

# Memorandum



CITY OF DALLAS

DATE January 23, 2015

TO Honorable Members of the Quality of Life & Environment Committee: Dwaine R. Caraway (Chair)  
Sandy Greyson (Vice Chair), Adam Medrano, Rick Callahan, Carolyn R. Davis, Lee M. Kleinman

SUBJECT Rest Break Ordinance Update

On City Council discussed a Rest Break Ordinance on November 12, 2014. Council directed staff to take the topic to both the Economic Development committee and the Quality of Life & Environment committee in order to prepare an ordinance to present to City Council for consideration.

On December 1, 2014, staff updated members of the two committees on the status of the rest break ordinance: staff met separately with both representatives from Texas Workers Defense Project and the construction industry, and arranged for the two parties to meet together to find a solution for Dallas. At that time, staff reported that the meetings were productive; however, a consensus had not been reached. Since then, the two sides have not been able to reach a compromise.

Attached are questions that arose throughout the discussion of this topic.

A handwritten signature in black ink, appearing to read 'Ry - S' followed by a long horizontal line.

Ryan S. Evans  
First Assistant City Manager

## Attachment

c: Honorable Mayor and Members of the City Council  
A.C. Gonzalez, City Manager  
Warren M.S. Ernst, City Attorney  
Craig D. Kinton, City Auditor  
Rosa A. Rios, City Secretary  
Daniel F. Solis, Administrative Judge  
Eric D. Campbell, Assistant City Manager

Jill A. Jordan, P.E., Assistant City Manager  
Mark McDaniel, Assistant City Manager  
Joey Zapata, Assistant City Manager  
Jeanne Chipperfield, Chief Financial Officer  
Forest E. Turner, Chief Wellness Officer  
Sana Syed, Public Information Officer  
Elsa Cantu, Assistant to the City Manager – Mayor & Council

**QUESTION 1:** Who regulates health issues?

**ANSWER 1:** OSHA regulates workplace health standards.

**QUESTION 2:** Which federal agency is in charge of worker safety?

**ANSWER 2:** OSHA, Occupational Safety and Health Administration, which is part of the United States Department of Labor. There are ten OSHA regions in the U.S. Texas is located in Region 6.

**QUESTION 3:** How would OSHA and City of Dallas intersect?

**ANSWER 3:** OSHA requires that water be provided at construction sites when working in hot environments. OSHA does not have firm requirements regarding rest breaks. OSHA simply recommends that workers should take adequate breaks when working in the heat. The City of Dallas may choose to notify OSHA of complaints received, and recommend that construction workers call OSHA to file complaints.

**QUESTION 4:** What will be the cost of the ordinance, if passed?

**ANSWER 4:** If passed, the City of Dallas would need at least one FTE at an average salary of \$50,000. Each violation of the ordinance could potentially cost industry \$100 to \$500 per day of violation.

**QUESTION 5:** Does this ordinance mean that employees have to take a break?

**ANSWER 5:** No. However, if an employee asks for a break, an employer cannot deny that request.

**QUESTION 6:** Does this ordinance mean that the employers have to give employees breaks at specific times?

**ANSWER 6:** No. The recommendation is for employees to be able to take a 10-15 minute break within 3.5 hours of a scheduled 4 hour work shift.

**QUESTION 7:** Does the construction industry support the requirements of the ordinance?

**ANSWER 7:** No. Staff met with industry representatives and no consensus was reached.

**QUESTION 8:** How many other cities have similar ordinances?

**ANSWER 8:** In Texas, Austin is the only city that has an ordinance.

**QUESTION 9:** What has been the City of Austin's experience since passing their ordinance?

**ANSWER 9:** A total of 70-80 sites were investigated in Austin. Forty-six notices of violations and 0 citations have been issued. All sites came into compliance after the notice was given.

**QUESTION 10:** How many heat related deaths have occurred in Dallas?

**ANSWER 10:** Dallas County tracks all heat related illnesses and deaths. This past year, no deaths were reported. However, there were 229 heat related illnesses. Dallas County does not differentiate whether the person was a construction worker or not. In the state of Texas, between 2008 and 2014, there were 16 heat related deaths, 8 of which were construction workers. No deaths were reported from the DFW region. 2 deaths were from highway construction workers, which is outside the jurisdiction of the City of Dallas.

