

**City of St. Petersburg**  
**Public Services & Infrastructure Committee Meeting**  
**May 28, 2020 – 9:25 AM**

Welcome to the City of St. Petersburg City Council Public Services & Infrastructure Committee Meeting. The agenda and supporting documents are available on the City's website at [www.st.pete.org/meetings](http://www.st.pete.org/meetings) or by emailing [city.clerk@stpete.org](mailto:city.clerk@stpete.org).

NOTE: City buildings are closed to the public due to the COVID-19 emergency. Accordingly, the meeting location has been changed from in-person at the Sunshine Center to a "virtual" meeting by means of communications media technology pursuant to Executive Order Number 20-69, issued by the Governor on March 20, 2020, and Executive Order 2020-12 issued by the Mayor on April 9, 2020.

The public can attend the meeting in the following ways:

- Watch live on Channel 15 WOW!/Channel 641 Spectrum/Channel 20 Frontier FiOS
- Watch live online at [WWW.stpete.org/TV](http://WWW.stpete.org/TV)
- Watch on your computer, mobile phone, or another device at: <https://zoom.us/j/9401115550>
- Listen by dialing any one of the following phone numbers and entering **Webinar ID: 940 1111 5550 #**
  - +1 312-626-6799
  - +1 646-876-9923
  - +1 669-900-6833
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  - +1 301-715-8592
  - +1 346-248-7799

City of St. Petersburg  
**Public Services & Infrastructure Committee**  
May 28, 2020 – 9:25 AM

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Members: Committee Chair Darden Rice, Committee Vice-Chair Amy Foster, Council Chair Ed Montanari, and Council Member Deborah Figgs-Sanders

Alternate: Council Member Robert Blackmon

Support Staff: Jayne Ohlman - City Council Legislative Aide

**1) Call to Order**

**2) Approval of Agenda**

**3) Approval of February 27, 2020 Minutes**

**4) New Business – May 28, 2020**

- a) An Update on Pinellas County’s Wage Theft Ordinance (Amended January 2020) and a Discussion of a Draft Ordinance to Repeal Chapter 15, Article III, Sections 15-40 – 15-47 of City Code Relating to Wage Theft – *Human Resources Director Chris Guella, Chief Assistant City Attorney Jeannine Williams, & Pinellas County Office of Human Rights Director Paul Valenti*

**Attachments:**

- 1. Memorandum from Paul Valenti, Director, Pinellas County Office of Human Rights
- 2. Pinellas County Ordinance Relating to Wage Theft & Recovery (Amended Jan. 2020)
- 3. Draft Ordinance to Repeal Chapter 15, Article III, Sections 15-40 – 15-47 of City Code Relating to Wage Theft
- 4. Current Chapter 15, Article III, Sections 15-40 – 15-47 of City Code Relating to Wage Theft

**Upcoming Meeting Dates & Tentative Agenda Items**

**June 11, 2020**

- a) Discuss Potential Revisions to City Code, Which Would Exempt Those Reporting Violence or Trafficking Against Themselves or Others from Violating Ordinance Section 20-120 – *Mike Kovacsev, Heather Judd, & Laura Roe*
- b) Discussion of a “Contiguous & Open Greenspace for Active, Urban Parkland” Requirement in the Upcoming Request for Proposals (“RFP”) for the Master Developer Contract for the 86-Acre Tropicana Field Site – *Alan DeLisle*

**General Attachments:**

Minutes of the February 27, 2020 PS&I Committee Meeting  
New Business Item Support Material  
Pending and Continuing Referral List

City of St. Petersburg  
**Public Services & Infrastructure Committee**  
**February 27, 2020 Meeting Minutes**  
*Sunshine Center Auditorium*

**Present:** Committee Members – Committee Chair Darden Rice, Committee Vice-Chair Amy Foster Council Chair Ed Montanari, & Council Member Deborah Figgs-Sanders

**Also Present:** Council Member Brandi Gabbard, City Administrator/Deputy Mayor Dr. Kanika Tomalin, City Attorney Jackie Kovilaritch, Public Works Administrator Claude Tankersley, & Water Resources Director John Palenchar

**Support Staff:** Jayne Ohlman - City Council Legislative Aide

1. **Call to Order** – 9:00 AM
2. **Approval of Agenda** – CM Montanari moved approval, all members voted in favor.
3. **Approval of February 13, 2020 Minutes** – CM Montanari moved approval, all members voted in favor.
4. **New Business – February 27, 2020**

**Consent Order Update** – *Claude Tankersley & John Palenchar*

Water Resources Director John Palenchar began with a brief overview of the consent order. Mr. Palenchar explained that during 2015 and 2016, the region experienced extreme wet weather which overwhelmed the city’s wastewater collection system and the water reclamation facilities (“WRFs”). In connection with the unauthorized discharges, the City entered into Consent Order No. 16-1280 with the Florida Department of Environmental Protection (“FDEP”) in July 2017. Mr. Palenchar noted that in August 2018, the City Council approved a settlement between the City and Suncoast Waterkeepers. Mr. Palenchar explained that the settlement agreement was memorialized with the First Amendment to Consent Order No. 16-1280. Mr. Palenchar noted that out of all the consent order requirements, 87 projects have been completed, which equals approximately 66%.

In referencing the capacity improvements at the Southwest Water Reclamation Facility (“SWWRF”) CM Rice asked if permitted capacity at SWWRF has changed since the improvements were made. Mr. Palenchar responded that the permitted capacity remains at 20 million gallons per day (“mgd”) annual average daily flow (“AADF”). However, Mr. Palenchar noted that the improvements have led to an increase in the peak hourly capacity of approximately 70 mgd.

In referencing the consent order projects that are on-going and those that have been completed, CM Montanari explained that he would like to see a basic list of the completed projects in order to better communicate with his constituents the progress that has been made and how those successful projects correlate with their utility bills.

In reference to the wet weather transfer and force main station (“lift station”) required by the Amended Consent Order, CM Figgs-Sanders asked for the exact location of the potential lift station. Mr. Palenchar responded that the lift station would likely be located near the Childs Park Recreation Center in Southwest St. Petersburg. CM Rice asked Mr. Palenchar to elaborate on the purpose of a new lift station. Mr. Palenchar responded that the Amended Consent Order requires the city to construct and operate an additional lift station and force main in order to balance wet weather flows between the Southwest and Northwest basins during wet weather events.

CM Foster asked Mr. Palenchar to elaborate on the Amended Consent Order requirement 6.i titled “Rainfall Derived Infiltration and Inflow Evaluation and Reduction Plan” or “RDII.” Mr. Palenchar explained that in order to comply with the objectives of the requirements, the two-phase RDII Evaluation and Reduction Plan was developed to provide a roadmap and related procedures for the City to maintain I/I in its collection system.

