

ORDINANCE NO. 018370

AN ORDINANCE AMENDING TITLE 3 (REVENUE AND FINANCE) OF THE EL PASO CITY CODE BY ADDING CHAPTER 3.46 (WAGE THEFT) IN ORDER TO SET THE PROCEDURE FOR WAGE THEFT COMPLAINTS RELATED TO CITY AND NON- CITY CONTRACTS; PROVIDING FOR THE CREATION OF A WAGE THEFT ADJUDICATION DATABASE; THE PENALTY AS PROVIDED IN SECTION 3.46.060 OF THE EL PASO CITY CODE.

WHEREAS, the City Council recognizes that combating wage theft promotes financial security and dignity of workers and families and promotes ethical business practices in the City of El Paso; 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 have been adjudicated of wage theft; and

WHEREAS, City Council desires to add Chapter 3.46 to the El Paso City Code providing for the creation of a wage theft database to identify employers with a wage theft adjudication record, establish a procedure for wage theft complaints, and to provide sanctions against such employers.

NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF EL PASO:

Section 1. That Title 3 (Revenue and Finance) of the City of El Paso Code is amended to add Chapter 3.46, Wage Theft, to read as follows:

Section 3.46.010 DEFINITION

1. *Wage Theft Adjudication* occurs when:

- (1) Employer is criminally convicted as an employer pursuant to Section 61.019 of the Texas Labor Code for failure to pay wages; or
- (2) Injunctive relief is granted in district court under Section 61.020 of the Texas Labor Code against the employer for repeated failures to pay wages as required by Chapter 61 of the Texas Labor Code; or
- (3) A wage payment determination order becomes final under Section 61.055 or Section 61.060 of the Texas Labor Code; or
- (4) The Texas Workforce Commission assesses an administrative penalty under Section 61.053 of the Texas Labor Code against the employer for

acting in bad faith in not paying wages as required by Chapter 61 of the Texas Labor Code; or

- (5) Employer is convicted for Theft of Service under Section 31.04 of the Texas Penal Code; or
 - (6) Court of competent jurisdiction finds that an employer engaged in wage theft.
- 2. **Employee** and **employer** have the meanings by Texas Labor Code, Section 61.001.
 - 3. **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.
 - 4. **Wage Enforcement Coordinator** shall mean the person designated by the City Manager to receive and investigate claims of wage theft and to create, maintain a Wage Theft database.
 - 5. **Wage Theft Complaint** means a written complaint filed with the Wage Theft Coordinator alleging any instance of wage theft by an employer.

Section 3.46.020 WAGE THEFT COORDINATOR

- A. **Appointment.** The City Manager shall designate a Wage Theft Coordinator to perform the duties identified in this Section.
- B. **Duties.** The Wage Theft Coordinator shall:
 - 1. Wage Theft Adjudication Database- the Wage Theft Coordinator shall create and maintain a database of employers located or operating within the City of El Paso who have a Wage Theft Adjudication record. The Wage Theft Database will be created on a "complaint basis" and populated with information provided by third parties. The Wage Theft Coordinator shall be under no obligation to investigate wage theft or to prosecute complaints.
 - 2. Substantiate whether a proposed party to a City Contract has a Wage Theft Adjudication record or part of the Wage Theft Adjudication Database.
 - 3. Receive, review, and process wage theft complaint according to the process established in Section 3.46.040.

4. Coordinate with the Purchasing Director to ensure that the notice of the City's Wage Theft ordinance is included in all the City's bid documents.
5. Provide and present an annual report to City Council regarding the number of employers in the Wage Theft Adjudication Database and an update on the status of the enforcement of the City's Wage Theft ordinance.

Section 3.46.030 WAGE THEFT ADJUDICATION DATABASE

A. Inclusion in Database. No employer shall be included in the database until the Wage Theft Coordinator has:

1. Confirmed that an employer has a Wage Theft Adjudication record;
2. Provided written notice at the address provided by the complainant, or on the documents evidencing the wage theft adjudication of the inclusion of the employer in the Wage Theft Adjudication Database.
3. Allowed the employer thirty (30) days from the date of the notice to protest the employer's inclusion in such database and provide the Wage Theft Coordinator evidence that the employer should not be included in the Wage Theft Adjudication Database. In the case of a wage theft judgment, the Wage Theft Coordinator shall not include the employer in the Database upon proof of full payment of outstanding wage theft adjudication judgment.

