



Commission on Labor

## Agenda

North Berkeley Senior Center  
1901 Hearst Avenue  
Berkeley, CA

Wednesday  
November 16, 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 July 20, 2016 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. Election of temporary Chairperson for today's meeting
5. Status Updates:
  - 1) *Freedom from Workplace Bullies Week*, October 16-22, 2016 -update by Nan Cowardin-Lee, PhD (Attachment 2)
  - 2) Berkeley Family Friendly & Environment Friendly Workplace Ordinance (aka Flexible Worktime Ordinance) update from staff on pending council report  
**Attachment 3:** Memo from staff with recommended draft language in lieu of draft ordinance originally recommended by the Commission on Labor on March 16, 2016
  - 3) Minimum Wage Ordinance/Living Wage Ordinance
  - 4) Fair Chance Ordinance Subcommittee report
  - 5) Public Transportation Subcommittee report
6. Council Referral: Develop an ordinance to create a Skilled Construction Wage that sets a floor for construction wages on major residential and mixed use projects and provides incentives for the use of apprentices. Also request that the Building Trades Council be consulted in the process.  
**Attachment 4:** September 27, 2016 Council referral  
**Attachment 4a:** Input from Carpenters Local Union 713

7. Sweatfree Procurement Ordinance- request from former Sweatfree Subcommittee member Diana Bohn to reinstitute the Commission Sweatfree subcommittee  
**Attachment 5:** Proposed resolution from Diana Bohn to eliminate the threshold  
**Attachment 5a:** October 7, 2014 Finance Department report adopting first reading of the ordinance to lower the threshold to \$1,000 & recommending against a threshold of \$0.  
**Attachment 5b:** 2015 Annual report from Finance Department
8. Establish 2017 Meeting Schedule (Attachment 6)
9. Agenda planning for next regular meeting on January 16, 2016

### **Information**

10. 2017 Council Meeting Schedule (Attachment 7)

### **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.

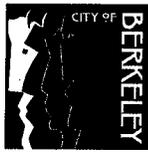
**Written material** may be viewed in advance of the meeting at the Housing & Community Services Department, 2180 Milvia, 2<sup>nd</sup> Floor, during regular business hours or at the Berkeley Public Library, Shattuck/Kittredge Streets, during regular library hours at the Reference Desk. The Commission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

#### **Secretary:**

Delfina M. Geiken  
Health, Housing & Community Services  
Department  
(510) 981-7551  
E-mail: [DGeiken@CityofBerkeley.info](mailto:DGeiken@CityofBerkeley.info)

#### **Mailing Address:**

Commission on Labor  
Delfina Geiken, Secretary  
2180 Milvia, 2<sup>nd</sup> Floor  
Berkeley, CA 94704



## Minutes

North Berkeley Senior Center  
1901 Hearst Avenue  
Berkeley, CA

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

### Preliminary Matters

1. Roll Call  
Meeting called to order @ 7:05PM  
Present: S. Frankel; L. Sayre; J. Fillingim; S. Kessler, W. Bloom; K. Gomez  
(arrived @ 7:20pm)  
Staff: D. Geiken; N. Dahl  
Members of the public: 4
  
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 May 18, 2016 Meeting minutes (Attachment 1)  
  
Ayes: S. Frankel; L. Sayre; J. Fillingim; S. Kessler, W. Bloom; K. Gomez  
Noes: None  
Absent: K. Gomez (arrived @ 7:20pm,)

### 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. Commission on the Status of Women presentation regarding status update on the Council referral to refer to the City Manager to amend the Berkeley Municipal Code to require city contractors and subcontractors with 20 or more employees to submit an Equal Pay Report.  
  
Equal Pay subcommittee provided a summary of their efforts to-date. Future plans include coordination of focus groups with city contractors, town hall meeting and a council report towards the end of calendar year 2016.
  
5. Status Updates:
  - 1) Minimum Wage Ordinance/Living Wage Ordinance  
Staff provided an update on enforcement and a current investigation. No action at this time.

2) Fair Chance Ordinance Subcommittee report

No action at this time. L. Sayre provided summary of recent research demonstrating that Ban the Box laws negatively impact jobseekers of color due to minority bias.

No action at this time.