CM Montanari inquired how the data from elapsed time meters and flow monitors (Consent Order requirement 6.s) is tracked. Mr. Palenchar responded that the data is monitored through the supervisory control and data acquisition (“SCADA”).

CM Montanari asked for an estimate of how much the city has invested in capital projects since the implementation of the consent order. Mr. Tankersley responded that at the outset, the city anticipated spending \$326 million on all capital projects and so far, the city has spent approximately \$250 million.

### **Water Resources Management Evaluation (2017) – Annual Update – *John Palenchar & Claude Tankersley***

Mr. Palenchar presented the committee with the annual update of the 2017 Water Resources Management Evaluation. Mr. Palenchar reminded the committee that the consultant, LA Consulting, identified 57 priority recommendations for the department to pursue and those recommendations were organized into the following five categories: general, planning, organizational, directing/scheduling, and controlling/improving.

Mr. Palenchar noted that there was an error in the presentation submitted to the committee and would like the following corrections noted: on the slide titled “Controlling & Improving Recommendations” (slide #8) recommendations 4.5.7, 4.5.8, and 4.5.9 are all completed. In addition, the presentation identifies recommendation 4.5.2 as “deferred” however, it is meant to say “disagree.”

In referencing the planning recommendation 4.2.2 relating to an independent and external cost/benefit evaluation of the Cosme Water Treatment Facility, CM Montanari asked Mr. Palenchar to elaborate on why that item is marked as complete if further review by staff is required. Mr. Palenchar explained that detailed analyses of scenarios for the Cosme Water Treatment Plant are provided in the Potable Water Infrastructure Scenario Planning portion of the Integrated Water Resources Master Plan (“IWRMP”) which will be discussed at a Committee of the Whole on April 30<sup>th</sup>.

***CM Rice noted that the PS&I meeting scheduled for March 12, 2020 has been canceled. With no further business, CM Rice adjourned the meeting at 10:32 AM***

	Topic	Return Date	Referral Date	Prior Meeting	Referred By	Staff	Notes
1	A Discussion on Pinellas County's Wage Theft Ordinance with a Proposed Draft Ordinance to Repeal Chapter 15, Article III, Sections 15-40 – 15-47 of City Code Relating to Wage Theft to Allow for One County-Wide Ordinance	5/28/20	3/12/20		Rice (Staff Request)	C. Guella J. Williams P. Valenti (County)	
2	Discuss potential revisions to city code, which would exempt those reporting violence or trafficking against themselves or others from violating ordinance Section 20-120	6/11/20	3/12/20		Foster	M. Kovacsev H. Judd L. Roe	
3	Discussion of a Resolution requesting administration to consider including a significant "contiguous & open greenspace for active, urban parkland" requirement in the upcoming request for proposals ("RFP") for the Master Developer Contract for the 86-Acre Tropicana Field Site	6/11/20	5/21/20		Rice	A. DeLisle	
4	Continued discussion of unused alleys & potential changes to the vacation process for alleys	7/16/20		6/14/18 (HLUT)	Staff	L. Abernethy M. Dema	
5	A discussion on potential amendments to the City's Grease Waste Management Program	7/30/20	4/4/19	10/24/19	Gerdes	S. Lewis C. Tankersley J. Palenchar	10/24/19 – CM Gerdes requested that staff return to PS&I with a draft ordinance after stakeholder outreach & FDEP review process is completed 4/10/20 – Postponed until July 2020
6	A presentation from staff on the design & construction plans for the new Sanitation Department facility	8/13/20 or 8/27/20	5/21/20		Montanari	R. Gerdes W. Joseph	
7	Update on the City's Facility Maintenance Plan	8/13/20 or 8/27/20	6/7/18	5/9/19	Foster, Admin	A. Wendler L. Glover- Henderson	9/12/19 – T. Greene indicated staff would like return to PS&I for a check-in once the plan became fully staffed
8	Presentation by Sanitation Department staff on the progress of the Management Evaluation Study (2019)	10/22/20	3/12/20		Rice (Staff Request)	W. Joseph	
9	A presentation from staff on the \$36 million Northwest Water Reclamation improvement project	TBD	5/21/20		Montanari	C. Tankersley J. Palenchar	
10	Discussion of an ordinance that will set standards for mechanical noise, such as HVAC systems		4/18/19	9/26/19	Driscoll	L. Abernethy D. Goodwin	9/26/19 – Committee requested staff to explore potential mechanical noise mitigation incentives & return to PS&I to present options.

11	<b>Quarterly Report on Grow Smarter Sites</b> a) Port Site b) Innovation District Site c) 800 Block Site d) Police Station Site e) Tropicana Field Site f) Commerce Park Site g) 22 <sup>nd</sup> Street Sites h) Tangerine Plaza Site		2/15/18 3/8/18	3/8/18 5/31/18 9/13/18 6/13/19 11/7/19	Foster Driscoll	A. DeLisle	<b>5/31/18</b> – Update on Innovation District, Police Station Site, Tropicana Field Site, and Tangerine Plaza Site <b>9/13/18</b> – A memo from A. DeLisle was distributed to the committee in lieu of a verbal update on Tangerine Plaza. See minutes of 9/13 for full memo <b>6/13/19</b> – Update on Innovation District, Former Police Station Site, & Tangerine Plaza
12	<b>Capital Improvement Assessment (Maintenance &amp; Hurricane/Tropical Storm Preparedness)</b> a. Bridges b. Reclaimed Water & possible expansion c. Roads / Sidewalks / Pedestrian Bridges d. Seawalls e. Stormwater f. Potable Water (water quality audit) g. Buildings h. Sewers / Wastewater (if needed) i. New sidewalk planning		2/2/17	a. 4/27/17 a. 7/20/17 b. 8/24/17 c. 11/9/17 d. 3/22/18 d. 11/15/18 e. 7/12/18 f. 7/26/18 (COW)	Kennedy, Gerdes	a. Prayman b. Palenchar c. Prayman d. Prayman e. J. Norris f. Palenchar g. Tankersley i. Tankersley, Mory	<b>a) Bridges</b> – Staff to bring back analysis of long-term and pedestrian bridge funding. CM Kennedy asked to have noted that between 2021 and 2025 there is a \$50 million shortage on funding for bridges. <b>b) Reclaimed Water</b> – Report provided by J. Palenchar. Items <b>b), e), f) &amp; h)</b> are in Integrated Master Plan. <b>c) Roads/Sidewalks</b> – Power point by B. Prayman & J. Norris. Staff to report to committee on updated numbers for annual sidewalk repair & replacement with the numbers based on new technology. Funding for brick streets replacement as a recurring maintenance cost needs to be considered. <b>e) Stormwater</b> – J. Norris updated committee on Stormwater infrastructure, challenges, and ongoing projects. <b>d) Seawalls/Living Shorelines</b> – B. Prayman, C. Frey, & C. Tankersley updated the committee on seawall repairs/replacements & living shoreline projects <b>1/16/20</b> – Committee requested continued updates in 2020.
13	Update on Albert Whitted Airport Master Plan, potential runway expansion, & general operational improvements	<b>Fall 2020</b>	5/17/18	8/9/18 2/13/20	Staff Request	R. Lesniak C. Ballestra	<b>8/9/18</b> – R. Lesniak and C. Ballestra presented the committee with an update on the airport’s runway feasibility study, an economic impact study, and an update on the airport master plan <b>2/13/20</b> – R. Lesniak, C. Ballestra, & D. DiCarlo (ESA) updated the committee on results from master plan working paper #1 and continued operational improvements at AWA. Staff indicated they would like to return in the Fall to provide further updates.

