

Commission on Labor

Agenda

North Berkeley Senior Center
1901 Hearst Avenue
Berkeley, CA

Wednesday
January 20, 2016
7:00 p.m.

Preliminary Matters

1. Roll Call
2. Public Comments
The public may comment about any item not on the agenda. Public comments regarding agenda items will be heard while the Commission is discussing the item.
3. Approval of December 16, 2015 Special Meeting minutes (attachment 1)

Action Items

The Commission may take action related to any subject listed on the Agenda. Public comments regarding agenda items will be heard while the Commission is discussing the item.

4. Status update on the efforts of the UC Workers coalition (Student Labor Committee & AFSCME 3299)
5. Housing Trust Fund Guidelines Regarding Predevelopment Loans and Labor-request from the Housing Advisory Commission to provide input regarding their possible recommendations to City Council (attachment 2)
6. Minimum Wage Ordinance/Living Wage Ordinance status updates:
 - 1) Revisions to the Minimum Wage Ordinance information from EDD regarding employer and workforce sizes (attachment 3)
 - 2) Interpretation of current LWO regarding applicability of the LWO to contracts based on Not to Exceed amount of contract versus 12-month period of contract-information from staff (attachment 4)
7. Fair Chance Ordinance Subcommittee-discuss replacing Bob Dixon who has resigned from Commission.
8. Flexible Work time Ordinance Subcommittee report & discussion of "working" draft regarding Council referral to submit recommendations for a right-to-request ordinance pursuant to the Flexible Work Time Initiative, Measure Q, passed by Berkeley voters in the November 4 election (attachment 5)
9. Public Transportation Subcommittee report

10. Equal Pay Council referral to staff and Commission on the Status of Women
11. City-wide security contracts draft council report discussion
12. Agenda planning for next regular meeting on March 16, 2016

Announcements

Adjournment

Please refrain from wearing scented products to this meeting.

COMMUNICATION ACCESS INFORMATION

This meeting is being held in a wheelchair accessible location. To request a disability-related accommodation(s) to participate in the meeting, including auxiliary aids or services, please contact the Disability Services specialist at 981-6342 (V) or 981-6345 (TDD) at least three business days before the meeting date.

Communications to Berkeley boards, commissions or committees are public record and will become part of the City's electronic records, which are accessible through the City's website. **Please note: e-mail addresses, names, addresses, and other contact information are not required, but if included in any communication to a City board, commission or committee, will become part of the public record.** If you do not want your e-mail address or any other contact information to be made public, you may deliver communications via U.S. Postal Service or in person to the secretary of the relevant board, commission or committee. If you do not want your contact information included in the public record, please do not include that information in your communication. Please contact the commission secretary for further information.

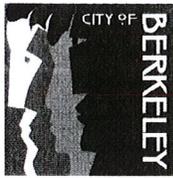
Written material may be viewed in advance of the meeting at the Housing & Community Services Department, 2180 Milvia, 2nd Floor, during regular business hours or at the Berkeley Public Library, Shattuck/Kittredge Streets, during regular library hours at the Reference Desk. The Commission Agenda and Minutes may be viewed on the City of Berkeley website:
<http://www.cityofberkeley.info/commissions>.

Secretary:

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Commission on Labor

Attachment 1

Special Meeting Minutes

North Berkeley Senior Center
1901 Hearst Avenue
Berkeley, CA

Wednesday
December 16, 2015
7:00 p.m.

Preliminary Matters

1. Roll Call
Meeting called to order @ 7:05pm
Present: S. Frankel; L. Sayre; A. Teter; J. Fillingim
Absent: S. Kessler; I. Yu
Leave of Absence: W. Bloom; B. Dixon
Members of the Public: 5
Staff: D. Geiken; K. Lee; N. Dahl; H. Oyekanmi

2. Public Comments
The public may comment about any item not on the agenda. Public comments regarding agenda items will be heard while the Commission is discussing the item.

None

3. Approval of September 16, 2015 Meeting minutes
M/S/C (Fillingim/Teter) to approve minutes as written
Ayes: S. Frankel; L. Sayre; A. Teter; J. Fillingim
Noes: None
Absent: S. Kessler; I. Yu
Leave of Absence: W. Bloom; B. Dixon

Action Items

The Commission may take action related to any subject listed on the Agenda. Public comments regarding agenda items will be heard while the Commission is discussing the item.

4. Sweatshop-free procurement ordinance annual report from Finance Department

Finance Director H. Oyekanmi provided overview of annual report. No action taken.

5. Status update on the efforts of the UC Workers coalition (Student Labor Committee & AFSCME 3299)

No update or action taken. L. Sayre will contact representatives to gather information for January meeting.

6. Minimum Wage Ordinance/Living Wage Ordinance status updates:

1) Revisions to the Living Wage Ordinance

M/S/C (Teter/Fillingim) to accept ordinance as amended.

Ayes: S. Frankel; L. Sayre; A. Teter; J. Fillingim

Noes: None

Absent: S. Kessler; I. Yu

Leave of Absence: W. Bloom; B. Dixon

Continue to next meeting.