3) Family & Environment Friendly Worktime Ordinance (aka Flexible Worktime Ordinance)

City Manager companion report will be included with Commission's report, tentatively scheduled for the September 13, 2016 City Council meeting.

4) Public Transportation Subcommittee report

No report or action at this time.

5) City-wide security contracts draft council report discussion on action taken at May 18, 2016 to amend the March meeting motion to include outsourcing of other city services including but not limited to parking fine processing.

No action at this time.

7. Agenda planning for next regular meeting on September 21, 2016

- Minimum Wage
- Fair Chance Ordinance
- Family & Environment Friendly Workplace Ordinance
- City-wide contracting

**Information**

8. Adding Berkeley Municipal Code Chapter 13.104, Wage Theft (attachment 2)

**Announcements**

None

**Adjournment**

Meeting adjourned @ 8:15pm

Minutes Approved on \_\_\_\_\_

Delfina Geiken

Commission Secretary

## **Bullying is:**

"Repeated, health-harming mistreatment of one or more persons (the targets) by one or more perpetrators. It is abusive conduct that is :

- Threatening, humiliating, or intimidating, or
- Work interference — sabotage — which prevents work from getting done, or
- Verbal abuse.:"

(<http://www.workplacebullying.org/individuals/problem/definition/>-accessed 3/15/2016)

## **Bullying has ~**

Nine core characteristics: repetition, duration, escalation, intent to harm, attributional intent, the creation of a hostile work environment, power disparity, negative communication patterning, and distorted communication networks. A lack of empathy should also be added to this list, along with a general lack of conscience or a guiding moral compass in the offending person.

## **Some main methods of bullying workers are ~**

- (1) threat to professional status [e.g. belittling opinion, public professional humiliation; accusation regarding lack of effort];
- (2) threat to personal standing [e.g. name-calling, insults, intimidation, devaluing with reference to age];
- (3) isolation [e.g. preventing access to opportunities, physical or social isolation, withholding of information];
- (4) overwork [e.g. undue pressure, impossible deadlines, unnecessary disruptions], and
- (5) destabilization [e.g. failure to give credit when due, meaningless tasks, removal of responsibility, repeated reminders of blunders, setting up to fail].

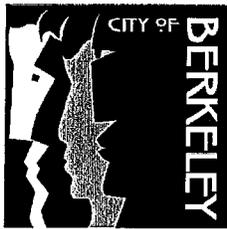
**Between 47% and 71% of bosses are reported to be bullies;  
1 in 5 people will experience bullying within their career;  
71% of workers will be forced out of their jobs causing  
financial, physical and emotional stress**

## Freedom From Workplace Bullies Proclamations 2015 - 2016

1 Alameda County	51 La Canada Flintridge	101 Plymouth
2 Albany	52 La Mesa	102 Rancho Cordova
3 Anaheim	53 La Quinta	103 Rancho Santa Margarita
4 Arcata	54 Lafayette	104 Reedley
5 Artesia	55 Lake Elsinore	105 Redlands
6 Atascadero	56 Lassen County	106 Richmond
7 Atwater	57 Lathrop	107 Riverside
8 Avenal	58 Livermore	108 Rohnert Park
9 Azuza	59 Lodi	109 Roseville
10 Belmont	60 Lompoc	110 Sacramento
11 Benecia	61 Long Beach	111 San Dimas
12 Blue Lake	62 Loomis	112 San Jose
13 Buena Park	63 Lynwood	113 San Leandro
14 Calistoga	64 Madera County	114 San Pablo
15 Capitola	65 Malibu	115 Santa Ana
16 Carpinteria	66 Mendocino County	116 Santa Clara
17 Cathedral City	67 Manteca	117 Santa Cruz
18 Ceres	68 McFarland	118 Santa Cruz County
19 Chino Hills	69 Mendota	119 Santa Maria
20 City of Industry	70 Milpitas	120 Santa Monica
21 Corcoran	71 Mission Viejo	121 Saratoga
22 Concord	72 Modesto	122 Scotts Valley
23 Covina	73 Modoc County	123 Sebastopol
24 Cudahy	74 Monrovia	124 Shafter
25 Del Norte County	75 Montclair	125 Sierra County
26 Dinuba	76 Monterey	126 South El Monte
27 Duarte	77 Monterey County	127 South Lake Tahoe
28 Dublin	78 Moorpark	128 South San Francisco
29 East Palo Alto	79 Morro Bay	129 Stanton
30 Eastvale	80 National City	130 Sutter County
31 El Cerrito	81 Needles	131 Tehachapi
32 El Dorado County	82 Nevada City	132 Temecula
33 Foster City	83 Newark	133 Thousand Oaks
34 Fowler	84 Newport Beach	134 Torrance
35 Glendale	85 Novato	135 Turlock
36 Goleta	86 Oakley	136 Tustin
37 Grover Beach	87 Oceanside	137 Union City
38 Hawaiian Gardens	88 Oroville	138 Upland
39 Hermosa Beach	89 Pacifica	139 Vacaville
40 Hesperia	90 Palmdale	140 Vallejo
41 Hollister	91 Palm Desert	141 Vernon
42 Holtville	92 Palm Springs	142 Wasco
43 Hughson	93 Palo Alto	143 Watsonville
44 Humboldt County	94 Petaluma	144 Westmorland
45 Huron	95 Pico Rivera	145 Wheatland
46 Indian Wells	96 Pinole	146 Wildomar
47 Isleton	97 Pismo Beach	147 Windsor
48 Jackson	98 Placentia	148 Yountville
49 Jurupa Valley	99 Placerville	
50 Kingsburg	100 Pleasant Hill	

