



OFFICE OF THE MAYOR

LEGISLATIVE REVIEW COMMITTEE COUNCIL RULES AND INTERGOVERNMENTAL RELATIONS

City Hall Building, #2 Civic Center Plaza
Mayor's Board Room, 10th Floor
Thursday, January 19, 2012
9:00 a.m.

AGENDA

1. Call to Order.
2. Approval of Minutes for the Legislative Review Committee meeting of February 10, 2011.
3. Discussion and action regarding Wage Theft.
4. Adjournment.

EXECUTIVE SESSION

The Legislative Review Committee of the City of El Paso may retire into EXECUTIVE SESSION pursuant to Section 3.5A of the El Paso City Charter and the Texas Government Code, Chapter 551, Subchapter D, to discuss any of the following: (The items listed below are matters of the sort routinely discussed in Executive Session, but the Legislative Review Committee of the City of El Paso may move to Executive Session any of the items on this agenda, consistent with the terms of the Open Meetings Act.) The Legislative Review Committee will return to open session to take any final action and may also, at any time during the meeting, bring forward any of the following items for public discussion, as appropriate.

- Section 551.071 CONSULTATION WITH ATTORNEY
- Section 551.072 DELIBERATION REGARDING REAL PROPERTY
- Section 551.073 DELIBERATION REGARDING PROSPECTIVE GIFTS
- Section 551.074 PERSONNEL MATTERS
- Section 551.076 DELIBERATION REGARDING SECURITY DEVICES
- Section 551.087 DELIBERATION REGARDING ECONOMIC DEVELOPMENT NEGOTIATIONS



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NOTICE TO THE PUBLIC: This is a meeting of a legislative review committee of the El Paso City Council. The committee ordinarily consists of 4 Council members for purposes of establishing a quorum and the voting membership on the committee. However, any other member of the City Council may, on an ad hoc basis, join the meeting and participate in the discussions.

Sign language interpreters will be provided for this meeting upon request. Request must be made to this department at a minimum of 24 hours prior to the date and time of the meeting.

Copies of this agenda will be provided in Braille, large print or audio tape upon request. Request must be made a minimum of 48 hours prior to the date and time of the meeting.

Item 1 - Call to Order.

The Legislative Review Committee met at the above place and date. Meeting was called to order at 9:07 a.m. Chairman John F. Cook present and presiding and the following committee members answered roll call: Ann Morgan Lilly and Cortney Carlisle Niland. Committee Member Eddie Holguin Jr. arrived 9:34 a.m. Also present for the City of El Paso was Senior Assistant City Attorney Elaine Hengen and Executive Assistant to the Mayor Diana Nuñez. A list of members of the public who attended the meeting is on file with the minutes.

Item 2 - Approval of Minutes for the Legislative Review Committee meeting of February 10, 2011.

Motion made by Committee Member Niland, seconded by Committee Member Lilly and unanimously carried to approve the minutes.

Item 3 - Discussion and action regarding Wage Theft.

Chairman Cook opened the meeting by reading into the record the resolution that the El Paso City Council passed on November 29, 2011; resolution on file with the minutes. At that same time, Council made a motion to send the

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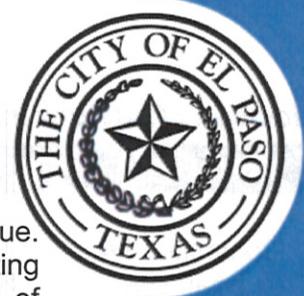
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issue to the Governmental Affairs LRC and asked legal to research the issue. The task at hand is to look at local ordinance that will allow the City in getting more actively involved in wage theft issues or have some other kind of legislation that will protect people from wage theft. Chairman Cook shared his personal perspective as a small business owner whose wife has a catering business and has to report employee wages to the State on a quarterly basis. He explained that Ms. Hengen has been researching other laws in the state and country and proceeded to introduce her into giving a report on her findings.

Senior Assistant City Attorney Elaine Hengen explained that she looked at proposed ordinances and other cities' ordinances and provisions on criminal and civil penalties for addressing wage theft. She looked at penal offenses that the City could enact that are not already covered by provisions of State law and also looked at other mechanisms in the proposed ordinances she has received that relate to civil enforcement, employer bonds, restitution to employees, etc. However, she has not found areas that the City can regulate unless the Texas Legislature gives the City authority. She stated that during the last legislative session, a deficiency was discovered in prosecuting wage theft under the Theft of Service statute and Senator Jose Rodriguez worked with the Texas District Attorneys Association to figure out how to plug that loop hole and as a result, there was an amendment to the Theft of Service statute in the penal code that now allows prosecutors in the District Attorney Office to successfully prosecute in a situation where a person is only paid for partial wages. At this point, the City needs to look at what kind of things on the state system may need to be improved and how the City can work with the state delegation to identify improvements to the state legislature.