2) Interpretation of current LWO regarding applicability of the LWO to contracts based on Not to Exceed amount of contract versus 12-month period of contract-report from staff

Staff will forward to commission information regarding number of non-profits impacted by new interpretation of LWO and proposed draft language on clarifying the applicability language.

No action.

3) Report back on November 10, 2015 Special Council meeting regarding revisions to the Minimum Wage Ordinance

One speaker. No action.

7. Fair Chance Ordinance Subcommittee report regarding council referral to extend the City's "Ban the Box" policy to private employers within the City of Berkeley

No action, carry over to next meeting.

8. Flexible Work time Ordinance Subcommittee report & discussion of "working" draft regarding Council referral to submit recommendations for a right-to-request ordinance pursuant to the Flexible Work Time Initiative, Measure Q, passed by Berkeley voters in the November 4 election

No action. Commissioners thanked Charles Siegel for his continuous technical assistance regarding the ordinance development.

9. Public Transportation Subcommittee report

No report or action.

10. Equal Pay Council referral to staff and Commission on the Status of Women
Staff provided overview of referral and will provide updates on future meetings of the subcommittee formed by the Commission on the Status of Women. Staff will also provide information on current San Francisco ordinance.

11. City-wide security contracts draft council report discussion
M/S/C (Fillingim/Sayre) to approve content of letter drafted by S. Frankel (to be used for council report)
Ayes: S. Frankel; L. Sayre; A. Teter; J. Fillingim
Noes: None
Absent: S. Kessler; I. Yu
Leave of Absence: W. Bloom; B. Dixon

12. Establish 2016 meeting schedule

M/S/C (Fillingim/Sayre) to approve draft schedule for 2016.
Ayes: S. Frankel; L. Sayre; A. Teter; J. Fillingim
Noes: None
Absent: S. Kessler; I. Yu
Leave of Absence: W. Bloom; B. Dixon

Month	Meeting Day and Date	Time
January 2016	Wednesday 1/20/16	7:00PM
February 2016	No Meeting	
March 2016	Wednesday 3/16/16	7:00PM
April 2016	No Meeting	
May 2016	Wednesday 5/18/16	7:00PM
June 2016	No Meeting	

Month	Meeting Day and Date	Time
July 2016	Wednesday 7/20/16	7:00PM
August 2016	No Meeting	
September 2016	Wednesday 9/21/16	7:00PM
October 2016	No Meeting	
November 2016	Wednesday 11/16/16	7:00PM
December 2016	No Meeting	

13. Agenda planning for next regular meeting on January 20, 2015

Carryover all items except 4, 12, 13 & 14.

Information Items

14. Commission Attendance Report submitted to City Clerk (Attachment 9)

Announcements

- N. Dahl has been elected as President of SEIU for the City of Berkeley.

- Fillingim requested adjournment in memory of Children's Hospital nurse Patricia Alvarez.

Adjournment

Meeting adjourned @ 9:15PM

Minutes Approved on _____

Delfina Geiken

Commission Secretary

Secretary:

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Delfina Geiken, Secretary
2180 Milvia, 2nd Floor
Berkeley, CA 94704

To: Sam Frankel, Chair and Wendy Bloom, Vice Chair, Commission on Labor
From: Igor Tregub, Vice Chair, Housing Advisory Commission
Date: January 11, 2016
Re: Modify Affordable Housing Trust Fund Guidelines to Resolve Certain Labor Topics

RECOMMENDATION AND RATIONALE:

That the Commission on Labor review and consider support for the below revisions to the Housing Advisory Commission Trust Fund Guidelines, dated April 21, 2009 (<http://www.ci.berkeley.ca.us/uploadedFiles/Housing/CouncilAdopted2009HTFGuidelines.pdf>), which were unanimously recommended to the Berkeley City Council by the Housing Advisory Commission at its January 7, 2016 meeting (additions are in ***bold and italicized***; deletions are in ~~strike through~~). The draft minutes from the meeting indicate that the following action was taken:

Action: M/S/C (Tregub/Abramson) to recommend to Council the following changes to the Housing Trust Fund Guidelines:

Vote: Ayes: Abramson, Berg, Crandall, Darrow, Franklin, Martinucci, Soto-Vigil, Tregub, and Wolfe. Noes: None. Abstain: None. Absent: None.

6. Prevailing Wages

For any Development Project involving eight (8) or more dwelling units, the Applicant shall ensure that the Project construction contract requires payment of the General Prevailing Rate of Per Diem Wages, as defined in Title 8 of the California Code of Regulations, (Division 1, Chapter 8, Subchapter 3, "Payment of Prevailing Wages Upon Public Works") section 16000, to all workers who perform work that is covered by a State-published prevailing wage determination. The Applicant shall ensure that contract documents and any call for proposals or bids shall specify that all contractors and subcontractors are subject to the provisions of 1771.1 and 1771.4 of the Labor Code with respect to the project. The construction contract shall require the contractor to maintain labor records as required by law, and to make these records available to any enforcement agency in the format prescribed by the California Labor Commissioner or other enforcement agency. Prior to the close of the Program loan, the Sponsor shall provide to the Department a certification that project contractors and subcontractors were currently registered and qualified to perform public work pursuant to Labor Code Section 1725.5, that prevailing wages have been paid or will be paid, and that payroll records are available, consistent with the requirements of Chapter 1 of Part 7 of Division 2 of the Labor Code.