14	Annual Update by Water Resources on Recommendations from the 2017 Management Evaluation & Consent Order Update	<b>January 2021</b>	12/7/17	1/10/19 2/27/20	Council	C. Tankersley J. Palenchar	<p><b>12/7/17</b> – PS&amp;I to manage the 57 recommendations made by LA Consulting.</p> <p><b>1/10/19</b> – C. Tankersley &amp; J. Palenchar updated committee on progress of implementation of the 57 recommendations</p> <p><b>1/16/20</b> – Committee decided to add a consent order update in light of the recently submitted Integrated Water Resources Master Plan (IWRMP)</p> <p><b>2/27/20</b> – Committee received updates on consent order &amp; 2017 management evaluation recommendations</p>
15	A discussion regarding the process and benefits of live streaming the City Council meetings on Facebook Live for more citizen engagement		5/21/20		Blackmon		

PS&I 2020 Dates: 1/16, 1/30, 2/13, 2/27, 5/28, 6/11, 7/16, 7/30, 8/13, 8/27, 9/10, 9/24, 10/8, 10/22, 11/12, 12/10



## Pinellas County Office of Human Rights

400 S. Fort Harrison Ave  
5<sup>th</sup> Floor  
Clearwater, FL 33756  
(727) 464-4880  
Fax: (727) 464-4157  
Text Phone/TDD: (727) 464-4062

To: Honorable City Council Members, City of St. Petersburg

Through: Chris Guella, Director of Human Resources, City of St. Petersburg

From: Paul Valenti, Director, Pinellas County Office of Human Rights

Date: May 13, 2020

**Re: Possible Repeal of City's Wage Theft Ordinance**

Following the City of St. Petersburg's adoption of its wage theft ordinance, Pinellas County adopted its own Wage Theft/Recovery Ordinance on November 15, 2015<sup>1</sup>. Since our ordinance took effect on January 1, 2016, we have helped employees recover over \$425,000 in wages claimed to be earned but unpaid.

Our office has also administered the city's wage theft ordinance since March 31, 2017<sup>2</sup>. Soon after, we discussed with city staff the advisability of the city repealing its ordinance to leave in place one county-wide ordinance for our enforcement. As our ordinance at that time did not require employers to provide employees basic information relating to their employer and remuneration (or rate of pay), nor require employers to prominently post employee rights under the ordinance, however, further discussion was held in abeyance.

The county's wage theft ordinance has subsequently been amended to now include notice and posting provisions akin to those found in the city's ordinance<sup>3</sup>, and staff believes it timely to revisit the advisability of the city repealing its ordinance to leave in place one county-wide wage theft ordinance for our enforcement.

We thank you for considering repealing the city's wage theft ordinance, and we assure you of our continued dedication to protecting those who performed work for which they have not been paid, as we believe to be demonstrated in the following data grid:

<sup>1</sup> Codified as Article IV, Chapter 70, of the Pinellas County Codes relating to Human Relations.

<sup>2</sup> Upon the departure of city staff responsible for administering the city's wage theft ordinance.

<sup>3</sup> To help employers comply with these provisions, the Office of Human Rights has added an "Employer's Resources" section of our website dedicated to wage theft. Here, employers can download a poster which conforms to the new posting requirement, and a form which, once completed and provided to an employee, would be deemed to be compliant with these notice provision of the ordinance. These may be reviewed at:

[http://www.pinellascounty.org/Humanrights/pdf/Wage\\_Theft\\_Program\\_Notice.pdf](http://www.pinellascounty.org/Humanrights/pdf/Wage_Theft_Program_Notice.pdf) and  
[http://www.pinellascounty.org/Humanrights/pdf/Wage\\_Theft\\_Program\\_Form.pdf](http://www.pinellascounty.org/Humanrights/pdf/Wage_Theft_Program_Form.pdf).

Wage Theft/Recovery Ordinance

<u>Calendar Year</u>	<u># of Cases Filed</u>	<u>Unpaid Wages Claimed</u>	<u>Wages Awarded/ Mediated</u>	<u>Actual Wages Paid Out</u>
2016	77	\$288,895.56	\$321,072.00	\$25,405.20
2017	113	\$297,068.54	\$79,990.38	\$145,997.13
2018	139	\$365,966.06	\$198,738.63	\$131,515.16
2019	173	\$431,628.12	\$55,605.32	\$117,326.18
2020	41	\$45,034.42	\$5,587.88	\$6,495.75
<b>Totals:</b>	<b>543</b>	<b>\$1,428,592.70</b>	<b>\$660,994.21</b>	<b>\$426,739.42</b>

**ORDINANCE NO. 20-01**

**AN ORDINANCE OF THE COUNTY OF PINELLAS RELATING TO THE WAGE THEFT AND RECOVERY CODE BY AMENDING SECTION 70-302 RELATING TO AUTHORITY; AMENDING SECTION 70-303 RELATING TO LEGISLATIVE FINDINGS OF FACT; AMENDING SECTION 70-304 RELATING TO INTENT AND PURPOSE; AMENDING SECTION 70-305 RELATING TO DEFINITIONS; AMENDING SECTION 70-306 RELATING TO WAGE THEFT VIOLATIONS; AMENDING AND RETITLING SECTION 70-307 RELATING TO PROCEDURES FOR WAGE THEFT COMPLAINTS; AMENDING AND RETITLING SECTION 70-308 RELATING TO ENFORCEMENT OF WAGE THEFT VIOLATIONS; AMENDING SECTION 70-309 RELATING TO APPEALS; DELETING SECTION 70-310 RELATING TO RETALIATION; AMENDING ALL SECTIONS FOR CLARITY, CONSISTENCY AND UNIFORMITY; PROVIDING FOR SEVERABILITY; PROVIDING AN EFFECTIVE DATE; PROVIDING FOR AREAS EMBRACED; AND PROVIDING FOR INCLUSION IN THE PINELLAS COUNTY CODE.**