Chairman Cook explained the process for the City's State Legislative Agenda and how the Intergovernmental Relations LRC reviews the legislative agenda and presents it to the City Council as a whole for approval. Any fixes would have to be included in the legislative agenda. He believes that the biggest problem resides on getting the people to report wage theft versus trying to change state law to empower the City to get more involved. He gave the example of a gardener who gets paid for an entire job on a given day and not paid by hour who will most likely not report wage theft because he/she needs the job.

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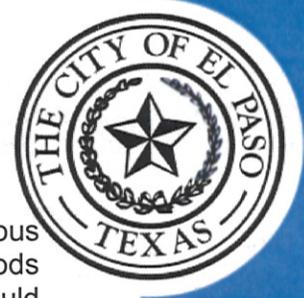
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Committee Member Niland agreed with the reporting problem and is anxious to hear solutions. She mentioned that she sees it in her neighborhoods where the citizens are not only not reporting wage theft but crime and would love to empower citizens.

Chairman Cook recommended creating a hotline to report wage theft as a potential solution in lieu of trying to change state law; the enforcement arm has financial consequences especially when we want to empower the City in enforcing, investigating and prosecuting these cases. People would feel more comfortable in reporting to their local government rather than their state government. The hotline would also have the responsibility of being the liaison and not just pass it on but follow through to make sure that the state is actually finding a resolution.

Committee Member Lilly agreed with the hotline initiative as she senses that some citizens are fearful of their government.

Chairman Cook gave the example of the City of San Francisco where the State of California gives them the ability to have their own Department of Labor.

Ms. Hengen explained that the City of San Francisco has a very broad department that regulates and even sets the minimum wage, payment of minimum wage and does other things in addition to that. Under Texas law, the City of El Paso cannot establish a minimum wage.

Mr. John Ruiz, member of the Building Trades Council Coalition, questioned which members of the state delegation the El Paso City Council would be reaching out to.

Chairman Cook elaborated a little more on the legislative process and stated that the City also works with the Texas Municipal League and the Big Cities Mayors and each entity has their own lobbyists all working together and helping each other on common issues of mutual interest. He explained that often times the state delegation will ask the City to provide testimony at a hearing and either an elected official or City staff will do so. He added that the Greater El Paso Chamber of Commerce, the County of El Paso and other quasi-governmental entities have their own legislative agenda as well and all

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of them pretty much follow similar methodologies in order to influence state law.

Mr. Ruiz stated that he would like to educate the coalition on the City's lobbying efforts and maintain continuity with communications.

Chris Benoit with the Coalition Against Wage Theft commented on the State's efforts and the ineffectiveness of the remedies. He welcomes placing the issue on the state legislative agenda and encourages coming up with creative ways to handle the issue instead of a kitchen sink mentality.

Chairman Cook cautioned the attendees that the kitchen list strategy is highly ineffective where nothing will get done versus a more effective short list where something will get done. He gave a personal anecdote on a honey-do-list after his retirement. In the same manner, he cautioned the group in giving many changes to the state delegation versus a very specific list with a couple of things that we might get accomplished that will either give more power to the City or State to fix a system that is broken.

Mr. Omar Uribe shared his personal experience from 2007 where he worked for a neighbor acquaintance remodeling hotels and was only paid \$80 total. He filed a formal complaint within the statute of limitations with the Texas Workforce Commission (TWC) and two years later was awarded the decision that over \$3,000 was owed to him, which he has not received. State law indicates that the first step is to file with TWC but by doing so, he no longer can file a law suit. The Labor Justice Committee has attempted to intercede with no avail. His former employer has not seen any negative consequences and although the decision was in his favor, he has not been able to collect the unpaid wages. He wrapped up his comments by asking for tools so that impunity does not continue.

Chairman Cook stated that the tool in Mr. Uribe's case would have been for the employer to post a wage bond and the state would have been able to call upon that bond to make sure that he would have collected the unpaid wages.

Mr. Benoit agreed with the chairman's analogy on the wage bond and proceeded to request that the City enforces/attaches a wage bond when issuing City permits.

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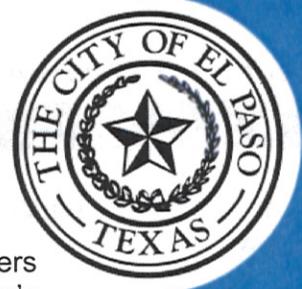
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Chairman Cook questioned the City's authority or ability to require employers to post a wage bond when obtaining a City permit to which Ms. Hengen's response was negative and that it would require state authority to be able to do that.

Committee Member Lilly questioned how to change the law that one is not allowed to sue once the TWC first steps have been taken to which Mr. Benoit quoted a recent Supreme Court case decision that says that once you go through the TWC process, you do not have the ability to come back to the courts.