Rationale: Affordable housing projects depend on financing from multiple sources. Often one or more source triggers federal and/or state prevailing wage provisions. Not all do, however, so establishing a HTF prevailing wage requirement for applicant projects will provide a backstop to state & federal policies.

VI. C. 1.e. Project Consideration / Funding Criteria: Community Objectives: Impact on the Community (p. 17):

x. Contribute to employment that sustains construction worker households at or above area median income levels through utilization of registered apprentices from training programs that regularly enroll and graduate residents of Berkeley and the East Bay Green Corridor.

Rationale: A 2012 federally sponsored study by a respected public policy research firm found that registered apprentices who complete their programs earn on average \$240,037 more over a career than similar workers who don't participate in apprenticeship programs. While joint (labor-management) apprenticeship programs have trained well over a thousand East Bay Green Corridor residents in recent years, some registered apprenticeship programs fail to enroll even a couple of handfuls of local area residents.

VI. C. 3. Project Consideration / Funding Criteria: Applicant Qualifications and Experience, including... (p. 17):

~~e. construction management track record~~ *track record of successful construction management, including:*

- (i) The Applicant's past projects are not encumbered by unexpired mechanics liens that were filed by or on behalf of workers with claims of unpaid wages or fringe benefits;*
- (ii) The Applicant's past projects are not related to unsatisfied final judgments from the California Labor Commissioner.*

j. Evidence that the Development Team's construction contractor(s) - with respect to projects completed within the past two years that required the payment of state prevailing wages - have utilized construction trades apprentices who are registered with the state of California at ratios of journeymen to apprentices that are consistent with California Labor Code section 1777.5.

Rationale: It is an unfortunate fact that it is not rare for construction contractors to fail to pay workers all that they are legally owed, and to shirk responsibility for developing a trained, skilled long-term industry workforce. The above measures would incentivize Applicant developers to work with contractors who make sure workers are paid in full or made whole swiftly upon discovery of underpayments. By assessing an Applicant's track record of working regularly with contractors who contribute to registered apprenticeship programs, the City sends a message that the housing affordability crisis is not simply an issue of under-supply, it is a problem created in part by over-demand created by low-skill, low-wage workforce strategies.

To: Honorable Members of the Berkeley City Council
Cc: City Manager, City Clerk, and Acting Director, Health & Community Services
From: Scott Littlehale, Senior Policy Research-Analyst, Carpenters Local Union 713
Date: December 1, 2015

Subject: Housing Trust Fund (HTF) Program Guidelines are silent on construction labor standards for funded projects: a potential problem and a suggested fix

On behalf of Carpenters Local Union 713, I urge you to consider directing Staff to investigate and – if found to be feasible – implement revisions to the Housing Trust Fund Program Guidelines that are suggested below. The proposed revisions will not substantially alter the *status quo* when it comes to HTF Developer-Applicant behavior, but will help to ensure that positive practices are not undermined in the future.

Background: Purpose of the Housing Trust Fund & the construction workforce

Berkeley established its Housing Trust Fund (HTF) to maintain and enhance the City’s diversity and to assure that people who work in Berkeley in all types of jobs have local housing options that meet the needs of households at all income levels.

Maintaining a place for construction workers is one element of maintaining Berkeley’s economic and ethnic diversity. Construction today is a “minority majority” industry, and some 40 percent of construction workers have annual incomes low enough to need below-market-rate Berkeley housing. Rising rents and falling median construction wages over recent decades have meant that these workers have been priced out of the local housing market.

While the overall trend is distressing, there is a bright spot. Construction workers given a chance to work their way all they way through a state approved apprenticeship program will earn on average an extra \$240,000 over the course of their careers. That is enough to make a stable home for that construction worker’s family a real possibility.

What Berkeley gets right

All significant public works infrastructure projects paid for by the city make extensive use of apprentices and are covered by a comprehensive master community workforce agreement. This covers fire stations, road repair, upgrades to municipal buildings, etc. Berkeley’s labor policies for such expenditures are exemplary. Workers who commit themselves to a construction craft earn wages that make a middle class standard of living possible, and residents of the East Bay Green Corridor have greater opportunities to participate in best-in-class training programs.

Where City program guidelines come up short

Community leaders I have spoken with recently have been surprised to learn that the HTF Program Guidelines do not necessarily require HTF-funded projects to pay prevailing wages or otherwise help assure that the projects’ construction workers might afford to live in decent housing in Berkeley or the East Bay Green Corridor. Any such requirements originate with regulations associated with outside sources of funds.

For projects that are financed with strictly local funds, there is nothing in the Program Guidelines or Municipal Code to prevent Housing Trust Fund dollars from funding projects that generate *more* low-wage construction employment, further adding to the already long list of people in need of subsidized housing in Alameda County. One BMR project under construction in Alameda County received \$14 million in county funds, *with no prevailing wage requirement*.

