

ORDINANCE NO. _____

An ordinance amending Article 8 of Chapter XVIII of the Los Angeles to adjust enforcement measures pursuant to the addition of sick time benefits and various procedural changes.

**THE PEOPLE OF THE CITY OF LOS ANGELES
DO ORDAIN AS FOLLOWS:**

Section 1. Article 8 of Chapter XVIII of the Los Angeles Municipal Code is amended in its entirety to read as follows:

ARTICLE 8

**LOS ANGELES OFFICE OF
WAGE STANDARDS ORDINANCE**

SEC. 188.00. TITLE AND PURPOSE.

This article shall be known as the “Los Angeles Office of Wage Standards Ordinance.” Wage theft occurs when employees are not paid the wages they are owed by their employers. Studies have concluded that employees in Los Angeles are disproportionately affected by the crime of wage theft in the State of California. This ordinance creates a new Office of Wage Standards within the Bureau of Contract Administration of the Department of Public Works, to enforce violations of wage theft in Los Angeles, establish penalties and grant authority to the City of Los Angeles Police Commission to deny, revoke or suspend a police permit issued or requested by an employer found to have committed wage theft. By investigating complaints and holding employers accountable for the sick time benefits afforded to employees and wages employers owe employees, and by revoking, suspending or denying a police permit to any noncompliant employer, the City will communicate to employers that wage theft will not be tolerated in Los Angeles. Holding employers accountable further serves as a deterrent to future actions by employers who otherwise would violate California wage and labor provisions within the City’s boundaries. Moreover, imposing penalties and administrative fines for violations of the Los Angeles Minimum Wage Ordinance and the requirements of this article will also serve as a deterrent to employers who choose not to follow the law. The importance of correctly paying wages due and providing sick time to an employee is one of the highest mandates for the welfare of employees working in the City.

SEC. 188.01. AUTHORITY.

This article is adopted pursuant to the powers vested in the City of Los Angeles under the laws and Constitution of the State of California and the City Charter, including but not limited to, the police powers vested in the City pursuant to Article XI, Section 7 of the California Constitution and Section 1205(b) of the California Labor Law to ensure

compliance with the Los Angeles Minimum Wage law, Los Angeles Municipal Code Section 187.00, et seq.

SEC. 188.02. DEFINITIONS.

As used in this article, the following capitalized terms shall have the following meanings:

“Division” shall mean the Office of Wage Standards of the Bureau of Contract Administration within the Department of Public Works.

“City of Los Angeles Police Commission” is defined in Los Angeles Municipal Code Section 103.01.

“City” shall mean the City of Los Angeles.

“Employee” is defined in Los Angeles Municipal Code Section 187.01.C.

“Employer” shall mean any person, as defined in Section 18 of the California Labor Code, including a corporate officer or executive, who directly or indirectly or through an agent or any other person, including through the services of a temporary services or staffing agency or similar entity, employs or exercises control over the wages, hours or working conditions of any Employee.

“Los Angeles Minimum Wage” means a minimum wage adopted by the Los Angeles City Council pursuant to Los Angeles Municipal Code Section 187.00, et seq.

“Police Permit” means any permit identified in Los Angeles Municipal Code Section 103.12.

“Sick Time Benefits” is defined in Los Angeles Municipal Code Section 187.04.

SEC. 188.03. POSTINGS AND PAYROLL RECORDS.

A. Every Employer shall post in a conspicuous place at any workplace or job site where any Employee works, the notice published each year by the Division informing Employees of the current Los Angeles Minimum Wage rate, Sick Time Benefits and of their rights under this article. Every Employer shall post notices in English, Spanish, Chinese (Cantonese and Mandarin), Hindi, Vietnamese, Tagalog, Korean, Japanese, Thai, Armenian, Russian and Farsi, and any other language spoken by at least five percent of the Employees at the workplace or job site. Every Employer also shall provide each Employee at the time this article becomes effective or at the time of hire, whichever is later, the Employer’s name, address, and telephone number in

writing. If the information the Employer provided to the Employee changes, the Employer shall provide the updated information in writing within ten days of the change.

B. Every Employer shall retain payroll records pertaining to Employees for a period of four years, and shall allow the Division access to such records, with appropriate notice and during business hours, to monitor compliance with the requirements of this article.

C. The head of the Division or his or her designee shall have access to all business sites and places of labor subject to this ordinance during business hours to inspect books and records, interview employees and any other relevant witnesses, and investigate such matters necessary or appropriate to determine whether an Employer has violated any provisions of this article.

