

1 **RESOLUTION NO.**

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

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

8 **WHEREAS**, violations of wage and hour, income tax, employment tax,
9 discrimination, safety and workers' compensation laws have become common in
10 the construction industry; and

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

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

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

19 **NOW, THEREFORE,**

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

21 The City Manager is directed to initiate an ordinance to require:

- 22
- certain notices and postings of wage-related information;

- 23 • employers to maintain payroll records;
- 24 • employers to pay employee wages owed;
- 25 • employers to properly classify an individual as an employee; and
- 26 • employers to refrain from retaliating against any worker who exercises
- 27 any right or process established by the ordinance.

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

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

41 **BE IT FURTHER RESOLVED:**

42 Staff should establish criminal penalties and a civil complaint procedure for

43 violations of these provisions, to the extent allowable by law.

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

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

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

51 **BE IT FURTHER RESOLVED:**

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

58 **BE IT FURTHER RESOLVED:**

59 The City Manager is directed to convene a working group composed of
60 representatives of local prosecuting agencies, including representatives of the City
61 Law Department, County Attorney's Office, District Attorney's Office, and, as
62 appropriate, other representatives of the City and state and federal labor
63 enforcement agencies, to develop recommendations for how the City may assist
64 and strengthen existing efforts to address and reduce incidents of wage theft,
65 worker misclassification, and employee retaliation on City-permitted construction
66 sites, including opportunities for the City to:

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

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

81 **BE IT FURTHER RESOLVED:**

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

90 Occupational Safety and Health Administration; state courts; and federal courts;
91 and local prosecutors.

92 **BE IT FURTHER RESOLVED:**

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

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

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

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

106 The proposal should prohibit the City from procuring services from an
107 employer who appears on the database or otherwise has a final determination of a
108 labor violation for five years after the most recent final determination. If the City
109 has an existing contract awarded prior to the effective date of this resolution with

110

111 an employer who has a final determination, the City may terminate the contract if
112 allowed by contract terms.

113

114 **ADOPTED:** _____, 2022 **ATTEST:** _____

115

Myrna Rios
City Clerk

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DRAFT