It is a fact that the two Berkeley-based, non-profit affordable housing developers that have been awarded most of the HTF funds to date have managed projects with good construction labor records. HTF policy, though, hasn't been structured to give such practices any preference. We have just gotten lucky. As new developers enter Alameda County and competition grows fiercer for shrunken housing subsidy funds, there are no guarantees that projects will pay prevailing wages and provide high quality apprenticeship training opportunities for local area residents.

Incorporate construction labor standards into HTF Program Guidelines & RFPs

Carpenters Local Union 713 urges the City Council to direct staff to amend the HTF program guidelines policies so that they will guarantee that City funds aren't increasing *demand* for affordable housing at the same time they are being expended to increase the *supply* of affordable housing.

To that end, Local 713 respectfully suggests the following revisions:

- **VI. D. Threshold Criteria and Other Conditions** (pages 18 - 19), insert:

6. *Prevailing Wages*

Except when prohibited by a source of HTF funds, the Applicant shall ensure that the Project construction contract requires compliance with state prevailing wage law (Chapter 1 of Part 7 of Division 2 of the Labor Code, commencing with Section 1720). The Applicant shall ensure that contract documents and any call for proposals or bids shall specify that contractors and subcontractors are subject to the provisions of 1771.1 and 1771.4 of the Labor Code with respect to the project. The construction contract shall require the contractor to maintain labor records as required by law, and to make these records available to any enforcement agency in the format prescribed by the Labor Commissioner or other enforcement agency. Prior to the close of the Program loan, the Sponsor shall provide to the Department a certification that project contractors and subcontractors were currently registered and qualified to perform public work pursuant to Labor Code Section 1725.5, that prevailing wages have been paid or will be paid, and that payroll records are available, consistent with the requirements of Chapter 1 of Part 7 of Division 2 of the Labor Code.

Background: Affordable housing projects depend on financing from multiple sources. Often one or more source triggers federal and/or state prevailing wage provisions. Not all do, however, so establishing a HTF prevailing wage requirement for applicant projects will provide a backstop to state & federal policies.

- **VI. C. 1. e. Project Consideration - Community Objectives**, "Impact on the Community" (pages 16-17) add:

x. Contribute to employment that sustains construction worker households at or above area median income levels through utilization of registered apprentices from training programs that regularly enroll and graduate residents of Berkeley and the East Bay Green Corridor.

Background: A 2012 federally sponsored study by a respected public policy research firm found that registered apprentices who complete their programs earn on average \$240,037 more over a career than similar workers who don't participate in apprenticeship programs. While joint (labor-management) apprenticeship programs

have trained well over a thousand East Bay Green Corridor residents in recent years, some registered apprenticeship programs fail to enroll even a couple of handfuls of local area residents.

- **VI. C. 3. Applicant Qualifications and Experience, including:** (page 17) amend & add:

- e. Track record of successful construction management, including:

- (i) The Applicant's past projects are not encumbered by unlapsed mechanics liens that were filed by or on behalf of workers with claims of unpaid wages or fringe benefits;

- (ii) The Applicant's past projects are not related to unsatisfied final judgments from the Labor Commissioner.

- j. Evidence that the Development Team's construction-related members have experience utilizing registered construction trades apprentices whose sponsor programs can certify that they have graduated at least five (5) residents of the East Bay Green Corridor each consecutive year for the five (5) years immediately preceding submission of the HTF application.

Background: It is an unfortunate fact that it is not rare for construction contractors to fail to pay workers all that they are legally owed, and to shirk responsibility for developing a trained, skilled long-term industry workforce. The above measures would incentivize Applicant developers to work with contractors who make sure workers are paid in full or made whole swiftly upon discovery of underpayments. By assessing an Applicant's track record of working regularly with contractors who contribute to registered apprenticeship programs, the City sends a message that the housing affordability crisis is not simply an issue of under-supply, it is a problem created in part by over-demand created by low-skill, low-wage workforce strategies.

Below is a table with the latest data (2014 Q4) from the State EDD which indicates the number of employees that Berkeley businesses reported having during the last quarter of 2014.

# of Employees	Total # of Businesses	Percentage of Berkeley Businesses	Total Number of Employees	% of Berkeley Workforce
0-1	2,161	43%	2,161	5%
2-10	1,930	38%	8,081	18%
10-24	580	12%	8,633	19%
25-39	157	3%	4,697	10%
40-55	79	2%	3,621	8%
56+	146	3%	18,613	41%
TOTAL	5,053	101%	45,806	101%

Note: Percentages do not add to 100% due to rounding. Total Number of Businesses and Total Number of Employees do not count some major large employers such as UC Berkeley and the Labs, BUSD, Peralta Colleges or the U.S. Postal Service because they are not subject to the MWO.

