

ORDINANCE NO. 15-_____

AN ORDINANCE OF THE COUNTY OF PINELLAS, CREATING SECTION 70-101 RELATING TO WAGE THEFT; PROVIDING A TITLE; PROVIDING FOR AUTHORITY; PROVIDING FOR LEGISLATIVE FINDINGS OF FACT; PROVIDING FOR DEFINITIONS; PROVIDING FOR WAGE THEFT VIOLATIONS; PROVIDING FOR PROCEDURES FOR WAGE THEFT COMPLAINTS; PROVIDING FOR THE ENFORCEMENT OF WAGE THEFT VIOLATIONS; PROVIDING FOR THE PENALTY; PROVIDING FOR SEVERABILITY; PROVIDING FOR INCLUSION IN THE PINELLAS COUNTY CODE; PROVIDING FOR AMENDMENT AT THE PUBLIC HEARING; PROVIDING FOR AREAS EMBRACED; PROVIDING FOR FILING OF ORDINANCE AND AN EFFECTIVE DATE.

WHEREAS, it is hereby declared to be the policy of Pinellas County in the exercise of its police power for the public safety, health and general welfare, to eliminate and prevent wage theft.

WHEREAS, eliminating the underpayment or non-payment of wages earned by persons working in the County serves the public purpose by promoting economic security and dignity for those working in the County.

WHEREAS, the elimination of wage theft promotes economic growth through the elimination of unfair economic competition from unscrupulous businesses that do not pay, or that underpay, their employees.

WHEREAS, the elimination of wage theft helps relieve the burden on the public that subsidize unscrupulous employers whose employees may be forced to rely on public assistance because of unpaid or underpaid wages.

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF PINELLAS COUNTY, FLORIDA IN A MEETING DULY ASSEMBLED THIS ___ DAY OF _____, 2015, THAT:

Section 70-301. Title.

This Ordinance shall be known and may be cited as the “Wage Theft Ordinance”.

Section 70-302. Authority.

This division is enacted pursuant to Florida Statutes Section 125.66, the home rule powers of Pinellas County (County) in the interest of health, peace, safety and general welfare of the people, and Pinellas County Charter Section 2.03.

Section 70-303. Legislative findings of fact.

It is hereby declared to be the policy of the County in the exercise of its police power for the public safety, health and general welfare, to eliminate and prevent wage theft. Eliminating the underpayment or nonpayment of wages earned by persons working in the County serves the public purpose by promoting economic security and dignity for those working in the County; by promoting business and economic development through the elimination of unfair economic competition by unscrupulous businesses that do not pay or that underpay their employees; and by relieving the burden on the public that subsidize unscrupulous employers whose employees are forced to rely on public assistance because of unpaid or underpaid wages.

Section 70-304. Intent and purpose.

It is the purpose and intent of this division to promote the general welfare of the citizens of the County through the continued analysis of any impacts from wage theft, the effectiveness of existing and emerging regulatory efforts and education efforts.

Section 70-305. Definitions.

- (a) *Employee* shall mean a natural person who performs work within the geographic boundaries of Pinellas County while being employed by an employer, but shall not include any bona fide independent contractor.
- (b) *Employer* shall include any person who, acting individually or as an officer, agent, or employee of another person, acts directly or indirectly in the interest of a person or entity employing an employee.
- (c) *Employ*. The meaning of “employ”, including as used in the term employment, shall include to suffer or permit to work.
- (d) *Independent contractor* shall have the same meaning as in the Internal Revenue Code and implementing federal regulations.
- (e) *Reasonable cause* means the existence of sufficiently reliable and probative evidence for a reasonable person of ordinary prudence and caution to believe it is more likely than not wage theft has occurred.
- (f) *Reasonable time* shall be presumed to be no later than fourteen days from the date on which the work is performed unless the employer has established, by policy or practice, a pay schedule whereby employees earn and are consistently paid wages according to regularly recurring pay periods in which case such pay schedule shall govern.
- (g) *Threshold amount* shall mean sixty dollars (\$60).
- (h) *Wage rate* shall mean any form of monetary compensation which the employee agreed to accept in exchange for performing work for the employer, whether daily, hourly, or by piece but in all cases shall be equal to no less than the highest applicable rate established by operation of any federal, state or local law. It shall include earned paid time off, leave, vacation or sick pay.

Section 70-306. Wage theft violations.