SEC. 188.04. RETALIATION PROHIBITED.

It shall be unlawful for an Employer or any other party to discriminate in any manner or take adverse action against any Employee in retaliation for exercising rights protected under this article. Rights protected under this article include, but are not limited to: the right to file a complaint or inform any person about any party's alleged noncompliance with this article; and the right to inform any person of his or her potential rights under this article and to assist him or her in asserting such rights. Protections of this article shall apply to any Employee who mistakenly, but in good faith, alleges noncompliance with this article. Taking adverse action against an Employee within 90 days of the Employee's exercise of rights protected under this article shall raise a rebuttable presumption of having done so in retaliation for the exercise of such rights.

SEC. 188.05. ENFORCEMENT.

A. **Reporting Violations.** An Employee or any other person may report to the Division any suspected violation of the Los Angeles Minimum Wage, Sick Time Benefits or this article. The Division shall encourage reporting pursuant to this article by keeping confidential, to the maximum extent permitted by applicable laws, the name and other identifying information of the Employee or person reporting the violation. With the authorization of the Employee or person reporting a violation, the Division may disclose his or her name and identifying information as necessary to enforce this article or for other appropriate purposes.

B. **Investigation.** The Division shall be responsible for investigating possible violations of the Los Angeles Minimum Wage, Sick Time Benefits or this article by an Employer or other person. The Employer shall cooperate fully in any investigation by the Division. The Division shall have access to all business sites and places of labor subject to this ordinance during business hours to inspect books and records, interview employees and any other relevant witnesses, investigate such matters necessary or appropriate and request the Board of Public Works to issue a subpoena for books, papers, records, or other items relevant to the enforcement of this article. The

Employer is required to provide to the Division its legal name, address, and telephone number in writing.

SEC. 188.06. NOTICE OF CORRECTION.

A. **Issuance of Notice of Correction.** After an investigation, if the Division makes a determination that an Employer has violated the Los Angeles Minimum Wage, Sick Time Benefits or this article, the Division shall issue a written Notice of Correction to the Employer.

B. **Service of Notice.** Service of a Notice of Correction shall be accomplished as follows:

1. The Division or its designee may obtain the signature of the Employer to establish personal service of the Notice of Correction; or

2. The Division or its designee may accomplish substitute service by mailing the Notice of Correction by certified mail to the Employer's address as provided in Section 188.03.A.

C. **Contents of Notice of Correction.** The Notice of Correction shall require the Employer to take corrective action by the date specified and shall include all the following:

1. A description of the violation(s);

2. The date and location of the violation(s);

3. A citation to the provisions of law violated;

4. A description of corrective action required, including reinstatement of employment for retaliation violations;

5. A statement explaining that each day of a continuing violation may constitute a new and separate violation;

6. The amount of wages or Sick Time Benefits due and the amount of penalties and administrative fines imposed for the violation(s);

7. A statement informing the Employer that the wages, Sick Time Benefits, penalties and administrative fines shall be paid to the City of Los Angeles (or alternatively, to the Employee, if appropriate) within 30 days from the date on the Notice of Correction, the procedure for payment, and the consequences of failure to pay;

8. A description of the process for appealing the Notice of Correction, including the deadline for filing such an appeal; and

9. The name and signature of the head of the Division or his or her designee.

D. Posting of Notice of Correction. Employer must, within 24 hours after receipt of a Notice of Correction, post the Notice of Correction by affixing the notice to a surface in a conspicuous place on property that is (1) the Employer's principal place of business in the City; (2) if the Employer's principal place of business is outside the City, the fixed location within the City from or at which the Employer conducts business in the City; or (3) if the Employer does not regularly conduct business from a fixed location in the City, one of the following: (i) the location where the Employer maintains payroll records if the Notice of Correction is for violation of Section 188.03.B; or (ii) the jobsite or other primary location where the Employees perform services in the City.

E. Settlement. The head of the Division or his or her designee may convene an informal meeting with the Employer to resolve the corrective action sought in the Notice of Correction. The compliance period in Section 188.06 C and the accrual of penalties and administrative fines may be temporarily suspended during settlement discussions. If after meeting the corrective actions are not resolved, the Division may issue a new compliance date to the Employer and reinstate the accrual of penalties and administrative fines.

SEC. 188.07. EMPLOYEE REMEDIES FOR VIOLATIONS.

