

Memorandum



CITY OF DALLAS

DATE June 20, 2014

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 for Construction Workers

On Monday, June 23, 2014, the Quality of Life & Environment Committee will receive a briefing on Rest Break Ordinances for Construction Workers from the Workers Defense Project.

Please contact me if you have any questions or need additional information.

A handwritten signature in blue ink that reads "Joey Zapata".

Joey Zapata
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
Ryan S. Evans, Interim First Assistant City Manager

Jill A. Jordan, P.E., Assistant City Manager
Forest E. Turner, Assistant City Manager
Charles M. Cato, Interim Assistant City Manager
Theresa O'Donnell, Interim Assistant City Manager
Jeanne Chipperfield, Chief Financial Officer
Shawn Williams, Interim Public Information Officer
Elsa Cantu, Assistant to the City Manager – Mayor & Council

Rest Break Ordinance for Construction Workers



*Presented to the Quality of Life
& Environment Committee, June 23, 2014*



Workers Defense Project
Proyecto Defensa Laboral

Dallas Needs a Rest Break Ordinance

Table 1: Working Conditions Reported by Dallas Construction Workers¹

Receive no rest breaks	33%
Employer doesn't provide drinking water	66%
Witnessed a coworker faint due to heat exhaustion	12%

OSHA recommends that workers laboring in the heat, especially during the summer, be granted frequent rest breaks and that each worker be provided with clean drinking water throughout the workday.²

¹ Based on the findings of *Build a Better Texas: Construction Working Conditions in the Lone Star State*, University of Texas Division of Diversity and Community Engagement, January 2013.

² "OSHA's Campaign to Prevent Heat Stress in Outdoor Workers," US Department of Labor, OSHA, accessed June 19, 2014, <http://www.osha.gov/SLTC/heatillness/index.html>.

Dallas Needs a Rest Break Ordinance

“I’ve seen people throw up, people fall, fainting because they wouldn’t get a rest break. But they are afraid to speak out because they’re afraid of being fired.”

– Modesto Suret

“Your body feels like it’s suffocating. I felt dizzy, my eyes got blurry. I felt nauseous. I knew that I could either faint or go get a drink of water, but the foreman would immediately get on my case for leaving the job, even for a minute.”

– Billy Tirado

Austin Rest Break Ordinance

PASSED JUNE 2010

Basic Requirements:

- 10 minutes of rest break for every four hours worked on a site.
- Signage in English and Spanish on all worksites explaining the ordinance requirements.
- Employers (subcontractors) receive fines of \$100 to \$500 for every day a violation occurs

Enforcement:

- Austin Code Compliance enforces the ordinance on private sites.
- On public sites, each city department is responsible for enforcing the ordinance on its own contracts.

Austin's Enforcement Protocol

Code Compliance visits job site for 1) random inspections or 2) a 311 complaint

Code Inspector checks that rest break poster displayed in English and Spanish

Code Inspector looks for evidence of rest breaks provided

Interviews 1) workers and 2) superintendent

If breaks not given or poster not displayed, issue warning and give 5 days to comply

If issue not resolved after 5 days, citations given until compliance is achieved

Elements of a Strong Rest Break Ordinance

- Mechanism for confidential reporting (3-1-1);
- Designation of specific enforcement agency;
- Standard enforcement protocol, including interviews with workers and random inspections;
- An express evidentiary requirement included in the language of ordinance;
- Clear and concise definition of employees protected by ordinance;
- Mechanism for city officials to assess immediate and meaningful penalties upon identifying violations.

ATTENTION CONSTRUCTION WORKERS



YOU HAVE THE RIGHT TO A REST BREAK IN AUSTIN

THE LAW:

You have the right to rest 10 minutes for every 4 hours worked. This does not include lunch breaks.

Your construction sites must also have signs in Spanish and English that state this right in a conspicuous place.