For any employer to fail to pay any portion of wages due to an employee, according to the wage rate applicable to that employee, within a reasonable time from the date on which that employee performed the work for which those wages were compensation, shall be wage theft; and such a violation shall entitle an employee, upon a finding by a Special Magistrate appointed by the County or by a court of competent jurisdiction that an employer is found to have unlawfully failed to pay wages, to receive three times the amount of back wages.

Section 70-307. Procedures for wage theft complaints.

- (1) *Filing wage theft complaints.*
 - (a) Threshold amount. In order for a complaint to be submitted to the County by, or on behalf of, an aggrieved employee, that employee must allege a wage theft violation in which the unpaid wages are equal to no less than the threshold amount.
 - (b) An employee aggrieved by a wage theft violation may file a sworn written, signed complaint, provided by the County, using the procedures set forth.
 - (c) A signed complaint for wage theft must be filed with the County no later than one (1) year after the last date upon which the employee performed the work for an employer with regard to which the employee alleges a violation of this subdivision has occurred (“filing deadline”); however, with respect to alleged ongoing violations, once a complaint has been made in compliance with the filing deadline, the County’s investigative capacity is limited only by the applicable statute(s) of limitations.
 - (d) The complaint shall set forth the facts upon which it is based with sufficient specificity to identify the employer or employers and for the County to determine both that an allegation of wage theft has been made and that the threshold amount has been met.
- (2) *Respondent.*
 - (a) Upon the filing of any complaint, the County shall promptly determine that the wage theft complaint alleges wage theft, names at least one employer and meets the threshold amount criterion. The duty of the County in determining whether a complaint meets this criterion is limited to receiving the complaint and comparing the information provided in the complaint to the criteria required herein. This determination is a ministerial act and may not be based on further investigation or the exercise of independent judgment.
 - (b) Upon making such determination, the County shall serve the complaint and a written notice on the employer or person charged with the commission of a wage theft practice, setting forth the allegations, rights and obligations of the parties including, but not limited to, the right to a due process hearing on the matter before a Special Magistrate and that the employer may be responsible for the costs of the Special Magistrate and other enforcement costs. Such service shall be by certified mail.
 - (c) Each employer shall file an answer to the complaint with the County not later than twenty-one (21) days after receipt of the complaint and notice.
- (3) *Conciliation or Mediation.*
 - (a) It is the policy of the County to encourage conciliation of charges. The County will work with the parties in an attempt to conciliate a complaint.

- (b) A conciliation agreement arising out of such conciliation shall be an agreement between the employer and the employee.
 - (c) Whenever a party believes that the other party has breached a conciliation agreement, the aggrieved party may file a civil action in a court of competent jurisdiction for enforcement of such agreement.
 - (d) Nothing said or done in the course of attempting conciliation under this subdivision may be used as evidence in any subsequent proceeding under this subdivision or otherwise without the written consent of the parties to the underlying charge of violation.
 - (e) Upon failure of conciliation or mediation, the County shall issue notice of the same to the parties.
- (4) *Hearing before Special Magistrate.*
- (a) Within thirty (30) days after the County determines that a complaint meets the criterion for wage theft, the County shall appoint a Special Magistrate that it deems to be qualified to hear wage theft matters. In conducting any hearing to determine whether a violation of this subdivision has occurred, the Special Magistrate shall have the authority to administer oaths, issue subpoenas in accordance with subsection (b), below, and compel the production of and receive evidence. The Special Magistrate shall have the authority to consolidate two or more complaints into a single hearing where such complaints name the same employer(s) and involve sufficiently similar allegations of fact to justify consolidation. The final determination of the Special Magistrate in wage theft matters is subject to appeal in a court of competent jurisdiction.
 - (b) In any hearing before the Special Magistrate pursuant to this section, the employer may file a written answer to the complaint. All parties shall appear at the hearing in person, with or without counsel, and may submit evidence, cross-examine witnesses, obtain issuance of subpoenas and otherwise be heard. Testimony taken at the hearing shall be under oath and a transcript shall be made available at cost to any interested party.
 - (c) Discovery shall be permitted upon motion of any party and shall proceed in the manner provided by the Florida Rules of Civil Procedure.
 - (d) The Special Magistrate may direct that the parties submit a pre-hearing statement addressing the issues of law and fact that will be involved in such hearing, identify the witnesses that will testify, and provide a list of all documents or other types of exhibits that will be submitted.
 - (e) Upon the conclusion of the hearing, an adjudicative final order shall be issued and served upon the parties setting forth written findings of fact and conclusions or law.
 - (f) In any proceeding under this subdivision, the burden of proof by a preponderance of the evidence rests upon the employee except as provided in Section 70-307(6).
 - (g) All such hearings shall be de novo.
- (5) *Subpoenas.*
- (a) If a Special Magistrate is appointed, any party may request that a subpoena be issued by the Special Magistrate.
 - (b) Within ten (10) days after service of a subpoena upon any person, such person may petition the Special Magistrate to revoke or modify the subpoena. The Special Magistrate shall grant the petition if it finds that the subpoena requires