**35% of California  
Cities and Counties issued  
Freedom From  
Workplace Bullies Week  
Proclamations  
to The California Healthy  
Workplace Advocates  
in 2015 & 2016**

**All Proclamations can be viewed at  
[www.bullyfreeworkplace.org](http://www.bullyfreeworkplace.org)**



Health Housing and  
Community Services Department  
Housing & Community Services Division

Attachment 3

## MEMORANDUM

**To:** Berkeley Commission on Labor

**From:** Nathan Dahl, Community Development Project Coordinator

**Date:** November 9, 2016

**Subject:** **Berkeley Family Friendly and Environment Friendly Workplace Ordinance (BFFFWO)**

### **Recommendation**

Recommend the attached draft of the Berkeley Family Friendly and Environment Friendly Workplace Ordinance to City Council in lieu of the draft Ordinance recommended by the Commission on March 16, 2016.

### **Background**

On March 16, 2016, the Commission unanimously passed (5-0-0) the subcommittee's recommendation to send the draft ordinance of the Berkeley Family Friendly and Environment Friendly Workplace Ordinance to City Council. On May, 4 2016, the Commission submitted their report and draft ordinance to staff for analysis and review. City staff in multiple departments have reviewed the draft ordinance and have made revisions that will improve the practicability, implementation and administration of the ordinance.

Proposed staff changes to the Labor Commission's version include:

- Addition of a "Findings" Section (13Z.020) that provides rationale for the ordinance.
- Addition of a definition of "Department" and enhanced definition of "Predictable Working Arrangement".
- Revision of Section 13Z.040 – "Right to Request Flexible or Predictable Working Arrangement". Eliminates duplication of Flexible and Predictable Work Schedule definitions and streamlines process.
- Revision of Section 13Z.050 – "Response to Request for Flexible or Predictable Working Arrangement". Allows an Employer to revoke or modify a Flexible or Predictable Working Arrangement for business reasons, including but not limited

*A Vibrant and Healthy Berkeley for All*

to reducing the number of hours assigned to an Employee if the Employer has insufficient work for the Employee during the period of the Predictable Working Arrangement.

- Deletion of Section 13Z.060 – “Request for reconsideration...” Eliminates the requirement of reconsideration of a request. If an Employee wants to use their second request within a calendar year to push for consideration of their request, they may.
- Revision of Section 13Z.080 – “Employer Records”, reducing the number of years that Employers must retain records documenting requests and responses from three years to one year.
- Revisions to Section 13Z.090 – “Implementation and Enforcement”, for consistency with City’s administrative citations process and addressing enforcement related to unrepresented City of Berkeley employees.
- Addition of Section 13Z.100 – “Exemption of Certain Job Classifications Pertaining to Public Health and Safety”.

Attachment 1: BFFEFWO with Staff Revisions Attached

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ORDINANCE NO. -N.S.