#	Agency	FY16 Contract Amount	Currently Subject to LWO	Subject to LWO with new interpretation*	# of employees implicated based on \$\$ only	Comments Attachment 4
1	Bay Area Community Land Trust	\$4,991	No	No		
2	J-Sei	\$8,845	No	No		
3	The Suitcase Clinic	\$9,828	No	No		
4	Berkeley Community Gardening Collab.	\$10,000	No	No		
5	Alzheimers Services of the East Bay	\$13,464	No	No		
6	Berkeley Free Clinic	\$13,500	No	No		
7	South Berkeley Community Church	\$14,025	No	No		
8	McGee Avenue Baptist Church	\$15,139	No	No		
9	Berkeley Place, Inc.	\$15,287	No	No		
10	Community Alliance for Learning	\$20,000	No	No		
11	K-College	\$20,000	No	No		
12	Pacific Center for Human Growth	\$23,245	No	No		
13	Through The Looking Glass	\$24,518	No	No		
14	Satellite Affordable Housing Associates	\$28,115	No	No		
15	Saint Johns	\$30,691	No	No		
16	Bonita House	\$31,134	No	No		
17	Rubicon Programs	\$35,266	No	No		
18	Resources for Community Development	\$37,943	No	No		
19	Nia House	\$39,999	No	No		
20	A Better Way, Inc.	\$40,000	No	No		
21	Bay Area Outreach & Recreation Program	\$40,426	No	No		
22	Bread Project	\$41,165	No	No		
23	SEEDS Community Resolution Center	\$45,000	No	No		
24	Toolworks, Inc.	\$47,665	No	No		
25	Healthy Black Families, Inc.	\$50,000	No	Yes	0	peer led
26	New Bridge Foundation, Inc.	\$50,000	No	Yes	17	
27	Rising Sun Energy Center	\$50,852	No	Yes	10	already complies
28	Berkeley Unified School District	\$54,000	No	Yes	8	
29	Family Violence Law Center	\$60,041	No	Yes	23	
30	Bay Area Community Resources (BACR)	\$62,000	No	Yes	7	
31	East Bay Community Law Center	\$65,700	No	Yes	16	2 positions may not be compliant
32	Dorothy Day House	\$71,324	No	Yes	0	Less than 6 employees but have seasonal shelter operators
33	Biotech Partners	\$76,750	No	Yes	0	5 employees & already complies
34	Berkeley Youth Alternatives	\$82,674	No	Yes	6	
35	Youth Spirit Artworks (YSA)	\$83,777	No	Yes	0	Less than 6 employees plus stipend artists
36	Fred Finch Youth Center	\$86,655	No	Yes	16	inc. mentors
37	BDIC	\$89,817	No	Yes	7	inc. stipended workers
38	Stiles Hall	\$90,000	No	Yes	16	inc. tutors
39	Inter-City Services (ICS)	\$95,036	No	Yes	6	already complies
40	Multicultural Institute	\$97,858	No	Yes	9	already complies
41	Regents of the University of California -	\$99,750	No	Yes	0	5 employees
42	BAHIA	\$103,590	Yes	Yes		
43	Ephesian Childrens Center	\$103,920	Yes	Yes		
44	Rebuilding Together East Bay-North	\$122,854	Yes	Yes		
45	Alameda County Homeless Action Center	\$126,349	Yes	Yes		
46	YEAH!	\$138,759	Yes	Yes		
47	Center for Independent Living (CIL)	\$176,826	Yes	Yes		
48	Women's Daytime Drop-In Center	\$188,651	Yes	Yes		
49	Options Recovery Services	\$191,839	Yes	Yes		
50	R.I.S.E.-	\$216,039	Yes	Yes		
51	Community Energy Svcs Corp (CESC)	\$282,334	Yes	Yes		
52	BANANAS	\$365,135	Yes	Yes		
53	Building Opportunities for Self-Sufficiency	\$398,119	Yes	Yes		
54	Lifelong Medical Care	\$587,343	Yes	Yes		
55	Easy Does It	\$1,075,936	Yes	Yes		
56	Berkeley Food & Housing Project	\$1,391,902	Yes	Yes		
		\$7,346,076			141	
	*assuming agency employs 6 or more staff who spend 50%+ of time on city-funded project					

Section 2. ~~The Administrative Code is hereby amended by adding Chapter 12Z, to read as follows:~~

ORDINANCE NO. -N.S.

ADDING BERKELEY MUNICIPAL CODE CHAPTER 12Z BERKELEY FAMILY FRIENDLY AND ENVIRONMENT FRIENDLY WORKPLACE ORDINANCE

BE IT ORDAINED by the Council of the City of Berkeley as follows:

Section 1. That Berkeley Municipal Code Chapter 12Z is adopted to read as follows:

CHAPTER 12.Z BERKELEY FAMILY FRIENDLY AND ENVIRONMENT FRIENDLY WORKPLACE ORDINANCE

Sections:

~~Sec. 12Z.010~~ Title.

~~Sec. 12Z.020~~ Findings.

~~Sec. 12Z.030~~ Definitions.

~~Sec. 12Z.040~~ Right to Request Flexible or Predictable Working Arrangement.

~~Sec. 12Z.050~~ Response to Request for Flexible or Predictable Working Arrangement.

~~Sec. 12Z.060~~ Request for Reconsideration by Employee from the Denial of Request for Flexible or Predictable Working Arrangement.

~~Sec. 12Z.070~~ Exercise of Rights and Caregiver Status Protected: Retaliation Prohibited.

~~Sec. 12Z.080~~ Notice and Posting Requirements for Employers.

~~Sec. 12Z.090~~ Employer Records.

~~Sec. 12Z.100~~ Implementation and Enforcement.

~~Sec. 12Z.110~~ Exemption of Certain Job Classifications Pertaining to Public Health and Public Safety.