appearance or attendance at an unreasonable time or place, that it requires production of evidence which does not relate to the matter, that it does not describe with sufficient particularity the evidence to be produced, that compliance would be unduly onerous, or for other good reason.

- (c) Upon refusal to obey a subpoena, the Special Magistrate or any party may seek enforcement of a subpoena issued under the authority of this subdivision by filing a petition for enforcement in the County Court of Pinellas County, Florida.
 - (d) Any person who willfully fails or neglects to attend and testify or to answer any lawful inquiry or to produce records, documents or other evidence, commits a violation of this subdivision.
- (6) *Standards for Resolving Factual Disputes.*
- (a) The burden of proof with respect to adequate records falls on the employer who fails to keep accurate records. The employer must come forward with evidence of the precise amount of work performed or with evidence to negate the reasonableness of the inference to be drawn from the employee's evidence.
 - (b) The employer fails to keep adequate records when the following three conditions are met:
 - (i) Where by operation of some other statute or regulation, an employer has an obligation to keep records of an employee's hours worked and/or records of compensation provided to an employee; and
 - (ii) Where such records are imprecise, inadequate or do not exist; and
 - (iii) Where an employee presents sufficient evidence to show, as a matter of just and reasonable inference, the amount of work done or the extent of work done or what compensation is due for the work done;
 - (c) If the employer fails to meet this burden, the Special Magistrate may award approximate damages based on the employee's evidence.
- (7) *Applicability of Florida Rules of Civil Procedure.*
- (a) The provisions of Rule 1.090, Florida Rules of Civil Procedure, shall govern the computation of any period of time prescribed or allowed by this subdivision or by rules, regulations, or orders adopted pursuant to this subdivision.
 - (b) All papers or pleadings required by this subdivision to be served may be served by certified mail or in accordance with Rule 1.080, Florida Rules of Civil Procedure.

Section 70-308. Enforcement of wage theft violations.

- (1) *Order Issued.* At the conclusion of a hearing and upon a finding of a wage violation, the Special Magistrate shall issue a written final order as follows:
 - (a) If the preponderance of the evidence demonstrates a wage theft violation, the Special Magistrate shall order the employer to pay wage restitution to the affected employee in an amount equal to three times the amount of back wages that the employer is found to have unlawfully failed to pay the employee; this treble amount shall include the back wages as compensation for the economic losses suffered by reason of the employee not receiving their wage at the time it was due; and

- (b) The Special Magistrate shall order the employer to pay to the Board of County Commissioners an assessment of costs in an amount not to exceed actual administrative processing costs and costs of the hearing.
- (2) *Failure to Comply with Final Order.* If the County finds that any employer has failed to comply with the Special Magistrate's order within forty-five (45) days after written notice from the Special Magistrate, the County shall issue a further written order on the employer as follows:
- (a) The County shall, upon request of the employer, grant the employer an additional forty-five (45) days to comply with any portion of the order, unless such an extension has previously been granted; or
 - (b) The County shall order the employer, in addition to wage restitution ordered, to pay the prevailing employee an amount equal to the applicable interest rate which accrues on the full amount of treble damages from the date upon which the findings of wage violation was made until the date upon which the amount is paid in full; and
 - (c) The County shall order the employer, in addition to assessment of costs ordered, to pay to the Board of County Commissioners and amount equal to the applicable interest rate which accrues on the assessment of costs from the date upon which the Special Magistrate's order is issued until the date upon which the amount is paid in full.
 - (d) This subdivision shall be enforced pursuant to Florida Statutes Section 125.69 and injunctive relief.
- (3) *Joint and Severable Liability.* In any order issued by the Special Magistrate, the County may specify two or more employers as jointly and severally liable for any amount payable to the employee or the County or both; however, the total amount the employee or the County may receive from jointly and severally liable employers shall not exceed the total amount for which employers are jointly and severally liable.
- (4) *Cumulative Rights Preserved.* Nothing in this subdivision shall be construed to limit, preclude or in any way abrogate the cumulative rights or remedies available to employees at common law or by other statute which were not the subject of an employee's complaint.
- (5) In any enforcement proceedings authorized by this subdivision, the Special Magistrate and/or court may award to the prevailing party all or part of the costs and attorney's fees incurred in obtaining the court order.
- (6) *Enforcement by private persons or by the State of Florida.*
- (a) *Enforcement by private persons.*
 - (i) If during the pendency of a wage theft violation employee but prior to the issuance of a final order by a Special Magistrate, an employee brings a private action in their own right, whether under state law, federal law, or both, in any state or federal court to seek unpaid wages based upon the same facts and allegations as the employee's complaint to the County, or affirmatively or by consent participates in any such litigation, that employee's complaint of wage theft shall be deemed withdrawn with respect to any employer named as a defendant in such court action. This section shall be interpreted narrowly so as to leave unaffected any cumulative rights which were not the subject of a employee's complaint.