NO BREAKS? FILE A COMPLAINT:

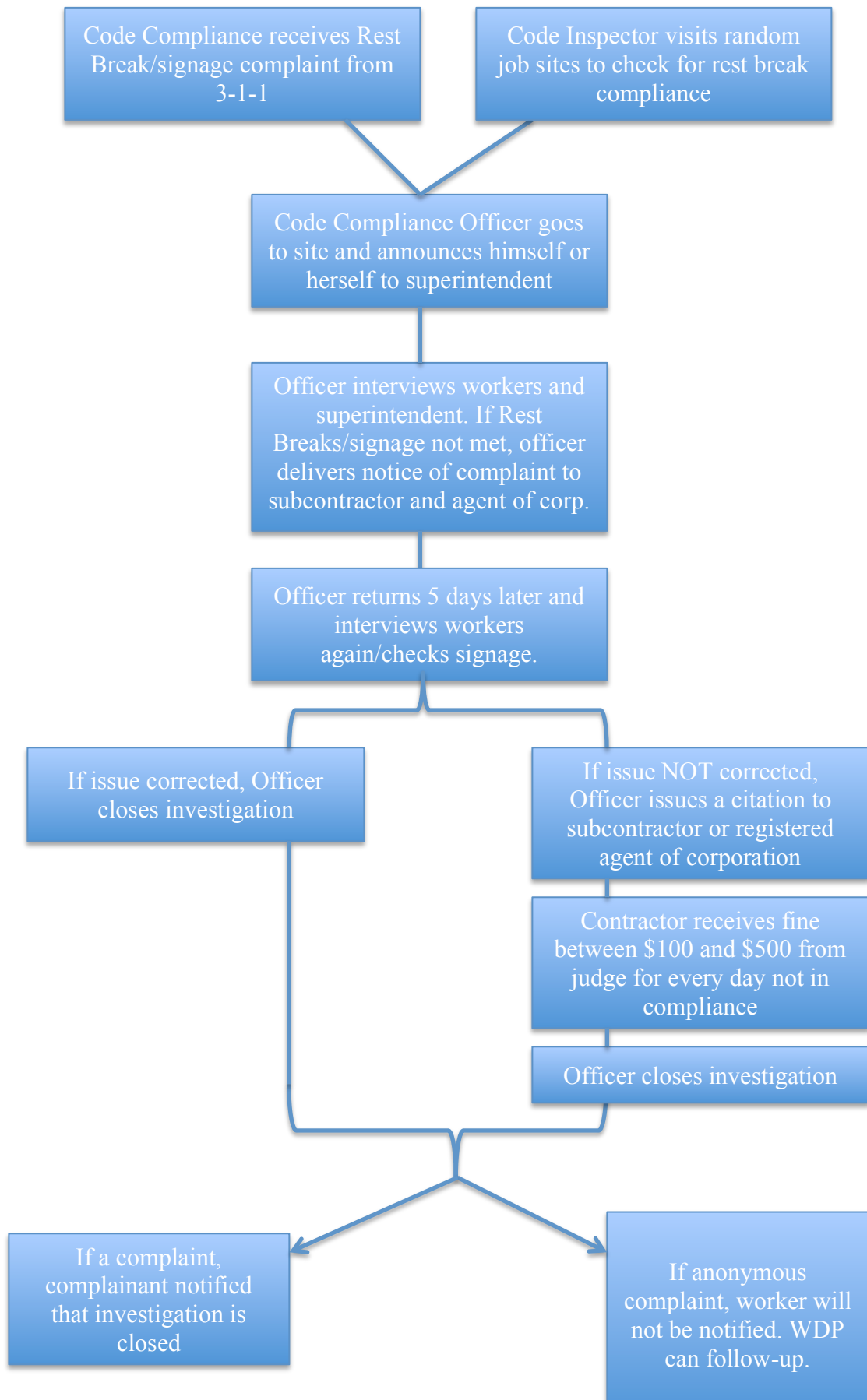
- File a complaint at the Municipal Court found at 700 E. 7th. St.; or go to their website for more information: <http://www.austintexas.gov/department/filing-citizencomplaint>
- Call 3-1-1 and give the following information: (1) Name of the business, (2) the address of the construction site

EMPLOYERS:

Anyone who continues to violate the requirements of this ordinance after being notified of the offense in writing by the City is subject to a civil penalty of not less than \$100 or more than \$500 for each day the violation occurs.