ADDING BERKELEY MUNICIPAL CODE CHAPTER 42Z13Z BERKELEY FAMILY FRIENDLY AND ENVIRONMENT FRIENDLY WORKPLACE ORDINANCE

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

Section 1. That Chapter 13Z is hereby added to the Berkeley Municipal Code Chapter 42Z is adopted to read as follows:

CHAPTER 42Z13.Z

BERKELEY FAMILY FRIENDLY AND ENVIRONMENT FRIENDLY WORKPLACE ORDINANCE

Sections:

42Z13Z.010 Title.

42Z13Z.020 Findings.

42Z13Z.030 Definitions.

42Z13Z.040 Right to Request Flexible or Predictable Working Arrangement.

42Z13Z.050 Response to Request for Flexible or Predictable Working Arrangement.

42Z.060 Request for Reconsideration by Employee from the Denial of Request for Flexible or Predictable Working Arrangement.

42Z.070 13Z.060 Exercise of Rights and Caregiver Status Protected: Retaliation Prohibited.

42Z.080 13Z.070 Notice and Posting Requirements for Employers.

42Z.090 13Z.080 Employer Records.

42Z.100 13Z.090 Implementation and Enforcement.

42Z.110 13Z.100 Exemption of Certain Job Classifications Pertaining to Public Health and Public Safety.

42Z.120 13Z.110 Waiver through Through Collective Bargaining.

42Z.130 13Z.120 Other Legal Requirements.

42Z.140 13Z.130 Rulemaking.

42Z.150 13Z.140 Outreach.

42Z.160 13Z.150 Preemption.

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**42Z.17013Z.160 Severability.**

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**42Z13Z.010. TITLE.**

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

**42Z13Z.020 FINDINGS**

A. Over the last few decades, the demographics of the nation's workforce and family structures have significantly changed. These changes include an increased number of women in the workforce; fewer households with children that have at least one parent staying at home full-time; and more single-parent households. As a result of these and other changes, the demands placed on workers with family responsibilities are greater and more complex today than they have been previously.

B. Many families have direct caregiving responsibilities for elderly parents or other older relatives. Family members serving this caregiving role face the same work/family pressures as parents with minor children, and are even more challenged when they also have caregiving responsibilities for minor children.

C. Many employees who live outside city centers have lengthy commutes to their jobs. Traffic patterns during rush hour elongate those commutes. Commutes of long duration leave less time for employees to balance work and caregiving responsibilities and also contribute to greenhouse gas emissions. Flexible working hours and telecommuting options will reduce demands on streets and highways and mass transportation systems during rush hour. Berkeley and the Bay Area will likely benefit from both a caregiving and environmental standpoint.

D. Studies indicate that providing employees with access to flexible work arrangements reduces the conflicts many face between their work responsibilities and their family obligations, with the effect of enhancing employee satisfaction and morale and overall well-being.

E. Flexible work arrangements may also benefit businesses at minimal cost. Implementing workplace flexibility helps businesses attract and retain key talent, increase employee retention and reduce turnover, reduce overtime needs, reduce absenteeism, and enhance employee productivity, effectiveness, and engagement.

F. In 2014, over 78% of Berkeley residents voted in favor of Measure Q, an advisory measure to inform the Berkeley City Council that the voters request it to adopt an ordinance that would give public sector and private sector employees in the City of Berkeley the right to request to work part-time.

**13Z.030. DEFINITIONS.**

For purposes of this Chapter, the following definitions apply.

"Agency" "City" means the City of Berkeley.

"Department" means the City of Berkeley's 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 Director of the Health, Housing and Community Services Department or his or her designee or any other person as designated by the City Manager.

"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 that provides flexibility, including but~~ 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.

"Major Life Event" means the birth of an Employee's child, the placement with an Employee of a child through adoption or foster care, or an increase in an Employee's care giving duties for a person with a Serious Health Condition who is in a Family Relationship with the Employee.

"Predictable Working Arrangement" means a change in an Employee's terms and conditions of employment. ~~that provides a consistent or reliable pattern of work assignment, including but not limited to days scheduled to work, start time and end time~~

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and work site location with at least seven (7) calendar days' notice prior to the start of the scheduled shift.

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"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.