- (ii) The County, upon becoming aware of any private action described herein shall advise the employee and any employer subject to the private action in writing within fifteen (15) days of this provision and its effect on the complaint. Within thirty (30) days of the issuance of such notice, the complaint will be dismissed, with prejudice, with respect to the employer or employers who are named as a defendant to the private action.
- (b) *Enforcement by the State of Florida.* If at any time during the pendency of a complaint of wage theft, the County becomes aware of an enforcement action by the Florida Attorney General or other body of the State of Florida based on wage violations involving the same facts as the employee's complaint to the County, the complaint will be dismissed, with prejudice, with respect to the employer or employers named in such State enforcement action. The County shall advise the employee and any employer of such dismissal.

Section 70-309. Appeals.

Any adverse decision may be appealed to a court of competent jurisdiction.

Section 70-310. Retaliation

- (a) Employers are prohibited from threatening, intimidating, or taking other adverse action against employees in retaliation for asserting any claim to wages pursuant to this subdivision, and any such actions are violations of this article. Adverse actions include, but are not limited to, communicating to the employee, whether directly or indirectly, explicitly or implicitly, the willingness to inform a government employee that the employee is not lawfully in the United States.
- (b) Where such retaliation resulted in any loss of the employee's wages, upon a finding by a hearing officer that an employer retaliated against an employee in violation of this subdivision, the employee is entitled to receive quantifiable damages.
- (c) Violations of the retaliation prohibition shall be determined under the same procedures as wage theft complaints, and in the same proceeding as any related wage theft complaint. The County shall order any employer who has been found to have violated the retaliation prohibition to pay to the County the actual administrative processing costs and costs of the hearing, regardless of the findings on any related wage theft claim.

Severability.

If any section, subsection, sentence, clause, phrase or provision of this subdivision is for any reason held invalid or unconstitutional by any Court of competent jurisdiction, such holding shall not be construed to render the remaining provisions of this subdivision invalid or unconstitutional.

Inclusion in the Pinellas County Code.

The provisions of this subdivision shall be included and incorporated in the Pinellas County Code, as an addition or amendment thereto, and shall be appropriately renumbered to conform to the uniform numbering system of the Pinellas County Code.

Amendment of Proposed Ordinance at Public Hearing.

If any section, subsection, sentence, clause, phrase or provisions of this subdivision as proposed may be amended, added or deleted by majority vote of the Board of County Commissioners as a result of matters raised at the public hearing or in consultation with responsible authorities, then such amendments, additions, or deletions shall be validly adopted without additional advertisement or public hearing.

Areas Embraced.

This ordinance shall be applicable to all employers in Pinellas County, including those located in any cities, towns or other municipalities therein; provided, however, nothing contained in this subdivision shall be construed to prevent any local government in Pinellas County from establishing wage theft laws distinct from those provided herein, by valid local government law, ordinance or regulation. All laws so established shall prevail within the jurisdictional limits of such local government.

Filing of Ordinance; Effective Date.

Pursuant to Section 125.66, Fla. Stat., a certified copy of this Ordinance shall be filed with the Department of State by the Clerk of the Board of County Commissioners within ten (10) days after enactment by the Board of County Commissioners. This Ordinance shall become effective January 1, 2016.

APPROVED AS TO FORM

By: Michelle Wallace
Office of the County Attorney