~~Sec. 12Z.120~~ Waiver through Collective Bargaining.

~~Sec. 12Z.130~~ Other Legal Requirements.

~~Sec. 12Z.140~~ Rulemaking.

~~Sec. 12Z.150~~ Outreach.

~~Sec. 12Z.160~~ Preemption.

~~Sec. 12Z.170~~ Severability.

SEC. 12Z.010. TITLE.

This Chapter shall be known as the "Berkeley Family Friendly and Environment Friendly Workplace Ordinance".

2 SEC. 12Z.030. DEFINITIONS.

For purposes of this Chapter, the following definitions apply.

"Agency" means the **Health, Housing, and Community Services Department**, or any successor department, or any other Department as designated by the City Manager.

"City" means the City of Berkeley.

"Director" means the Community Development Project Coordinator Director of the Health, Housing and Community Services Department or his or her designee.

"Employee" means any person who is employed within the geographic boundaries of the City by an Employer, including part-time employees. "Employee" includes a participant in a Welfare-to-Work Program when the participant is engaged in work activity that would be considered "employment" under the federal Fair Labor Standards Act, 29 USC §201 et seq., and any applicable US. Department of Labor Guidelines. "Welfare-to-Work Program" shall include any public assistance program administered by the Human Services Agency, including but not limited to CalWORKS, and any successor programs that are substantially similar, that require a public assistance applicant or recipient to work in exchange for their grant.

"Employer" means the City, or any person as defined in Section 18 of the California Labor Code who regularly employs 10 or more Employees, including an agent of that Employer and corporate officers or executives 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, employ or exercise control over the wages, hours, or working conditions of an Employee. The term "Employer" shall also include any successor in interest of an Employer. The term "Employer" shall not include the state or federal government or any local government entity other than the City.

"Flexible Working Arrangement" means a change in an Employee's terms and conditions of employment. A Flexible Working Arrangement may include but is not limited to a modified work schedule, changes in start and/or end times for work, part-time employment, job sharing arrangements, working from home, telecommuting, reduction or change in work duties, or part-year employment.

"Predictable Working Arrangement" means a change in an Employee's terms and conditions of employment.

"Work Schedule" means those days and times within a work period that an Employee is required by an Employer to perform the duties of his or her employment for which he or she will receive compensation.

SEC. 12Z.040. RIGHT TO REQUEST FLEXIBLE OR PREDICTABLE WORKING ARRANGEMENT.

(a) An Employee who has been employed with an Employer for ~~six~~ **three** months or more and works at least eight hours per week on a regular basis may request a Flexible or Predictable Working Arrangement. That request may include, but is not limited to, a change in the Employee's terms and conditions of employment as they relate to:

- (1) The number of hours the Employee is required to work;
- (2) The times when the Employee is required to work;
- (3) Where the Employee is required to work;
- (4) Work assignments or other factors: or
- (5) Predictability in a Work Schedule.

(b) Any request submitted to the Employer under this Section shall be in writing and specify the arrangement applied for, the date on which the Employee requests that the arrangement becomes effective, and the duration of the arrangement, ~~and explain how the request is related to care giving.~~ **A copy of this written request shall also be sent to the City, at an address provided as part of the public notice required in Section 12Z.080.**

SEC. 12Z.050. RESPONSE TO REQUEST FOR FLEXIBLE OR PREDICTABLE WORKING ARRANGEMENT.

(a) An Employer to whom an Employee submits a request under Section 12Z.040 must meet with an Employee requesting a Flexible or Predictable Working Arrangement within **21 calendar** days of the request.

(b) An Employer must consider and respond to an Employee's request for a Flexible or Predictable Working Arrangement in writing within **21 calendar** days of the meeting required in subsection (a). The deadline in this Section may be extended by agreement with the Employee confirmed in writing.

(c) An Employer may grant or deny a request for Flexible or Predictable Working Arrangement. An Employer who grants the request shall confirm the arrangement in writing to the Employee. An Employer who denies a request must explain the denial in a written response that sets out a bona fide business reason for the denial, notifies the Employee of the right to request reconsideration by the Employer under Section 12Z.060, and includes a copy of the text of that Section. **A copy of this written confirmation or denial shall also be sent to the City, at an address provided as part of the public notice required in Section 12Z.080.**

(d) Either an Employer or an Employee may revoke an applicable Flexible or Predictable Working Arrangement with 14 days written notice to the other party; if either party so revokes, the Employee may submit a request for a different Flexible or Predictable Working Arrangement and the Employer must respond to that request as set forth in Sections 12Z.050 and 12Z.060. **A copy of all such written notices or requests shall also be sent to the City, at an address provided as part of the public notice required in Section 12Z.080.**

(e) For an Employer who grants a Predictable Working Arrangement, if the Employer has insufficient work for the Employee during the period of the Predictable

Working Arrangement, nothing in this Ordinance requires the Employer to compensate the Employee during such period of insufficient work.

NO 12Z.060 Language???

SEC. 12Z.070. EXERCISE OF RIGHTS PROTECTED; RETALIATION PROHIBITED.