# Memorandum

RECEIVED

2015 JAN 23 PM 4: 09

CITY SECRETARY  
DALLAS, TEXAS



CITY OF DALLAS

DATE 01/23/2015

TO Quality of Life Committee Members

SUBJECT **Revised Rest Break Ordinance**

Councilmembers,

Enclosed please find the draft version of the Rest Break Ordinance prepared by the Worker's Defense Project. A motion will be made on Monday, January 26<sup>th</sup>, 2015, to move forward with this version. We recommend that this item go before full council for a vote.

Thank you for your attention to this matter.

Sandy Greyson  
Sandy Greyson, Councilmember *N.K.*

Adam Medrano  
Adam Medrano, Councilmember

c: A.C. Gonzalez, City Manager  
Warren M.S. Ernst, City Attorney  
Craig D. Kinton, City Auditor  
Rosa A. Rios, City Secretary  
Daniel F. Solis, Administrative Judge  
Ryan S. Evans, First Assistant City Manager  
Eric D. Campbell, Assistant City Manager

Jill A. Jordan, P.E., Assistant City Manager  
Mark McDaniel, Assistant City Manager  
Joey Zapata, Assistant City Manager  
Jeanne Chipperfield, Chief Financial Officer  
Sana Syed, Public Information Officer  
Elsa Cantu, Assistant to the City Manager – Mayor & Council

An ordinance amending CHAPTER \_\_, " \_\_\_\_\_," of the Dallas City Code, as amended; defining terms: establishing requirements, procedures, penalties, and remedies for working conditions on construction sites; requiring rest breaks for every four hours of work; providing for signs explaining rest break requirements on construction sites; providing a criminal penalty of a class C misdemeanor; providing a penalty not to exceed \$500; providing a saving clause; providing a severability clause; and providing an effective date.

WHEREAS, the Occupational Health and Safety Commission recommends a work/rest cycle to prevent heat-related illness; and

WHEREAS, the city has heard testimony on the negative health effects of workers who do not receive rest breaks on construction sites, not allowing them needed rest and water; and

WHEREAS, the average number of days in the city with one hundred degrees or more is eighteen days; and

WHEREAS, the Occupational Health and Safety Commission, under 29 CFR 1926.51, requires that drinking water be available and toilets be accessible on or near a work site; and

WHEREAS, the Occupational Health and Safety Commission recommends a rest area be in full shade; and

WHEREAS, the Centers for Disease Control recommends scheduling and encouraging frequent rest and water breaks to prevent heat stress; and

WHEREAS, the city has an interest in the health and safety of the workers in the city; Now, Therefore,

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF DALLAS:

SECTION 1: That Chapter \_\_, " \_\_\_\_\_," of the Dallas City Code, as amended, is amended to read as follows:

CHAPTER \_\_ “ \_\_\_\_\_ ”

ARTICLE I.

GENERAL.

**SEC. \_\_. PURPOSE.**

The purpose of this chapter is to protect workers on construction sites from heat-related illnesses caused by a lack of adequate rest breaks and water on the site.

**SEC. \_\_. DEFINITIONS.**

In this chapter:

(1) CONSTRUCTION SITE means a site or structure for which a building permit or site plan has been approved or issued under Chapter 51, the Dallas Land Development Code, for an existing or proposed use.

(2) CONSTRUCTION ACTIVITY means all work associated with construction, including but not limited to work involving the alteration, demolition, building, excavation, maintenance, and renovation of structures or sites.

(3) DEPARTMENT means the Sustainable Development and Construction Department of the City of Dallas.

(4) WORKER means any individuals completing Construction Activities, whether on a contract basis or as employees, for any Prime Contractor or Subcontractor.

(5) PRIME CONTRACTOR means an individual, firm, partnership, owner operator, corporation, or combination thereof, including joint ventures, which is an independent business enterprise and has entered into a contract or agreement with respect to performance of any Construction Activity.

(6) SUBCONTRACTOR means an individual firm, partnership, owner operator, corporation, or combination thereof, including joint ventures, which is an independent business enterprise and has entered into a contract or agreement with a Prime Contractor or another Subcontractor with respect to the performance of any Construction Activity.