WHEREAS, the Pinellas County Board of County Commissioners adopted the Wage Theft and Recovery ordinance pursuant to its police powers for the public safety, health and general welfare, effective January 1, 2016; and

WHEREAS, the Pinellas County Board of County Commissioners wishes to amend the Wage Theft and Recovery ordinance in order to disallow claims from those who have had a prior ownership interest with the Employer and to include a cap on the Threshold Amount for complaints; and

WHEREAS, the Pinellas County Board of County Commissioners wishes to amend the Wage Theft and Recovery ordinance in order to enhance Retaliation protections to those who file wage theft and/or Retaliation complaints; and

WHEREAS, the Pinellas County Board of County Commissioners wishes to incentivize Employers to timely pay orders and to create enhanced enforcement mechanisms for wage theft and Retaliation violations; and

WHEREAS, the Pinellas County Board of County Commissioners wishes to establish parameters in the amount of damages an Employee may be awarded if the Employee refuses all or part of the Wage Rate offered by the Employer prior to a hearing; and

WHEREAS, the Pinellas County Board of County Commissioners wishes to establish standards in which a special magistrate may find against an Employee for filing a frivolous complaint.

**NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF PINELLAS COUNTY:**

**Section 1. Ch. 70 Article IV of the Pinellas County Code is amended to read as follows:**

ARTICLE IV. - WAGE THEFT AND RECOVERY

Sec. 70-301. - Title.

This article shall be known and may be cited as the "Wage Theft and Recovery Ordinance."

Sec. 70-302. - Authority.

This article is enacted pursuant to F.S. § 125.86, the home rule powers of Pinellas County (County) in the interest of health, safety and general welfare of the people, and County Charter section 2.03.

Sec. 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 health, safety 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.

Sec. 70-304. - Intent and Purpose.

It is the intent and purpose of this article 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.

Sec. 70-305. - Definitions.

*Adverse Action* includes, but is not limited to, communicating to the Employee, whether directly or indirectly, explicitly or implicitly, the willingness to inform a government agency that the Employee is not lawfully in the United States.

*Assisting Party* shall have the same meaning as an Employee; except, that an Assisting Party shall not be a party in the wage theft complaint.

*Employ* means to permit a natural person to work for wages.

*Employee* means a natural person who performs work within the geographic boundaries of the County while being employed by an Employer, but shall not include any bona fide Independent Contractor nor a natural person who has had a prior ownership interest with the Employer. "Employee" may also include a natural person who performs work that benefits an Employer located within the geographic boundaries of the County even though the Employee may have performed work outside of the County.

*Employer* includes 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; but such term does not include:

- (1) The United States or a corporation wholly owned by the government of the United States;
- (2) The State of Florida.

*Independent Contractor* shall have the same meaning as in the Internal Revenue Code and implementing federal regulations.

*PCOHR* means the Pinellas County Office of Human Rights.

*Repeat Violation* means any subsequent violation of the same section of this article by an employer that has been previously found, within the two (2) prior calendar years, through an administrative, quasi-judicial, or judicial process, to have violated the same section of this article, which does not arise out of the same transaction or occurrence of events in question. A violation will not be a "Repeat Violation" if it stems from substantially the same nucleus of operative facts occurring within the proximate timeframe of an earlier violation.

*Retaliation* means threatening, intimidating, or taking other Adverse Action against Employees for asserting any claim to wages or assisting an Employee who asserts any claim to wages.

*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.

*Reasonable Time* shall be presumed to be no later than fourteen (14) calendar 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.

*Threshold Amount* means no less than \$60.00 and no more than \$15,000.00.

*Wage Rate* means 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. "Wage Rate" shall include earned paid time off, leave, vacation and sick pay.

#### Sec. 70-306. - Wage Theft Violations.

- (a) 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 up to three times the amount of back wages.

(b) At the time of hiring, an employer shall provide to each employee a written notice, to be signed and dated by the employer and employee, containing the following information:

(1) The rate or rates of pay and basis thereof, whether paid by the hour, shift, day, week, salary, piece, commission, or otherwise, including any rates for overtime, as applicable;

(2) Allowances, if any, claimed as part of the minimum wage, including meal or lodging allowances;

(3) The regular payday designated by the employer;

(4) The name of the employer, including any "doing business as" names used by the employer;

(5) The physical address of the employer's main office or principal place of business, and a mailing address, if different; and

(6) The employer's telephone number.

(c) An employer must retain, for a period of one year following an employee's date of hire, a copy of the signed and dated written notice required by subsection (b).

(d) In addition to providing the written notice required by subsection (b), employers must place in a location accessible to all employees a poster or notice summarizing the protections and rights of employees pursuant to this article.

(e) An employer shall notify his or her employees in writing of any changes to the information set forth in the notice required by subsection (b) within seven calendar days after the time of the changes, and shall retain a copy of the signed notice for a period of one year following the date such change is signed by the employee.

(f) An employer's failure to abide by and adhere to any part of this section constitutes a County ordinance violation, which may be enforced pursuant to the procedures in this article or in Sec. 1-8 of the Pinellas County Code.

(g) A Repeat Violation constitutes a separate County ordinance violation.

(h) Enforcement of a Repeat Violation under Sec. 1-8 of the Pinellas County Code by the County will not limit or affect the remedies otherwise available to, or the procedural obligations otherwise imposed on, an aggrieved Employee under this article.

#### Sec. 70-307. - Procedures for Wage Theft and Retaliation Complaints.

##### (a) *Filing Wage Theft Complaints.*

In order for a wage theft complaint to be submitted to the County by, or on behalf of, an aggrieved Employee, the complaint must set forth the facts upon which it is based with sufficient specificity to identify the Employer and for the PCOHR to determine both that an allegation of wage theft has been made and that the Threshold Amount has been met.

##### (b) *Filing Retaliation Complaints.*

In order for a Retaliation complaint to be submitted to the County by, or on behalf of, an aggrieved Employee, the complaint must set forth the facts upon which it is based with sufficient specificity to identify the Employer and for PCOHR to determine that an allegation of Retaliation has been made in accordance with this article.

(c) An Employee or Assisting Party aggrieved by a wage theft and/or a Retaliation violation must file a complaint with a signed declaration, provided by the PCOHR.

(d) A complaint, as described herein, must be filed with the PCOHR 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 section has occurred ("Filing Deadline"); however, with respect to alleged ongoing violations, once a complaint has been made in compliance with the Filing Deadline, the PCOHR's enforcement capacity is limited only by the applicable statute(s) of limitations.

(e) *PCOHR.*

(1) The duty of the PCOHR in determining whether a complaint meets the criteria 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.

(2) Upon making such determination, the PCOHR shall serve the complaint and a written notice on the Employer 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.

(f) *Employer.*

Each Employer shall file an answer to the complaint with the PCOHR not later than twenty-one (21) calendar days after mailing of the complaint and notice. Upon request, the PCOHR will grant one (1) fourteen (14) calendar day extension to file an answer.