(a) It shall be unlawful for an Employer or any other person to interfere with, restrain, or deny the exercise of, or the attempt to exercise, any right protected under this Chapter. It shall be unlawful for an Employer to discharge, threaten to discharge, demote, suspend, or otherwise take adverse employment action against any person for exercising rights protected under this Chapter. Such rights include but are not limited to:

- (1) The right to request a Flexible or Predictable Working Arrangement under this Chapter;
- (2) the right to request reconsideration of the denial of a request for a Flexible or Predictable Working Arrangement under this Chapter;
- (3) the right to file a complaint with the Agency alleging a violation of any provision of this Chapter;
- (4) the right to inform any person about an Employer's alleged violation of this Chapter;
- (5) the right to cooperate with the Agency or other persons in the investigation or prosecution of any alleged violation of this Chapter;
- (6) the right to oppose any policy, practice, or act that is unlawful under this Chapter; or
- (7) the right to inform any person of his or her rights under this Chapter.

SEC. 12Z.080. NOTICE AND POSTING REQUIREMENTS FOR EMPLOYERS.

(a) The Agency shall, by the operative date of this Chapter, publish and make available to Employers, in all languages spoken by more than 5% of the Berkeley workforce, a notice suitable for posting by Employers in the workplace informing Employees of their rights under this Chapter. The Agency shall update this notice on December 1 of any year in which there is a change in the languages spoken by more than 5% of the Berkeley workforce. In its discretion, the Agency may combine the notice required herein with any other Agency notice that Employers are required to post in the workplace. **This notice shall include an appropriate address for Employees and Employers to send copies of all written communication pursuant to the requirements of this Chapter.**

(b) Every Employer shall post in a conspicuous place at any workplace or job site where any Employee works the notice required by subsection (a). Every Employer shall post this notice in English, Spanish, Chinese, and any language spoken by at least 5% of the Employees at the workplace or job site. **In instances where an Employee does not have a regular physical location where they perform their work, the Employer shall provide a copy of the public notice to the Employee when they are hired or assigned to complete work within the City of Berkeley.**

The notice shall be provided to the employee before they commence work within the city limits and must be provided in the language most easily comprehended by the Employee.

SEC. 12Z.090. EMPLOYER RECORDS.

Employers shall retain documentation required under this Chapter for a period of three years from the date of the request for a Flexible or Predictable Working Arrangement, and shall allow the Agency access to such records, with appropriate notice and at a mutually agreeable time, to monitor compliance with the requirements of this Chapter. When an issue arises as to an alleged violation of an Employee's rights under this Chapter, if the Employer has failed to maintain or retain documentation required under this Chapter, or does not allow the Agency reasonable access to such records, it shall be presumed that the Employer has violated this Chapter, absent clear and convincing evidence otherwise.

SEC. 12Z.100. IMPLEMENTATION AND ENFORCEMENT.

(a) Administrative Enforcement.

(1) The Agency is authorized to take appropriate steps to enforce this Chapter and coordinate enforcement of this Chapter. The Agency may investigate possible violations of this Chapter. Where the Agency has reason to believe that a violation has occurred, it may order any appropriate temporary or interim relief to mitigate the violation or maintain the status quo pending completion of a full investigation or hearing. **The Agency shall make every effort to resolve complaints informally, in a timely manner, and shall have a policy that the Agency shall take no more than six months to resolve any matter, before initiating an enforcement action. The failure of the Agency to meet these timelines within six months shall not be grounds for dismissal of the penalty.** The Agency's finding of a violation may not be based on the validity of the Employer's bona-fide business reason for denying an Employee's request for a Flexible or Predictable Working Arrangement. Instead, the Agency's review shall be limited to an Employer's adherence to procedural, posting and documentation requirements, set forth in this Chapter, as well as the validity of any claims under Section 12Z.070.

(2) Where the Agency determines that a violation has occurred, it may issue a determination and order any appropriate relief. Thereafter, the Agency may impose an administrative penalty up to \$50.00 requiring the Employer to pay to each Employee or person whose rights under this Chapter were violated for each day or portion thereof that the violation occurred or continued.

(3) Where prompt compliance is not forthcoming, the Agency may take any appropriate enforcement action to secure compliance, including initiating a civil action pursuant to Section 12Z.10(b). 12Z.10(7)(b). In order to compensate the City for the costs of investigating and remedying the violation, the Agency may also order the violating Employer or person to pay to the City a sum of not more than \$50.00 for each day or portion thereof and for each Employee or person as to whom the violation occurred or continued. Such funds shall be allocated to the Agency and used to offset the costs of implementing and enforcing this Chapter.

(4) An Employee or other person may report to the Agency any suspected violation of this Chapter, but if an Employee is reporting a violation pertaining to that Employee's own request for Flexible or Predictable Working Arrangement, that Employee must first have submitted a request for reconsideration to the Employer under Section 12Z.060. The Agency shall encourage reporting pursuant to this subsection 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; provided however, that with the authorization of such person, the Agency may disclose his or her name and identifying information as necessary to enforce this Chapter or for other appropriate purposes. The filing of a report of a suspected violation by an Employee does not create any right of appeal to the Agency by the Employee; based on its sole discretion, the Agency may decide whether to investigate or pursue a violation of this Chapter.