Mr. Ruiz stated that he worked for the City for many years and it was his understanding that the City is able to require a performance bond.

Ms. Hengen explained that the City is able to require a performance bond in order to protect the City and a homeowner relating to the issuance of building permits but cannot regulate the wages that the contractor pays; therefore, the City could not require a bond for payment of wages. State law only allows the City to regulate wages within the performance of the City's construction contracts.

Chairman Cook and Ms. Hengen explained that a contractor who is doing work for a private citizen, as a general contractor, has to post a performance bond with the City that applies only with relation to doing the work under that permit.

Mr. Benoit stated that it was his understanding, in sharing notes with other stakeholders in Houston and San Antonio, that home-rule cities do have the ability to require bonds if contractors apply for permits and/or business licenses. One of the most effective solutions would be the ability to revoke or deny an application for a permit. He gave the examples of the State being able to pull hunting and fishing licenses for lack of child support payment. Those are two areas where the City could provide very unique consequences and it does not require a huge expense because of the systems that the City already has in place.

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Mr. Ruiz stated that the State of Texas does not require general contractor licenses versus the State of California that does require it.

Ms. Hengen explained that the City issues a broad number and types of licenses and permits such as for construction, use of streets, and for registration of dogs and cats. However, El Paso does not have a business license requirement. The City would have to evaluate/analyze each situation separately, in order to determine if there is a relationship between the permit and the reason/bases for which the permit will be revoked. She gave the example that the City could not revoke a dog registration for having an overdue book at the library.

Chairman Cook recommended looking into Scofflaw which is a program that the County Tax Assessor runs that enables the registration of a vehicle if the person has outstanding traffic tickets or owes any money to the state.

Ms. Hengen explained that the Scofflaw program is specifically regulated by State law stating exactly under what circumstances can the County Tax Assessor collect or refuse to issue a license plate renewal.

Chairman Cook recommended to place in the state legislative agenda to broaden the ability for the County Tax Assessor not to issue vehicle registrations to include labor law violations on any case that has gone all the way through the TWC and judgment has been issued. This is one of the most effective programs where people have paid millions of dollars in back fines.

Mr. Uribe informed the group that he was told by TWC that the contractor who still owes him money is supposedly unable to sell or buy any real estate property, has a lien on his property, and cannot cash any checks under his name which has not happened as he is still in business.

Mr. Benoit responded that TWC's lack of enforcement requires extensive follow up and they do not have the resources to follow through. He asked again that the City look into not issuing or revoking permits. He mentioned that in his conversations with Senator Rodriguez, the Senator stated that the State remedies have not been effective and is supportive of viable options.

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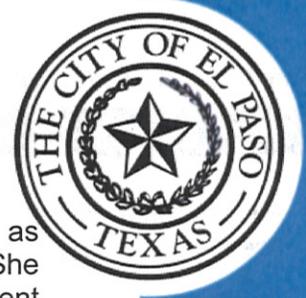
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Committee Member Niland agreed with the idea of expanding Scofflaw as most individuals need to operate their vehicle to run their business. She questioned what the City's ability is in not issuing licenses and to what extent it could be done.

Ms. Hengen stated that the City would not be able to enforce a judgment as she assumes that TWC is creating a civil order and penalty that is in effect judgment. She elaborated that the City would need State authority as the City regulates under the City's police power to regulate the public's health, safety, and welfare and the City's decisions related to issuing licenses cannot act on an arbitrarily discriminatory manner, the bases has to be related to the purpose of the license.

Mr. Benoit stated that there is no case law that says that it cannot be done and he believes it falls within the general welfare.

Ms. Hengen responded that she has been disagreeing with Mr. Benoit on this point as there is no case law that says you can or cannot do it. She committed to do more research.

Committee Member Holguin expressed his support on proposing solutions to address wage theft but questioned how to address frivolous complaints that seriously affect businesses. Penalties should also be imposed to individuals who file malicious complaints. There are a lot of laws that protect employees but there are hardly any laws that protect employers.

Chairman Cook reiterated Mr. Uribe's case where TWC made a determination and proposed that the City use the same mechanism in order to collect unpaid wages.

Committee Member Holguin repeated his concern on imposing a penalty on the employee when a malicious complaint is unfounded.

Mr. Benoit explained that they would not want to add another due process but leave the existing procedures.

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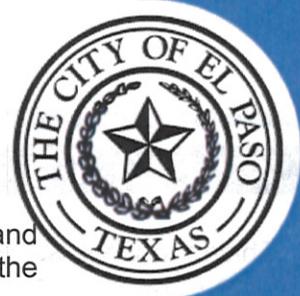
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Committee Member Lilly expressed her support on pulling back licenses and to include requiring a license for general contractors but it is not sure if the City would want to tackle that in the legislature.