B. Identity of Employer. An employer operating as a business entity shall be listed by its corporate name, address and type of business organization. If the employer is an individual, the person's name, business address, type of business or occupation shall be included.

C. Removal from Database. An employer shall be removed from the database if:

1. A Wage Theft Adjudication has been annulled, withdrawn, overturned, rescinded or abrogated, and such fact has been confirmed by the Wage Theft Coordinator; or
2. Employer provides proof of full payment of an outstanding wage theft adjudication judgment; or
3. Five (5) years or more has elapsed since the date of the employer's most recent Wage Theft Adjudication.

Section 3.46.040 WAGE THEFT COMPLAINTS PROCEDURE

A. Non- City Contracts. If no City contract is involved, the Wage Theft Coordinator shall assist persons with wage theft complaints by referring the complaint to the Texas Workforce Commission.

B. City Contracts.

1. **Filing a Complaint.** 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 Wage Theft Coordinator in writing. The complaint shall contain fact including but not limited to: identity of the employer, 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.
2. **Notification and Resolution of the Complaint.** The Wage Theft Coordinator shall notify the employer of the receipt of the wage theft complaint. Employer shall attempt to resolve the alleged issue with the affected employee by written agreement within thirty (30) days from the receipt of the City notification. Employer shall notify the Wage Theft Coordinator if the issue was resolved between the Employer and the affected employee.
3. **Texas Workforce Commission.**
 - (a) If no resolution is achieved, the complainant shall be referred to the Texas Workforce Commission ("Commission").
 - (b) The Wage Theft Coordinator shall seek to determine status of the complaint at the commission. The Wage Theft Coordinator shall place Employer in the Wage Theft Adjudication Database if it appears that the Commission has made a finding that wage theft occurred.

Section 3.46.050 RETALIATION PROHIBITED

- A.** No City Contractor shall retaliate against any person who has filed a wage theft complaint pursuant to this Chapter. Retaliation means action to discharge from employment, discipline, or otherwise punish an employee for filing a wage theft complaint in good faith.

- B.** If the Wage Theft Coordinator determines that retaliation has occurred, the Wage Theft Coordinator shall refer the matter to the City Attorney for appropriate action.

Section 3.46.060. SANCTIONS AND PENALTIES- CITY CONTRACTS

A. Existing City Agreement.

1. In the event the City becomes aware of the fact an Employer acting under a contract which was awarded prior to the effective date of this Ordinance has been adjudicated for wage theft, the City may terminate the contract.
2. Prior to terminating the contract the City will provide Employer with thirty (30) days' notice and opportunity to provide full proof of payment of outstanding wage theft adjudication judgment.
3. The award of future City contracts after termination of an existing contract due to an Employer's wage theft adjudication shall be managed as a New City Agreement in this section.

B. New City Agreement.

1. In the event the City becomes aware an Employer with a wage theft adjudication record has submitted a bid or proposal for City work prior to the award of a contract, the City shall deem the Employer non-responsible and refuse to enter into a City Agreement with such Employer for a period of five (5) years after the date of final adjudication.
2. Prior to deeming the Employer as non-responsible, the City will provide the Employer with thirty (30) days' notice and opportunity to provide full proof of payment of outstanding wage theft adjudication judgment.

Section 2. This ordinance shall take effect _____, 2015.

(Signatures follow on the next page)

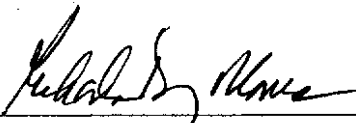
ADOPTED THIS 16th day of June 2015.

CITY OF EL PASO



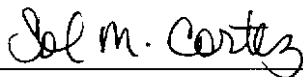
Oscar Leaser
Mayor

ATTEST:



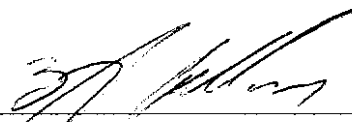
Richarda Duffy Momsen
City Clerk

APPROVED AS TO FORM:



Sol M. Cortez
Assistant City Attorney

APPROVED AS TO CONTENT



Bruce D. Collins, Director
Purchasing and Strategic Sourcing Dept.

CITY CLERK DEPT.
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ORDINANCE NO. 018370
14-1019-102/PL#360522/Wage Theft Ordinance/SMC