the employer has a record of wage theft adjudication;
 - (2) provided written notice to the employer at the address provided by a complainant, the Texas Secretary of State, or on a record of wage theft adjudication of the proposed inclusion of the employer in the wage theft database; and
 - (3) allowed the employer 30 days from the date the notice is sent to protest the employer's proposed inclusion in the wage theft database and to provide the Wage Theft Coordinator with evidence that the employer should not be included in the wage theft database.
- (C) An employer with a record of wage theft adjudication shall not be included in the wage theft database if:

- (1) sufficient proof is provided by the employer that a record of wage theft adjudication does not apply to the employer;
 - (2) the record of wage theft adjudication has been annulled, withdrawn, overturned, rescinded, or abrogated, and the Wage Theft Coordinator has confirmed such action;
 - (3) at least five years has elapsed since the date of the most recent record of wage theft adjudication; or
 - (4) the wage theft adjudication occurred prior to the effective date of this chapter.
- (D) The wage theft database may include the following information about an employer:
- (1) corporate name, or individual name if the employer operates as an individual;
 - (2) assumed name, or the name under which the employer operates;
 - (3) registered address;
 - (4) type of business entity;
 - (5) name of each individual who is an owner, partner, or officer of the employer, or who is actively engaged in management; and
 - (6) a statement of whether the employer paid the wages owed.
- (E) The Wage Theft Coordinator may coordinate or contract with a labor organization for the collection of information to be included in the wage theft database.
- (F) The Wage Theft Coordinator shall ensure the wage theft database complies with the City's language access policy.

§ 4-22-4 COMPLAINTS.

- (A) Any person may make a complaint concerning wage theft to the Wage Theft Coordinator. The Wage Theft Coordinator may assist the person in making a complaint. To the best of the complainant's ability, the complaint shall include:
- (1) the worker's full name;
 - (2) the identity and address of the employer;

- (3) the date or dates on which the wages were earned;
 - (4) the date or dates on which the wages were to be paid;
 - (5) the amount of wages alleged to have been unpaid;
 - (6) a brief description of the work performed and the location where it was performed; and
 - (7) whether the worker sent the employer a written demand for payment of wages.
- (B) The Wage Theft Coordinator may investigate a complaint related to wages to be paid under a City contract and may refer complaints and complainants to an appropriate investigative and enforcement authority.
- (C) The Wage Theft Coordinator shall notify an employer of a wage theft complaint within 30 days of receiving the complaint. The employer shall attempt to resolve the complaint by written agreement with the complainant within 30 days of its receipt of the notice and shall notify the Wage Theft Coordinator regarding whether the complaint was resolved between the employer and the complainant.

§ 4-22-5 APPLICABILITY TO CITY CONTRACTS.

- (A) The City will not consider an offer from, or award a contract to, any employer identified in the wage theft database as having a record of wage theft adjudication.
- (B) Any contractor that submits an offer to the City seeking an award of a City contract shall execute an approved form, prescribed by the Wage Theft Coordinator, stating that the contractor has agreed:
- (1) not to engage in any activity described in Section 4-22-1(B)(1) of this chapter or prohibited by chapter 61 (*Payment of Wages*) of the Texas Labor Code;
 - (2) to require of all subcontractors, in connection with any contract with the City subject to the terms of this chapter, that they not engage in any activity described in Section 4-22-1(B)(1) of this chapter or prohibited by chapter 61 (*Payment of Wages*) of the Texas Labor Code;
 - (3) to take affirmative action to ensure that employees are informed of federal and state wage laws and the provisions of this chapter;

- (4) to post in conspicuous places, available to the employees and applicants for employment, notices to be provided by the Wage Theft Coordinator setting forth the provisions of this chapter and a link to the wage theft database; and
 - (5) to cooperate fully with the City in connection with any investigation by the Wage Theft Coordinator of any complaint filed under this chapter.
- (C) The Wage Theft Coordinator may investigate any complaint received by the Wage Theft Coordinator under section 4-22-4 (*Complaints*) of this chapter concerning wages to be paid under a City contract.
 - (D) At the conclusion of an investigation by the Wage Theft Coordinator into a complaint related to a City contract, the Wage Theft Coordinator may refer the findings to the Chief Procurement Officer. Within 30 days of the date of the referral, the Chief Procurement Officer may take action to cause the contract with the employer to be canceled, terminated, or suspended in whole or in part, as the Chief Procurement Officer deems advisable under the circumstances, and may declare the employer to be ineligible for conducting further business with the City.
 - (E) An employer that is declared ineligible to conduct business with the City under this chapter may make an application for reinstatement to the Wage Theft Coordinator. Upon the Wage Theft Coordinator's recommendation, the Chief Procurement Officer may approve or deny the employer's reinstatement.

§ 4-22-6 RETALIATION PROHIBITED.

- (A) A City contractor shall not retaliate against any person who has filed a wage theft complaint pursuant to this chapter.
- (B) Any person may file a complaint alleging retaliation in the same manner as prescribed by section 4-22-4 (*Complaints*) of this chapter.
- (C) If after investigation, the Wage Theft Coordinator determines retaliation has occurred, the employer shall be subject to the provisions set forth in section 4-22-5 (*Applicability to City Contracts*) of this chapter.
- (D) No City department shall take any adverse action against an employer based solely on the filing of a wage theft complaint under this chapter.

§ 4-22-7 PROMULGATION OF RULES AND REGULATIONS.

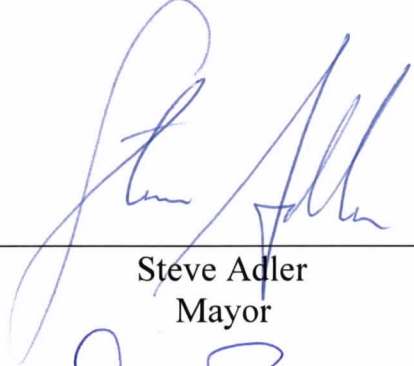
The Wage Theft Coordinator is authorized to promulgate rules and regulations necessary to implement the policies and purposes of this chapter.

PART 3. This ordinance takes effect on December 12, 2022.


PASSED AND APPROVED

December 01, 2022

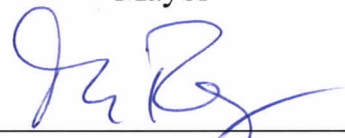
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Steve Adler
Mayor

APPROVED:


Anne L. Morgan
City Attorney

ATTEST:


Myrna Rios
City Clerk