Mr. Benoit and Mr. Uribe agreed with Committee Member Lilly.

Committee Member Niland stated that the first step would be the recommendation on expanding the Scofflaw followed by lobbying for new legislation that would require general contractors to have a license. She gave the example of how the City does not require a license to run a homeless shelter and anyone can start one. When individuals are allowed to operate by different standards, it leaves room for error.

Mr. Ruiz stated that the problem is not the construction industry but the mom and pop small businesses. He commented that frivolous complaints by employees are addressed when the investigation process is going on. He then moved on to state that the City's Best Value awards include financial responsibility as part of the criteria and questioned if any other awards by the City outside of construction have this requirement. Perhaps the City could consider denying a contract if the company has judgments against them.

Chairman Cook explained that it is different for awarding contracts rather than issuing licenses. Denying a contract would only prevent the contractor from doing business with the City in addition to looking into what the permit is for.

Committee Member Holguin stated that it is very naïve to think that people do not file frivolous complaints as it is very evident in the court system where there are frivolous law suits all the time.

Ms. Josefina Torres questioned how to protect domestic workers.

Chairman Cook responded that he believes that instituting a hotline would help address the domestic workers issue as it would act as a liaison.

Committee Member Niland requested that it be an anonymous hotline and also suggested implementing an anonymous text tip line like the one that the Police Department already has in place to report crime.

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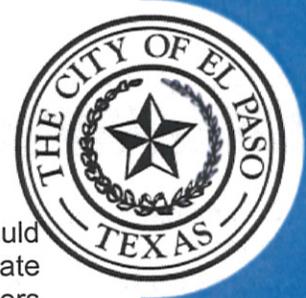
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Chairman Cook stated that the funding vehicle for the liaison position would have to be suggested in the budget process. This would also ask the state and federal governments to get involved to protect those domestic workers that fall through the cracks today.

Mr. Benoit requested that the hotline not only connect to the State but also the U.S. Department of Labor and the District Attorney Office.

Committee Member Niland asked that the City not only look at general contractors but all aspects of licensing such as homeless shelters.

Mr. Ray Diaz with El Paso Builders questioned if the City would accept licenses from other states.

Chairman Cook stated that this would involve looking at licensing in general and work with our state delegation to see if they support it. The first step would be to find a delegate that would want to carry/author the bill or find someone else that is already promoting a similar bill and support it. He proposed that the following two items be pursued in the state legislative agenda and be presented to the Council as a whole:

1. Look at licensing in general and not only adding the requirement of a license for general contractors
2. Try to modify and expand the existing Scofflaw to add penalties for wage theft.

Motion made by Committee Member Niland, seconded by Committee Member Lilly and unanimously carried to **add to the state legislative agenda to look into licensing requirements in general.**

Committee Member Holguin requested that Legal do research what recourse to take on frivolous complaints filed by employees.

Motion made by Committee Member Niland, seconded by Committee Member Lilly and unanimously carried to **add to the state legislative agenda the expansion of the existing Scofflaw to add penalties for wage theft.**

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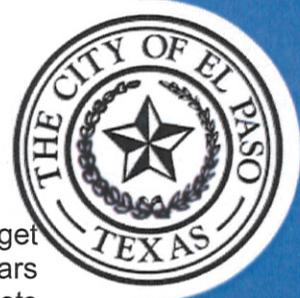
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Chairman Cook wrapped up the meeting by cautioning everyone not to get their hopes up as there are issues that have been on the agenda for years and not passed. Changing state law is difficult as there are other interests and lobbyists who work counter to what we are trying to accomplish today. The committee will also be recommending to City Council during the budget session to consider having a hotline that would be the liaison for the Texas Workforce Commission and U.S. Department of Labor for wage theft.

Committee Member Niland requested that it be anonymous, a dual purpose hotline, that will serve for other cases where people are afraid of retaliation but Mayor Cook explained that it would be difficult to have an anonymous hotline since the Department of Labor would follow through on the cases. It was agreed that there will be a full discussion on this issue during the budget session.

Motion made by Committee Member Niland, seconded by Committee Member Lilly and unanimously carried to recommend to City Council during the budget session **to consider funding a hotline** that would be the liaison for the Texas Workforce Commission and U.S. Department of Labor for wage theft.

Chairman Cook closed the meeting by stating that three things on the list are manageable. The state legislative agenda is a work in process and the City usually starts discussions in the fall. The discussions in the legislature will probably not start until past the November election. He explained that the two categories in the state legislative agenda are for the City to actively seek to secure legislators to author bills for initiatives or to find support. Budget session starts in May and he committed to keep everyone informed.

Item 4 - Adjournment.

Motion made by Committee Member Niland, seconded by Committee Member Lilly and unanimously carried to adjourn this meeting at 10:10 a.m.



John F. Cook
Chairman



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