A. Restitution and Penalties. Every Employer who violates this article, or any portion thereof, shall be liable to the Employee whose rights were violated for any and all relief, including, but not limited to, the payment to each Employee of wages unlawfully withheld, Sick Time Benefits unlawfully withheld and an additional penalty of up to \$120 per day that each of the violations occurred or continued. A violation for unlawfully withholding wages or Sick Time Benefits shall be deemed to continue from the date immediately following the date that the wages or Sick Time Benefits were due and payable as provided in Part 1 (commencing with Section 200) of Division 2 of the California Labor Code, to the date immediately preceding the date the wages or Sick Time Benefits are paid in full. For retaliatory action by the Employer, the Employee shall be entitled to reinstatement and a trebling of all wages, Sick Time Benefits and penalties owed.

B. Civil Enforcement. Any Employee aggrieved by a violation of this article, the City Attorney or any other person or entity acting on behalf of the public as provided for under applicable state law, may bring a civil action in a court of competent jurisdiction against the Employer violating this article. An Employee or the City, upon prevailing, shall be entitled to such legal or equitable relief as may be appropriate to remedy the violation, including, without limitation, the payment of any wages unlawfully withheld, Sick Time Benefits unlawfully withheld, the payment of penalties in the amount

of up to \$120 to each Employee whose rights under this article were violated for each day that either violation occurred or continued, reinstatement in employment and/or injunctive relief, and shall be awarded reasonable attorneys' fees and costs. Any other person or entity enforcing this article on behalf of the public as provided for under applicable state law, upon prevailing, shall be entitled only to equitable, injunctive and/or restitutionary relief, and reasonable attorneys' fees and costs. Nothing in this article shall be interpreted as restricting, precluding, or otherwise limiting a separate or concurrent criminal prosecution under the Municipal Code or state law. Jeopardy shall not attach as a result of any administrative or civil enforcement action taken pursuant to this article.

SEC. 188.08. ADMINISTRATIVE FINES AND PENALTIES FOR VIOLATIONS.

A. **Penalties.** Every Employer who violates this article, or any portion thereof, shall be liable to the City for a penalty of up to \$50 per day that either wages or Sick Time Benefits were unlawfully withheld from an Employee. A violation for unlawfully withholding wages or Sick Time Benefits shall be deemed to continue from the date immediately following the date that the wages were due and payable as provided in Part 1 (commencing with Section 200) of Division 2 of the California Labor Code, to the date immediately preceding the date the wages are paid in full.

B. **Administrative Fines.** An administrative fine payable to the City may be assessed for a violation of any provision of this article as specified below. The administrative fine may be assessed by means of a Notice of Correction issued to the Employer by the Division.

VIOLATION AND FINE AMOUNT

Failure to post notice of the Los Angeles Minimum Wage rate and Sick Time Benefits – Municipal Code Section 188.03.A.	Up to \$500
Failure to allow access to payroll records – Municipal Code Section 188.03.B.	Up to \$500
Failure to maintain payroll records or to retain payroll records for four years – Municipal Code Section 188.03.B.	Up to \$500
Failure to allow access for inspection of books and records or to interview employees – Municipal Code Section 188.03.C.	Up to \$500
Retaliation for exercising rights under this article – Municipal Code Section 188.04 – The Penalty for retaliation is up to \$1,000 per employee.	Up to \$1000
Failure to provide employer’s name, address, and telephone number in writing – Municipal Code Sections 188.03.A or 188.05.B.	Up to \$500
Failure to cooperate with the Division’s investigation – Municipal Code Section 188.05.B.	Up to \$500
Failure to post Notice of Correction to employees – Municipal Code Section 188.06.D.	Up to \$500

C. **Calculation of Administrative Fines.** Each and every day that a violation exists constitutes a separate and distinct violation. Any administrative fine

assessed within a three-year period in any Notice of Correction and determined to be a subsequent violation of the same provision by the same Employer may be increased cumulatively by 50 percent from the maximum administrative fine allowed.

D. Payments to City; Due Date; Late Payment Penalty. Administrative fines and City penalties shall be payable to the City of Los Angeles and due within 30 days from the date of the Notice of Correction. The failure of any Employer to pay an administrative fine or City penalty within 30 days may result in the assessment of an additional late fee. The amount of the additional late fee shall be ten percent of the total amount of the administrative fine or City penalty assessed for each month the amounts are unpaid, compounded to include already accrued late administrative fines and City penalties that remain unpaid.

E. Penalties and Fines under Section 188.07 and 188.08. The Division shall base its imposition of penalties and administrative fines for non-compliance with the city's laws after considering factors, including but not limited to: 1) the extent of harm caused by the violation; 2) the nature and persistence of the violation; 3) the length of time over which the violation occurs; 4) the frequency of past violations; 5) any action taken to mitigate the violation; and 6) the financial burden to the Employer.