Austin Code Compliance Rest Break Investigation Protocol



ORDINANCE NO. 20100729-047

AN ORDINANCE AMENDING TITLE 4 OF THE CITY CODE TO ADD A NEW CHAPTER 4-5 RELATING TO WORKING CONDITIONS AT CONSTRUCTION SITES; CREATING AN OFFENSE AND IMPOSING A MAXIMUM PENALTY OF \$500 FOR EACH OFFENSE; AND DECLARING AN EMERGENCY.

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

PART 1. Title 4 (*Business Regulation and Permit Requirements*) of the City Code is amended to add a new Chapter 4-5 to read:

CHAPTER 4-5. WORKING CONDITIONS AT CONSTRUCTION SITES.

§ 4-5-1 DEFINITIONS.

- (1) **CONSTRUCTION SITE** means a site or structure for which a building permit or site plan has been issued under Title 25 (*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 department designated by the city manager.
- (4) **EMPLOYEE** means any person employed by the employer.
- (5) **EMPLOYER** means an individual, partnership, association, corporation, business trust, or any person or group of persons who directly or indirectly, through an agent, or any other person or employee, exercises control over the wages, hours or working conditions of any person.
- (6) **ESTABLISHMENT** means a single physical location to which employees report each day.
- (7) **HOURS WORKED** means the time during which an employee is subject to the control of an employer and includes all the time the employee is required or permitted to work, whether or not required to do so.
- (8) **REST BREAK** means a break from work within working hours, during which an employee may not work. The term excludes any regular meal period provided by the employer.

§ 4-5-2 REST BREAK REQUIRED.

- (A) Except as provided in Subsection (B), an employee 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. No employee may be required to work more than 3.5 hours without a rest break.
- (B) An employee is not entitled to rest breaks under Subsection (A) of this section on any day that the employee works less than 3.5 hours or spends more than half of his or her work time engaged in non-strenuous labor in a climate-controlled environment.
- (C) An employer 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.

§ 4-5-3 SIGNAGE REQUIRED.

- (A) A sign describing the requirements of Section 4-5-2 (*Rest Break Required*) in English and Spanish shall be posted by the employer in each establishment subject to Section 4-5-2 in a conspicuous place or places where notices to employees are customarily posted.
- (B) The department shall prescribe by rule the size, content, and location of signs required under Subsection (A) of this section.

§ 4-5-4 CRIMINAL PENALTY.

- (A) A person commits a Class C misdemeanor if the person:
 - (1) fails to provide a rest break as required under Section 4-5-2 (*Rest Break Required*); or
 - (2) fails to post signage required under Section 4-5-3 (*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.

§ 4-5-5 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) The City may file suit to enforce this chapter or collect a civil penalty.
- (D) The City may seek to enjoin violations of this chapter.

§ 4-5-6 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.

PART 2. The council finds that the need to ensure employee rest breaks at construction sites constitutes an emergency. Because of this emergency, this ordinance takes effect immediately on its passage for the immediate preservation of the public peace, health, and safety.

PASSED AND APPROVED

July 29, 2010

§
§
§ _____
Lee Leffingwell
Mayor

APPROVED: _____
Karen M. Kennard
Acting City Attorney

ATTEST: _____
Shirley A. Gentry
City Clerk

RESOLUTION NO. 20100624-087

WHEREAS, the City Council of the City of Austin passed a resolution in October 2009 related to construction worker safety that began a series of efforts to improve construction site safety; and

WHEREAS, rest breaks and provision of drinking water for construction workers are necessary for the health and safety of workers; and

WHEREAS, federal regulations under the Occupational Safety and Health Act include a requirement that drinking water be provided to workers on construction sites; and

WHEREAS, the Occupational Safety and Health Administration currently enforces laws related to construction site safety, including the provision of drinking water; **NOW, THEREFORE,**

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

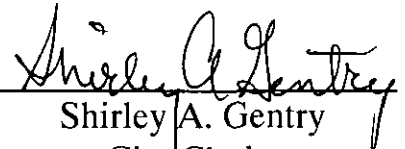
The City Manager is directed to work with the City's Legal Department to develop an ordinance requiring (1) rest breaks at regular intervals for construction workers at construction sites within the City, and (2) provision of drinking water for construction workers at construction sites within the City, provided the City has the legal authority to require it.