(7) ESTABLISHMENT means a single physical location to which workers report each day.

(8) HOURS WORKED means the time during which a worker is subject to the control of a Prime Contractor or Subcontractor and includes all the time the worker is required or permitted to work, whether or not required to do so.

(9) REST BREAK means a break from work within working hours, during which a worker may not work and during which a worker can access water and toilet facilities. The term excludes any regular meal period provided by the employer, prime contractor, or subcontractor.

## ARTICLE II.

### REQUIREMENT OF REST BREAKS ON CONSTRUCTION SITES.

#### SEC. \_\_. REST BREAK REQUIRED.

(a) Except as provided in Subsection (b), a worker performing construction activity at a construction site is entitled to a rest break of not less than ten (10) minutes for every four (4) hours worked. This break must occur within the first 3.5 hours of each four (4) hour shift.

(b) A worker is not entitled to rest breaks under Subsection (a) of this section on any day that the worker works less than 3.5 hours.

(c) Prime Contractors and Subcontractors shall provide rest breaks in accordance with the requirements of this section. A rest break shall be scheduled as near as possible to the midpoint of the work period.

#### SEC. \_\_. SIGNAGE REQUIRED.

(a) A sign describing the requirements of Section \_\_\_\_ (*Rest Break Required*) in English and Spanish shall be posted in each establishment subject to Section \_\_\_\_ above, in a conspicuous place or places where notices to employees are customarily posted. Prime Contractors and Subcontractors must inform workers of their right to rest breaks prior to initiating work on the project.

(b) The department shall prescribe by rule the size, content, and location of signs required under Subsection (a) of this section such that the information is readable, except that the sign must include:

(1) information on how to make a confidential complaint of failure to provide rest breaks;

(2) OSHA requirements that there be an adequate supply of potable water and access to toilets per 29 CFR 1926.51; and

(3) contact information for OSHA to report failure to comply with any OSHA requirements.

(c) The department shall include on its investigation documents additional investigation requirements to ensure

(1) that workers are being given rest breaks according to this Section \_\_\_(*Rest Break Required*); and

(2) that signage is posted as required by this Section \_\_\_\_ (*Rest Break Required*).

### ARTICLE III.

#### PENALTIES AND REMEDIES.

##### **SEC. \_\_.** **CRIMINAL PENALTY.**

(a) A person commits a Class C misdemeanor if the person:

(1) fails to provide a rest break as required under Section \_\_\_ (*Rest Break Required*); or

(2) fails to post signage required under Section \_\_\_ (*Signage Requirements*).

(b) Proof of a culpable mental state is not required to prove an offense under this chapter.

(c) Each day that a violation occurs or continues is a separate offense.

##### **Sec. \_\_.** **CIVIL REMEDIES.**

(a) The city council has determined that this chapter is necessary to protect health, life, and property and to preserve the good government, order, and security of the City and its inhabitants.

(b) A person who continues to violate this chapter after being notified of the offense in writing by an authorized City representative is subject to a civil penalty of not less than \$100 or more than \$500 for each day the violation occurs.

(c) Any Prime Contractor or Subcontractor working on a construction site is jointly and severably liable for any penalties assessed for failure to comply with this chapter.

(d) The City may file suit to enforce this chapter or collect a civil penalty.

(e) The City may seek to enjoin violations of this chapter.

**SEC. \_\_.**                      **CUMULATIVE REMEDIES.**

The remedies authorized under this article are cumulative. If the City files a civil or criminal action, it is not precluded from pursuing any other action or remedy.

SECTION 2. That CHAPTER \_\_ of the Dallas City Code, as amended, will remain in full force and effect, save and except as amended by this ordinance. Any proceeding civil or criminal, based upon events that occurred prior to the effective date of this ordinance are saved, and the former law is continued in effect for that purpose.

SECTION 3. That the terms and provisions of this ordinance are severable and are governed by Section 1-4 of CHAPTER 1 of the Dallas City Code, as amended.

SECTION 4. That this ordinance will take effect on March 30, and it is accordingly so ordained.