SEC. 188.09. ADDITIONAL REMEDIES.

The City, when enforcing on behalf of an Employee, has the authority to require that payment of wages, Sick Time Benefits and/or penalties found to be due and owing to the Employee, be paid directly to the City for disbursement to the Employee. The City, when enforcing on the behalf of an Employee, has the authority to require that payment of all amounts due under this article be paid directly to the City. The failure of an Employer to pay any amounts due under this article shall constitute a debt to the City. The City, as plaintiff and/or judgment creditor, may file a civil action on behalf of an Employee and/or the City or, to the extent feasible under state law, create and impose a lien against any property owned or operated by an Employer or other person who fails to pay wages, penalties and administrative fines assessed by the Division, or pursue other legal and equitable remedies available to the City. The City shall be awarded reasonable attorney's fees and costs associated with pursuing a violation under this article.

The remedies, penalties and procedures provided under this article are cumulative and are not intended to be exclusive of any other available remedies, penalties and procedures. The City shall study and review the feasibility of enacting additional measures consistent with state law to enhance the Division's enforcement tools, including, but not limited to, pursuing a memorandum of understanding or referral process to the Chief of Division of Labor Standards Enforcement for the recordation of a certificate of lien on behalf of an Employee, pursuant to California Labor Code Section 98.2(g), for amounts due under this article.

SEC. 188.10. ADMINISTRATIVE APPEAL.

A. **Deadline for Appeal.** An Employer who receives a Notice of Correction may file with the Division a notice of appeal within 15 days from the last compliance date specified as part of the Notice of Correction. In order to be considered timely, the appeal must be postmarked on or actually received by the Division by the 15th day following the service of the Notice of Correction. The appeal must be in writing and must indicate a return address. The appeal must be filed with the Division and must specify in detail the basis for the appeal.

B. **Hearing Date.** As soon as practicable after receiving the written notice of appeal, the head of the Division or his or her designee shall promptly select a hearing officer to hear and decide the administrative appeal. The hearing officer shall fix a date, time and place for the hearing on the appeal. Written notice of the time and place for the hearing shall be served by First Class mail, at the return address indicated on the written appeal. Service of the notice of hearing on the Employer must be made at least ten days prior to the date of the hearing. The hearing shall be held no later than 30 days after service of the notice of hearing, unless that time is extended by mutual agreement.

C. **Notice of Hearing.** Except as otherwise provided by law, the failure of the Employer or any other person affected by the Notice of Correction to receive a properly addressed notice of the hearing shall not affect the validity of any proceedings under this article. Service by First Class mail, postage prepaid, shall be effective on the date of mailing.

D. **Stay of Enforcement.** If penalties and administrative fines payable to the City are the subject of administrative appeal or judicial review, then accrual of such penalties and administrative fines shall be stayed until the determination of such appeal or review is final. The payment of the contested amount of wages, Sick Time Benefits and penalties owed to the Employee during the pendency of any appeal shall be stayed, but shall continue to accrue until a determination of such appeal is final.

E. **Failure to Appeal.** Failure of an Employer to file an appeal in accordance with the provisions of this section or to appear at the hearing shall constitute a failure to exhaust administrative remedies. The Notice of Correction shall become final and enforceable as a Wage Enforcement Order.

F. **Submittals for the Hearing.** No later than five days prior to the hearing, the Employer and the Division shall submit to the hearing officer, with simultaneous service by First Class mail on the opposing party, written information, including, but not limited to, the following: the statement of issues to be determined by the hearing officer and a statement of the evidence to be offered and the witnesses to be presented at the hearing.

G. Conduct of Hearing. The hearing officer shall conduct all appeal hearings under this article. The Division shall have the burden of proof by a preponderance of the evidence in each hearing. The hearing officer may accept evidence on which persons would commonly rely in the conduct of their business affairs, including, but not limited to, the following:

1. A Notice of Correction shall be prima facie evidence of the violation(s) specified therein, and those continuing through the date of the hearing;
2. The hearing officer may accept evidence and oral and written testimony under penalty of perjury relating to the violation(s) and the appropriate means of correcting the violation(s);

The hearing shall be open to the public and shall be tape-recorded. Any party to the hearing may, at his or her own expense, cause the hearing to be recorded and transcribed by a certified court reporter. The hearing officer may continue the hearing and request additional information from the Division, Employer or Employee prior to issuing a written decision.