(g) *Mediation.*

(1) It is the policy of the County to encourage mediation of the charges. The PCOHR will work with the parties in an attempt to mediate a complaint.

(2) An agreement arising out of mediation shall be an agreement between the Employer and the Employee.

(3) Whenever a party believes that the other party has breached a mediated agreement, the aggrieved party may file a civil action in a court of competent jurisdiction for enforcement of such agreement.

(4) Nothing said or done in the course of attempting mediation under this section may be used as evidence in any subsequent proceeding under this section or otherwise without the written consent of the parties to the underlying charge of violation.

(h) *Hearing Before Special Magistrate.*

(1) If mediation is declined or is unsuccessful, the PCOHR shall schedule a quasi-judicial hearing, as soon as practicable, before a special magistrate that it deems to be qualified to hear wage theft matters and will notify the parties regarding hearing information. In conducting any hearing to determine whether a violation of this section has occurred, the special magistrate shall have the authority to administer oaths, issue subpoenas in accordance with the subsection titled "Subpoenas" herein, and compel the production of

and receive evidence. The special magistrate shall have the authority to consolidate two (2) 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 and Retaliation matters is subject to appeal to a court of competent jurisdiction. The burden is on the parties to ensure a verbatim record of the hearing is made for use in any appeals.

- (2) All parties shall appear at the hearing in person, unless a written request has been made to PCOHR five (5) business days in advance of the hearing, excluding County holidays, for the special magistrate to allow persons to appear by telephone or video conference. Parties may appear with or without counsel, and may submit evidence, cross-examine witnesses, obtain issuance of subpoenas and otherwise be heard. Testimony taken at the hearing must be under oath.
  - (3) Discovery shall be permitted upon motion of any party and shall proceed in the manner provided by the Florida Rules of Civil Procedure.
  - (4) 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.
  - (5) 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.
  - (6) In any proceeding under this section, the burden of proof by a preponderance of the evidence rests upon the Employee or Assisting Party except as provided in the subsection titled “Standards for Resolving Factual Disputes in Wage Theft Complaints”.
  - (7) All such hearings shall be de novo.
- (i) *Subpoenas.*
- (1) Upon written petition to the PCOHR, a party may be entitled to the issuance of a reasonable number of subpoenas, in the sole discretion of the special magistrate. A party must submit a written petition to the PCOHR for each subpoena requested and must provide a copy to the other party, as notice. Within ten (10) calendar days, the special magistrate shall grant or deny the written petition. Notice of petitions for subpoenas granted or denied will be provided by the PCOHR to both parties.
  - (2) Within ten (10) calendar days after service of a subpoena upon any person, such person may submit a written petition to the PCOHR for the special magistrate to revoke or modify the subpoena. A copy of the written petition to revoke or modify a subpoena must be provided by the petitioning party to all parties. 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.
  - (3) Upon refusal to obey a subpoena, the special magistrate or any party may seek enforcement of a subpoena issued under the authority of this section by filing a petition for enforcement in the County Court of Pinellas County, Florida.

(j) *Standards for Resolving Factual Disputes in Wage Theft Complaints.*

- (1) 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.
- (2) The Employer fails to keep adequate records when the following three conditions are met:
  - a. Where by operation of a 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
  - b. Where such records are imprecise, inadequate or do not exist; and
  - c. 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.

(k) *Applicability of Florida Rules of Civil Procedure.*

- (1) The provisions of Rule 1.090, Florida Rules of Civil Procedure, shall govern the computation of any period of time prescribed herein.
- (2) The provisions of Rule 1.080, Florida Rules of Civil Procedure, shall govern the service and filing of pleadings and other documents.

Sec. 70-308. - Enforcement of Wage Theft and Retaliation Violations.

(a) *Order Issued.* At the conclusion of the quasi-judicial hearing and upon a finding of a violation, the special magistrate shall issue a written final order as follows:

- (1) 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 two (2) times the amount of the Wage Rate that the Employer is found to have unlawfully failed to pay the Employee. This amount includes the Wage Rate and additional compensation for the economic losses suffered by reason of the Employee not receiving their Wage Rate at the time it was due.
  - (A) Notwithstanding the above, if the special magistrate finds that the Employer offered a portion of the Wage Rate, in writing, to the Employee prior to commencement of the hearing and the Employee does not accept, in writing, the amount offered, the special magistrate must, on a finding of a wage theft violation, award the Wage Rate previously offered plus two (2) times the amount of any Wage Rate not offered prior to the hearing.
  - (B) If the special magistrate finds that the Employer offered the full Wage Rate, in writing, to the Employee prior to the commencement of the hearing and the Employee did not accept, in writing, the amount offered, the special magistrate must award only the Wage Rate alleged to have been the subject of the wage theft complaint.
- (2) If the preponderance of the evidence demonstrates a Retaliation violation and there is a related wage theft complaint, regardless of the outcome of the wage theft complaint, the

special magistrate must order the Employer to pay quantifiable damages on the amount ordered, excluding administrative fines and costs. If the preponderance of the evidence demonstrates a Retaliation violation and there is no related wage theft complaint, the special magistrate may order the Employer to pay for the Assisting Party's expenses, including but not limited to, lost wages, expenses incurred in gaining alternative employment, and reasonable attorney's fees.

- (3) The special magistrate shall order the Employer to pay to the County an assessment of costs in an amount not to exceed actual administrative processing costs and costs of the hearing. Any assessment of costs shall not include payroll expenses or routine and recurring expenses that the County would otherwise incur in performing duties within the regular scope of its operations.
  - (4) If the special magistrate finds that a complaint was made by an Employee without any basis in law or fact, the special magistrate shall order the Employee to reimburse the County, within forty-five (45) calendar days, an amount not to exceed the actual administrative processing costs and costs of the hearing.
  - (5) The special magistrate may award reasonable attorney's fees to a prevailing party if the special magistrate finds that a claim or defense was raised without any basis in law or fact. No award of attorney's fees shall be awarded to a prevailing party in a successful action under this article against the County.
- (b) *Failure to Comply with Final Order.* If an Employer has failed to comply with the special magistrate's order within thirty (30) calendar days from the date of the order:
- (1) The PCOHR shall, upon request of the Employer, grant the Employer a one-time additional fourteen (14) calendar days to comply with any portion of the order.
  - (2) The Employer shall be liable for three (3) times the Wage Rate, as specified in the special magistrate's order.
  - (3) The County may 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
  - (4) The County may order the Employer, in addition to assessment of costs ordered, to pay to the Board of County Commissioners an 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.
  - (5) The PCOHR may post the name of the Employer and any pertinent information relating to the order on PCOHR's website.
  - (6) The County may deem the Employer as non-responsible, in any responses to solicitations for goods or services submitted by the Employer, in the best interests of the County.
  - (7) This section may be enforced in accordance with all legal remedies available to the County.
- (c) *Joint and Severable Liability.* In any order issued by the special magistrate, the special magistrate may specify two (2) 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.