(5) In accordance with the procedures described in Section 12Z.140, the Director shall establish rules governing the administrative process for determining and appealing violations of this Chapter. The rules shall include procedures for:

- (A) providing the Employer with notice that it may have violated this Chapter;
- (B) providing the Employer with a right to respond to the notice;
- (C) providing the Employer with notice of the Agency's determination of a violation; and
- (D) providing the Employer with an opportunity to appeal the Agency's determination to a hearing officer, not employed by the Agency, who is appointed by the City ~~Controller~~ Manager or his or her designee.

(6) If there is no appeal of the Agency's determination of a violation, that determination shall constitute the City's final decision. An Employer's failure to appeal the Agency's determination of a violation shall constitute a failure to exhaust administrative remedies, which shall serve as a complete defense to any petition or claim brought by the Employer against the City regarding the Agency's determination of a violation.

(7) If there is an appeal of the Agency's determination of a violation, the hearing before the hearing officer shall be conducted in a manner that satisfies the requirements of due process. In any such hearing, the Agency's determination of a violation shall be considered prima facie evidence of a violation, and the Employer shall have the burden of proving, by a preponderance of the evidence, that the Agency's determination of a violation is incorrect. The hearing officer's decision of the appeal shall constitute the City's final decision. The sole means of review of the City's final decision, rendered by the hearing officer, shall be by filing in the Alameda County?? Superior Court a petition for writ of mandate under Section 1094.5 of the California Code of Civil Procedure. The Agency shall notify the Employer of this right of review after issuance of the City's final decision by the hearing officer.

(b) **Civil Enforcement.** The City may bring a civil action in a court of competent jurisdiction against the Employer or other person violating this Chapter and upon prevailing, shall be entitled to such legal or equitable relief as may be appropriate to

remedy the violation including, but not limited to: reinstatement; back pay; the payment of benefits or pay unlawfully withheld; the payment of an additional sum as liquidated damages in the amount of \$50.00 to each Employee or person whose rights under this Chapter were violated for each day such violation continued or was permitted to continue, appropriate injunctive relief, and, further, shall be awarded reasonable attorneys' fees and costs.

(c) **Interest.** In any administrative or civil action brought under this Chapter, the Agency or court, as the case may be, shall award interest on all amounts due and unpaid at the rate of interest specified in subdivision (b) of Section 3289 of the California Civil Code.

(d) **Remedies Cumulative.** The remedies, penalties, and procedures provided under this Chapter are cumulative.

~~SEC. 12Z.120.~~ **WAIVER THROUGH COLLECTIVE BARGAINING.** All and any portions of the applicable requirements of this Chapter shall not apply to Employees covered by a bona fide collective bargaining agreement to the extent that such requirements are expressly waived in the collective bargaining agreement in clear and unambiguous terms.

~~SEC. 12Z.130.~~ **OTHER LEGAL REQUIREMENTS.** This Chapter provides minimum employment requirements pertaining to Employees and shall not be construed to preempt, limit, or otherwise affect the applicability of any other law, regulation, requirement, policy, or standard, or provision of a collective bargaining agreement, that provides for greater or other rights of or protections for Employees or that extends other rights or protections to Employees.

~~SEC. 12Z.140.~~ **RULEMAKING AUTHORITY.** The Director shall have authority to issue regulations or develop guidelines that implement provisions of this Chapter. Notwithstanding the definition of "Director" in this Chapter, a designee of the Director shall not have authority under the foregoing sentence of this Section; but a designee of the Director shall have authority to conduct hearings leading to the adoption of regulations or guidelines.

~~SEC. 12Z.150.~~ **OUTREACH.**

~~??The Department on the Status of Women and the Office of Labor Standards Enforcement and the Labor Commission shall jointly create an outreach and community engagement program to educate Employees and Employers about their rights and obligations under this Chapter. This outreach program shall include media, trainings and materials accessible to the diversity of Employees and Employers in Berkeley.~~

~~SEC. 12Z.15 12Z.160.~~ **PREEMPTION.**

Nothing in this Chapter shall be interpreted or applied so as to create any requirement, power, or duty in conflict with federal or state law.

~~SEC. 12Z.16~~ **12Z.170. CITY UNDERTAKING LIMITED TO PROMOTION OF GENERAL WELFARE.**

In enacting and implementing this Chapter, the City is assuming an undertaking only to promote the general welfare. The City is not assuming, nor is it imposing on

its officers and employees, an obligation for breach of which it is liable in money damages to any person who claims that such breach proximately caused injury. This Chapter does not create a legally enforceable right against the City.

~~SEC. 12Z.17~~ 12Z.180. SEVERABILITY.

If any of the parts or provisions of this Chapter including sections, subsections, sentences, clauses, phrases, words, numbers, or the application thereof to any person or circumstance is held invalid or unconstitutional by a decision of a court of competent jurisdiction, the remainder of this Chapter, including the application of such part or provisions to persons or circumstances other than those to which it is held invalid, shall not be affected thereby and shall continue in full force and effect. To this end, the provisions of this Chapter are severable.

Section 3. Effective

(a) Effective Date. This ordinance shall become effective **60** days after enactment.

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