H. Hearing Officer's Findings and Determinations. Within 15 days after the conclusion of the hearing, the hearing officer shall make findings based on the record of the hearing. The hearing officer may uphold or reject the violation(s) referenced in the Notice of Correction in whole or in part. The hearing officer also may uphold the Notice of Correction but reduce, waive or conditionally reduce or waive the penalties and administrative fines stated therein if mitigating circumstances are shown and the hearing officer finds specific grounds for reduction or waiver in the evidence presented at the hearing. The hearing officer may impose penalties for any additional violations occurring during the pendency of the appeal. The hearing officer may impose conditions and deadlines for the correction of violations or the payment of outstanding wages, Sick Time Benefits, penalties and administrative fines.

I. Wage Enforcement Order. The hearing officer's findings pursuant to Section 188.10.H shall constitute the Wage Enforcement Order, which shall be issued by the hearing officer. The Wage Enforcement Order shall specify the amount of wages, Sick Time Benefits, penalties and administrative fines, if any, owed by the Employer. The Wage Enforcement Order shall be final and shall be served on the Employer, Employee and Division by certified mail. Pursuant to California Code of Civil Procedure Section 1094.5, the Wage Enforcement Order shall be subject to judicial review in the appropriate superior court.

SEC. 188.11. OTHER REMEDIES NOT AFFECTED.

The administrative enforcement procedures established in this article shall be in addition to any other criminal, civil or other remedy established by law which may be pursued to address violations of this article. A Notice of Correction or Wage

Enforcement Order issued pursuant to this article shall not prejudice or adversely affect any other action, civil or criminal, that may be brought to prosecute or abate a violation or to seek compensation for damages suffered.

SEC. 188.12. OUTREACH.

The Division shall establish a community-based outreach program to conduct education and outreach to Employers and Employees. In partnership with organizations involved in the community-based outreach program, the Division shall create outreach materials that are designed for Employers and Employees in particular industries.

SEC. 188.13. REGULATIONS.

The Division may promulgate and enforce rules and regulations, and issue determinations and interpretations relating to this article. Any rules and regulations promulgated by the Division shall have the force and effect of law, and may be relied upon by Employers, Employees and other parties to determine their rights and responsibilities under this article.

SEC. 188.14. REPORTS.

The Division shall provide annual reports to the City Council on the implementation of the Los Angeles Office of Wage Standards Ordinance.

SEC. 188.15. SEVERABILITY.

If any subsection, sentence, clause or phrase of this article is for any reason held to be invalid or unconstitutional by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this ordinance. The City Council hereby declares that it would have adopted this section, and each and every subsection, sentence, clause and phrase thereof not declared invalid or unconstitutional, without regard to whether any portion of the ordinance would be subsequently declared invalid or unconstitutional.

Sec. 2. URGENCY CLAUSE. The City Council finds and declares that this ordinance is required for the immediate protection of public peace, health and safety for the following reason: Many employers do not provide sick time benefits to their employees. Moreover, many employees report to work sick for fear of losing their employment or because they cannot afford the lost wages. In order for the City of Los Angeles to protect the health of its residents and workers, sick time benefits must be provided to those who work in the City and the amendments to the Los Angeles Municipal Code as reflected in this ordinance must become effective as soon as possible. For all these reasons, the ordinance shall become effective upon publication pursuant to Los Angeles Charter Section 253.

Sec. 3. The City Clerk shall certify to the passage of this ordinance and have it published in accordance with Council policy, either in a daily newspaper circulated in the City of Los Angeles or by posting for ten days in three public places in the City of Los Angeles: one copy on the bulletin board located at the Main Street entrance to the Los Angeles City Hall; one copy on the bulletin board located at the Main Street entrance to the Los Angeles City Hall East; and one copy on the bulletin board located at the Temple Street entrance to the Los Angeles County Hall of Records.

I hereby certify that this ordinance was passed by the Council of the City of Los Angeles, **by a vote of not less than three-fourths** of all its members, at its meeting of _____.

HOLLY L. WOLCOTT, City Clerk

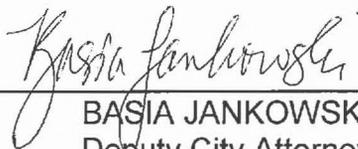
By _____ Deputy

Approved _____

Mayor

Approved as to Form and Legality

MICHAEL N. FEUER, City Attorney

By  _____
BASIA JANKOWSKI
Deputy City Attorney

Date May 20, 2016

File No. _____