- (d) *Cumulative Rights Preserved.* Nothing in this section 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.
- (e) In any subsequent enforcement proceedings authorized by this section, a court may award to the prevailing party all or part of the costs and attorney's fees incurred in obtaining the court order.
- (f) *Enforcement by Private Action or by the State of Florida.*
  - (1) *Enforcement by Private Action.* If during the pendency of a wage theft and/or Retaliation violation complaint process 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 or damages for Retaliation based upon the same or substantially the same facts and allegations as the Employee's complaint to the PCOHR, or affirmatively or by consent participates in any such litigation, that Employee's complaint of wage theft and/or Retaliation shall be dismissed with prejudice 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 an Employee's complaint.
  - (2) *Enforcement by the State of Florida.* If at any time during the pendency of a wage theft and/or Retaliation violation complaint process, the County becomes aware of an enforcement action by the Florida Attorney General or other body of the State of Florida based on wage theft or Retaliation violations involving the same or substantially the same facts as the Employee's complaint to the PCOHR, the complaint will be dismissed with prejudice.

(g) *Enforcement of Repeat Violations.*

The County is authorized, upon consulting with PCOHR, and has discretion independent of any action brought by an aggrieved Employee for relief under this article pursuant to Sec. 70-306, to initiate an independent proceeding and pursue any relief authorized under Sec. 1-8 of the Pinellas County Code against an Employer for Repeat Violations.

Sec. 70-309. - Appeals.

Any adverse decision may be appealed to a court of competent jurisdiction within thirty (30) calendar days from the date of the final order issued by the special magistrate.

**Section 2. Severability.**

In the event that any court having jurisdiction over any case arising under this Section determines that any subsection or other provision of this section is invalid for any reason, the remaining subsections or other provisions shall continue to be in full force and effect, and towards

that end the Board of County Commissioners declares this Section and its subsections and other provisions to be severable.

**Section 3.     Effective Date.**

Pursuant to Section 125.66(2), Florida Statutes, 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 upon filing of the Ordinance with the Department of State.

**Section 4.     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 the local government and shall be enforced by the local government while in effect.

**Section 5.     Codification.**

It is the intention of the Board of County Commissioners that the provisions of this Ordinance shall become and be made a part of the Pinellas County Code; and that the sections of this Ordinance may be renumbered or re-lettered, and the word “ordinance” may be changed to “section”, “article”, or such other appropriate word or phrase in order to accomplish such intentions.

**Section 6.     Amendment of Proposed Ordinance at Public Hearing.**

Any section, subsection, sentence, clause, phrase, or provision of this Ordinance as proposed 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, and in such event, the amendments, additions or deletions shall be validly adopted without additional advertisement or hearing.

APPROVED AS TO FORM

By:   
Office of the County Attorney

ORDINANCE NO. \_\_\_\_

AN ORDINANCE REPEALING CHAPTER 15, ARTICLE III, SECTIONS 15-40 THROUGH 15-47 OF THE CITY CODE, RELATING TO WAGE THEFT; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, on April 16, 2015, City Council enacted Chapter 15, Article III, Sections 15-40 through 15-47 of the City Code to address underpayment and nonpayment of wages by employers in the City; and

WHEREAS, on November 10, 2015, Pinellas County enacted Chapter 70, Article IV, Sections 70-301 through 70-309 of the Pinellas County Code to address underpayment and nonpayment of wages by employers in the County and amended these sections on January 22, 2019 and January 28, 2020; and

WHEREAS, Chapter 70, Article IV of the Pinellas County Code, as amended, is now substantially similar to Chapter 15, Article III of the St. Petersburg City Code; and

WHEREAS, Pinellas County has full responsibility for wage theft enforcement throughout the county including wage theft complaints in St. Petersburg; and

WHEREAS, St. Petersburg residents have the ability to file wage theft complaints with the Pinellas County Office of Human Rights, including through the County's website; and

WHEREAS, City Council finds that the existing provisions, regulations and enforcement pursuant to the Pinellas County Code and Pinellas County Office of Human Rights afford St. Petersburg residents the opportunity to address underpayment and nonpayment of wages by employers in the City.

THE CITY OF ST. PETERSBURG DOES ORDAIN:

SECTION 1. Chapter 15, Article III, Sections 15-40 through 15-47 of the St. Petersburg City Code are hereby repealed in their entirety and those sections are reserved for future use.

SECTION 2. In the event that this ordinance is not vetoed by the Mayor in accordance with the City Charter, it shall become effective after the fifth business day after adoption unless the Mayor notifies the City Council through written notice filed with the City Clerk that the Mayor will not veto the ordinance, in which case the ordinance shall take effect immediately upon filing such written notice with the City Clerk. In the event this ordinance is vetoed by the Mayor in accordance with the City Charter, it shall not become effective unless and until the City Council overrides the veto in accordance with the City Charter, in which case it shall become effective immediately upon a successful vote to override the veto.

Approved as to form and content:

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City Attorney (designee)  
00509701

**ARTICLE III. - WAGE THEFT**

Sec. 15-40. - Declaration of policy; legislative findings.

It is hereby found, determined and declared that:

- (a) The Research Institute on Social Policy at Florida International University recently issued two studies that document that wage theft is a significant problem in Florida and more specifically, St. Petersburg.
- (b) Eliminating the underpayment or nonpayment of wages earned by persons working in the City serves a public purpose by:
  - (1) Providing economic security for persons working in the City;
  - (2) 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
  - (3) Reducing the number of employees who rely on public assistance for essential needs because their employer does not pay or underpays earned wages.

(Ord. No. 161-H, § 1, 4-16-2015)

Sec. 15-41. - Definitions.

As used in this article the following terms shall have the meaning ascribed to them:

*Employ* shall mean to permit a person to work for wages.

*Employee or complainant employee* shall mean a natural person who performs work within the geographic boundaries of the City while being employed by an employer, but shall not include any bona fide independent contractor. "Employee" may also include a person who performs work that benefits an employer located within the City even though the employee may have performed work outside of the City.

*Employer or respondent employer* shall include any entity or person who, acting either 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. Employer includes a third-party labor provider, but such term does not include:

- (1) The United States or a corporation wholly owned by the government of the United States;
- (2) The State of Florida; or
- (3) The City of St. Petersburg.

*Hearing officer* shall mean an attorney who has been licensed to practice law in the State of Florida for a period of at least five years, and who the City determines, in its absolute discretion, is qualified to hear wage theft matters.

*Independent contractor* shall have the same meaning as in the Internal Revenue Code, Fair Labor Standards Act, and implementing federal regulations, administrative interpretations and guidance.