BE IT FURTHER RESOLVED:

The City Manager is hereby directed to place the ordinance on the City Council agenda for July 29, 2010, with the provision that it should be immediately effective upon passage.

ADOPTED: June 24,, 2010

ATTEST:


Shirley A. Gentry
City Clerk

ATENCIÓN TRABAJADORES DE CONSTRUCCIÓN



TIENEN EL DERECHO A UN DESCANSO

LA LEY:

Tiene el derecho de un descanso de 10 minutos cada cuatro horas además de la hora del almuerzo. Sus sitios de construcción deben tener letreros en inglés y español con información de sus derechos bajo esta ley.

¿NO TE DAN DESCANSOS? TOMA ACCIÓN

- Presente una queja a la Corte Municipal en 700 E. 7th. St.; o visite su sitio web: <http://www.austintexas.gov/page/presentando-su-denuncia>
- Llame al 3-1-1 y proporcione la información siguiente: (1) El nombre del empleador, (2) la dirección del sitio de construcción.

EMPLEADORES:

Cualquier persona que siga violando los requisitos de esta ordenanza después de ser notificado del delito por la ciudad es sujeto a una multa civil de entre \$100 y no más de \$500 por cada día que la violación ocurra.

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NO BREAKS? FILE A COMPLAINT:

- File a complaint at the Municipal Court found at 700 E. 7th. St.; or go to their website for more information: <http://www.austintexas.gov/department/filing-citizencomplaint>
- Call 3-1-1 and give the following information: (1) Name of the business, (2) the address of the construction site

EMPLOYERS:

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Ensuring Rest Breaks for Dallas Construction Workers

During the summer, the City of Dallas regularly experiences **average temperatures exceeding 100° F**. Workers laboring outside in such conditions are at great risk of injury and illness due to heat exhaustion or heat stroke. Between 2008 and 2012, at least 18 Texas workers died as the result of a heat-related illness, **over 50% of which were construction workers**.¹

OSHA recommends that workers laboring in the heat, especially during the summer, be granted short, frequent rest breaks and that each worker be provided with clean drinking water throughout the workday.² However, neither federal law nor Texas law requires employers to provide rest breaks.

Many Dallas construction workers currently go without rest breaks or water on the job:

33% of Dallas construction workers report receiving no rest breaks during their workday besides lunch;

66% of Dallas construction workers report that their employers fail to provide drinking water at their worksite; and

12% of Dallas construction workers report that they have witnessed a co-worker faint on the job due to heat exhaustion.³

In 2010, the City of Austin passed an ordinance requiring rest breaks for construction workers laboring within city limits.

A rest break ordinance in Dallas would benefit the city, its construction workers, and local construction employers. Well-rested workers commit fewer accidents, resulting in fewer injuries and costly work-stoppages.

For more information, contact:

Juan Cardoza-Oquendo

juan@workersdefense.org

972-479-5080, x8038

¹OSHA's Campaign to Prevent Heat Stress in Outdoor Workers: Map of Heat Fatalities," US Department of Labor, OSHA, accessed June 19, 2014, https://www.osha.gov/SLTC/heatillness/map_text.html

²OSHA's Campaign to Prevent Heat Stress in Outdoor Workers," US Department of Labor, OSHA, accessed June 19, 2014, <http://www.osha.gov/SLTC/heatillness/index.html>.

³Based on the findings of *Build a Better Texas: Construction Working Conditions in the Lone Star State*, University of Texas Division of Diversity and Community Engagement, January 2013.