*Liquidated damages* shall mean twice the amount a respondent employer is found to have unlawfully failed to pay the complainant employee. Liquidated damages are awarded in addition to back wages in order to compensate for the economic losses suffered by reason of the employee not receiving the wage at the time it was due as well as to serve as a deterrent to employers.

*POD* means the person officially designated by the Mayor to perform the duties described in this article.

*Reasonable time* shall be presumed to be no later than 14 business 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.

*Threshold amount* shall mean \$60.00.

*Wage rate* shall mean any form of monetary compensation which the employee agreed to accept in exchange for performing work for the employer, whether a salary, daily or hourly wage, or by piece, and whether exempt or non-exempt from the Fair Labor Standards Act and other federal, state or local overtime laws. In all cases the wage rate shall be no less than the highest applicable rate established by operation of any federal, state or local law.

(Ord. No. 161-H, § 1, 4-16-2015; Ord. No. 251-H, § 1, 12-15-2016)

Sec. 15-42. - Wage theft violations.

An employer commits wage theft when the employer fails to pay wages, or a portion of wages, due to an employee according to the wage rate and other laws applicable to that employee within a reasonable time from the date on which that employee performed the work for which those wages were compensation. Upon a finding by a hearing officer that an employer failed to pay wages, or a portion of wages, such violation shall entitle an employee to receive back wages in addition to liquidated damages and reasonable costs and attorney's fees from that employer as stated in the hearing officer's order.

(Ord. No. 161-H, § 1, 4-16-2015)

Sec. 15-43. - Procedures for wage theft complaints.

(a) *Filing wage theft complaints.*

(1) The employee must file a written, signed complaint with the City Clerk. Any person or entity may assist the employee in filing his or her complaint.

(2) The POD will only process a complaint alleging a wage theft violation in which the unpaid wages are equal to no less than the threshold amount.

(3) A signed complaint for wage theft must be filed with the City Clerk no later than one calendar year after the date wages were due to be paid for work performed for a respondent employer. If the alleged wage theft violation is ongoing at the time of the filing of the complaint, the complaint may also seek recovery of amounts that accrue after the filing of the complaint.

(4) The complaint shall set forth the facts upon which it is based with sufficient specificity to identify the respondent employer or respondent employers, to determine that the threshold amount has been met, and to identify that an allegation of wage theft has been made.

(b) *Respondent employer.*

(1) Upon the filing of any complaint, the POD shall promptly determine whether the complaint alleges wage theft, names at least one respondent employer and meets the threshold amount. The duty of the City to determine whether a complaint meets these criteria is limited to receiving the complaint and comparing the information provided in the complaint to the required criteria. This determination is a ministerial act and may not be based on further investigation or the exercise of independent judgment.

(2) Upon making such determination, the POD shall serve the complaint and a written notice on the respondent employer, 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 hearing officer and that the respondent employer may be responsible for the costs of the hearing officer and other enforcement costs. Such service shall be by mail and is presumed served upon mailing unless all mail is returned.

(3) Each respondent employer shall file an answer to the complaint with the POD at the address specified in the notice not later than 21 days after service of the complaint and notice from the City. The POD may grant one extension, not to exceed 30 days, for good cause. If no extension is granted by the POD and the POD does not receive an answer to the complaint, the POD will proceed with the conciliation process. If the respondent employer pays the employee the underpayment before the conciliation process has commenced, the complaint will be dismissed upon verified proof of payment and acknowledgement by the employee.

(c) *Conciliation.*

(1) It is the policy of the City to encourage conciliation of complaints. After the complaint is filed, the POD will coordinate a conciliation process to attempt to resolve the complaint by agreement of both parties. If possible, a written conciliation agreement resolving the dispute between the complainant employee and the respondent employer shall be executed in lieu of referral of the matter to a hearing officer.

(2) A conciliation agreement arising out of such conciliation shall be a written agreement between the respondent employer and the complainant employee.

(3) 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.

(4) If conciliation fails, nothing said in the course of attempting conciliation under this article may be used as evidence in any subsequent proceeding under this article or otherwise without the written consent of the parties.

(5) If the POD determines that the conciliation process has been refused or has reached impasse, the POD will notify the parties and schedule a hearing before the hearing officer.

(d) *Hearing before hearing officer.*

(1) Within 15 days after the POD gives notice that the conciliation process has been refused or has reached impasse, any party may submit a written request for a hearing before a hearing officer.

(2) In conducting any hearing to determine whether a violation of this article has occurred, the hearing officer shall have the authority to administer oaths, issue subpoenas, compel the production of evidence and receive evidence. The hearing officer shall have the authority to consolidate two or more complaints into a single hearing where such complaints name the same respondent employer(s) and involve sufficiently similar allegations of fact to justify consolidation. The final determination of the hearing officer in wage theft matters is subject to appeal in a court of competent jurisdiction.

(3) Pre-hearing matters.

a. If a hearing officer is appointed, any party may request that a subpoena be issued by the hearing officer. Witnesses summoned by subpoena of the hearing officer shall be entitled to the same witness and mileage fees as are witnesses in proceedings in the County Court of Pinellas County, Florida. Fees payable to a witness summoned by subpoena issued at the request of a party shall be paid by the party at the time the subpoena is requested.

b. Within ten days after service of a subpoena upon any person, such person may petition the hearing officer to revoke or modify the subpoena. The hearing officer 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. In the case of refusal to obey a subpoena, the hearing officer or any party may seek enforcement of a subpoena issued under the authority of this article by filing a petition for enforcement in the County Court of Pinellas County, Florida.

d. In any enforcement proceedings authorized by this article, the court shall award to the prevailing party all or part of the costs and attorney's fees incurred in obtaining the court order, to the extent such award is authorized by the Florida Rules of Civil Procedure.

e. Discovery shall be permitted upon motion of any party and shall proceed in the manner provided by the Florida Rules of Civil Procedure.

f. The hearing officer 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.

g. The hearing officer may rule on a motion to dismiss the complaint for failure to state a cause of action under this article.

h. In any proceeding under this article, the burden of proof by a preponderance of the evidence rests upon the employee.

i. In any hearing before the hearing officer pursuant to this section, the respondent 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, and otherwise be heard. Testimony taken at the hearing shall be under oath and either party may pay the cost to have a transcript made. The City may, at its discretion, utilize a court reporter or electronic recording device to create a verbatim record. If the City chooses to use an electronic device, either party may elect to pay a court reporter to attend the hearing.

(4) Standards for resolving factual disputes.

Adequate records. When the following three conditions are met:

a. Where by operation of some other statute or regulation, a respondent employer has an obligation to keep records of an employee's hours worked and/or records of compensation provided to an employee; and

b. Where such records are imprecise, inadequate or do not exist; and

c. Where a complainant employee presents sufficient evidence to show, as a matter of reasonable inference, the amount of work done or the extent of work done or what compensation is due for the work done;

then the burden of persuasion falls on the respondent employer whose obligation it was to keep accurate records and the respondent 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 complainant employee's evidence. If the respondent employer fails to meet this burden, the hearing officer may award damages based on the complainant employee's evidence.

(5) Representation. Any person may be represented by counsel in any proceeding herein at that person's expense. Any party, including corporate entities, may authorize a non-lawyer advocate to appear on behalf of that party unless specifically disallowed by the hearing officer for good cause. The employee who asserts the claim must appear at the hearing in person.

(6) 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 article or by rules, regulations, or orders adopted pursuant to this article.

b. All papers or pleadings required by this article to be served may be served by certified mail or in accordance with Rule 1.080, Florida Rules of Civil Procedure.

(Ord. No. 161-H, § 1, 4-16-2015)

Sec. 15-44. - Written notice provided to employees at time of hiring; contents; notification of changes to information.

(a) At the time of hiring, an employer shall provide to each employee a written notice, to be signed and dated by the employer and employee, containing the following information:

- (1) The rate or rates of pay and basis thereof, whether paid by the hour, shift, day, week, salary, piece, commission, or otherwise, including any rates for overtime, as applicable;
  - (2) Allowances, if any, claimed as part of the minimum wage, including meal or lodging allowances;
  - (3) The regular payday designated by the employer;
  - (4) The name of the employer, including any "doing business as" names used by the employer;
  - (5) The physical address of the employer's main office or principal place of business, and a mailing address, if different;
  - (6) The employer's telephone number; and
  - (7) A template summary, available from the City, summarizing the protections and rights of employees pursuant to this article.
- (b) An employer must retain, for a period of three years following an employee's date of hire, a copy of the signed and dated written notice required by subsection (a).
- (c) In addition to providing the written notice required by subsection (a), employers must place in a location accessible to all employees a poster, available from the City, summarizing the protections and rights of employees pursuant to this article.
- (d) An employer shall notify his or her employees in writing of any changes to the information set forth in the notice required by subsection (a) within seven calendar days after the time of the changes.
- (e) An employer's failure to adhere to any part of this section shall be a municipal ordinance violation not to exceed \$500.00 per violation.

(Ord. No. 251-H, § 2, 12-15-2016)

Editor's note— Ord. No. 251-H, §§ 3, 4, adopted December 15, 2016, renumbered §§ 15-44—15-46 as 15-45—15-47.

Sec. 15-45. - Enforcement of wage theft violations.

(a) At the conclusion of a hearing and upon a finding of no violation, the hearing officer shall issue a written order to that effect.

(b) At the conclusion of a hearing and upon a finding of a wage theft violation, the hearing officer shall issue a written order that orders the employer within 45 days of the date of the order:

(1) To pay to the affected employee an amount equal to the amount of back wages that the respondent employer is found to have unlawfully failed to pay to the employee, liquidated damages, and reasonable attorney's fees and costs of pursuing the wage theft violation as determined by the hearing officer.

(2) To pay the City the administrative costs of processing the claim and all the costs of the hearing.

(c) Joint and several liability. In any order issued by the hearing officer, the order may specify two or more respondent employers as jointly and severally liable for any amount payable to the complainant employee or the City or both; however, the total amount the complainant employee or the City may receive from jointly and severally liable respondent employers shall not exceed the total amount for which respondent employers are jointly and severally liable.

(d) Cumulative rights preserved. Nothing in this article 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 or the City's enforcement actions; such cumulative rights, which shall be unaffected by the provisions of this article unless they are made the subject of a complaint or the City's enforcement action, shall include, but shall not be limited to, rights related to the violation of overtime, minimum wage, living wage, prevailing wage, or equal pay laws.

(e) Enforcement by private persons.

(1) If prior to filing a complaint under this article or during the pendency of such a complaint but prior to the issuance of a final decision by a hearing officer, a complainant employee brings a private action in his or her 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 filed with the City, or affirmatively or by consent opts to participate 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.

(2) Within 15 days of becoming aware of any private action described herein, the POD shall notify the employee and any employer subject to the private action in writing of this provision and its effect on the complaint. Within 30 days of the issuance of such notice, the POD will dismiss the complaint, with prejudice, only with respect to the employer or employers who are named as a defendant to the private action. The City will notify the employee and any employer of such dismissal in writing.

(Ord. No. 161-H, § 1, 4-16-2015; Ord. No. 251-H, § 3, 12-15-2016)

Former § 15-44, see editor's note § 15-44.

Sec. 15-46. - Retaliation prohibited.

(a) Employers are prohibited from threatening, intimidating, or taking other adverse action against any employee or person because the employee or person has:

- (1) Made a complaint to his or her employer that the employer has engaged in conduct that the employee, reasonably and in good faith, believes violates any provision of this article;
- (2) Initiated a proceeding under this article;
- (3) Provided information to the POD or any other person regarding a violation, investigation, or proceeding under this article;
- (4) Testified in an investigation or proceeding under this article; or
- (5) Otherwise exercised rights protected under 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 article, the employee is entitled to receive quantifiable wages and liquidated damages.

(c) An employee complaint or other communication need not make explicit reference to this article or to any other provision of law to trigger the protections of this article. The employer, or any person acting on behalf of the employer, taking adverse action against an employee within 90 days of an employee or other person's engagement in the activities set forth in subsection (a) of this section shall raise a presumption that such action is retaliation, which may be rebutted by clear and convincing evidence that such action was taken for other permissible reasons.

(d) 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 City shall order any employer who has been found to have violated the retaliation prohibition to pay to the City the actual administrative processing costs and costs of the hearing, regardless of the findings on any related wage theft claim.

(Ord. No. 161-H, § 1, 4-16-2015; Ord. No. 251-H, § 4, 12-15-2016)

Former § 15-45, see editor's note § 15-44.

Sec. 15-47. - Community engagement and proactive investigation.

(a) It is the policy of the City to engage community-based organizations to implement the purposes of this article. The POD may coordinate implementation of City-funded community outreach efforts, including developing appropriate guidelines or rules, and contracting with community-based organizations to provide such services. Contracted services may include, but are not limited to, educating employers regarding their obligations under this article, assisting employers with compliance, educating employees on their rights assisting employees who wish

to file complaints, and assisting employees who wish to record as a lien or otherwise pursue enforcement of any order issued by a hearing officer.

(b) The POD is authorized to direct proactive investigations of designated industries or employers in response to reports of alleged violations of this article from employees, residents, organizations, or employers.

(Ord. No. 161-H, § 1, 4-16-2015; Ord. No. 251-H, § 4, 12-15-2016)

Former § 15-46, see editor's note § 15-44.