#### **12Z13Z.040. RIGHT TO REQUEST FLEXIBLE OR PREDICTABLE WORKING ARRANGEMENT.**

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(a)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 Employer's terms and conditions of employment as they relate to:~~

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- (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)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. ~~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.~~

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12ZC. A request made under this Section may be made two times within any twelve month period, unless the Employee experiences a Major Life Event, in which case the Employee may make, and the Employer must consider, an additional request.

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D. Nothing in this Chapter shall prohibit an Employee from making requests in addition to those permitted in subdivision c of this Section, but any such requests will not be covered by this Chapter.

#### **13Z.050 RESPONSE TO REQUEST FOR FLEXIBLE OR PREDICTABLE WORKING ARRANGEMENT.**

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(a)A. An Employer to whom an Employee submits a request under Section 12Z13Z.040 must meet with an Employee requesting a Flexible or Predictable Working Arrangement within 21 calendar days of the request.

(b)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)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 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, D. Nothing in this Chapter prevents an Employer from later revoking or modifying a Flexible or Predictable Working Arrangement for business reasons, including but not limited to reducing the number of hours assigned to an Employee 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.~~

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#### **~~12Z.060 REQUEST FOR RECONSIDERATION BY EMPLOYEE FROM THE DENIAL OF REQUEST FOR FLEXIBLE OR PREDICTABLE WORKING ARRANGEMENT.~~**

~~(a) An Employee whose request for Flexible or Predictable Working Arrangement has been denied may submit a request for reconsideration to the Employer in writing within 30 days of the decision.~~

~~(b) If an Employee submits a request for reconsideration under this Section, the Employer must arrange a meeting to discuss this request to take place within 21 days after receiving the notice of the request.~~

~~(c) The Employer must inform the Employee of the Employer's final decision in writing within 21 days after the meeting to discuss the request for reconsideration. If the request for reconsideration is denied, this notice must explain the Employer's bona fide business reasons for the denial.~~

#### **~~12Z.070~~13Z.060 EXERCISE OF RIGHTS PROTECTED; RETALIATION PROHIBITED.**

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~~(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. A. 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;

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(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) (4) the right to cooperate with the Agency or other persons in the investigation of any alleged violation of this Chapter;~~

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~~(6) the right to oppose any policy, practice, or act that is unlawful under this Chapter; or~~

~~(7) (5) the right to inform any person of his or her rights under this Chapter.~~

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#### **~~12Z.08013Z.070 NOTICE AND POSTING REQUIREMENTS FOR EMPLOYERS.~~**

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~~(a) A.~~ The AgencyDepartment 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 AgencyDepartment 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 AgencyDepartment may combine the notice required herein with any other AgencyDepartment 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) 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.

#### **~~12Z.09013Z.080 EMPLOYER RECORDS.~~**

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Employers shall retain documentation of the written response required under this Chapter Section 13.Z.050(B) for a period of three years ~~one year~~ from the date of the request for a Flexible or Predictable Working Arrangement issuance of the written response, and shall allow the AgencyDepartment 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.

**12Z.10013Z.090 IMPLEMENTATION AND ENFORCEMENT.**

(a) Administrative Enforcement.

(1) The Agency is authorized

A. If the Employer fails to take appropriate steps provide a response to enforce this Chapter and coordinate enforcement of this Chapter. The Agencythe Employee in accordance with the procedures outlined in BMC Section 13Z.050, or an Employee believes that retaliation as described in 13Z.060 has taken place, the Employee may file a complaint with the City on a form provided by the Department. Upon receipt of a complaint, the Department may investigate possible violations of this Chapter. Where the AgencyDepartment 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 Agencythe Department 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

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B. Complaints filed with the Department by City of Berkeley Employees who are not exempt from this Chapter under Sections 13Z.100(a) or 13Z.110, shall be groundsforwarded to the City's Human Resources Department or to the City Manager or her designee for dismissal of the investigation and resolution under City of Berkeley internal rules and procedures.

C. Where the Department determines that a violation has occurred, it may issue an administrative penalty pursuant to Chapter 1.28. The Agency'sDepartment's finding of a violation mayshall 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'sDepartment'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.07013Z.060.

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(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 eachD. Any 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(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 affected 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 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 Employer's willful violation of this Chapter 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 awarded reasonable attorneys' fees and costs and shall be entitled to such legal or equitable relief as may be

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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 and are not intended to be exclusive of any other available remedies, penalties and procedures established by law which may be pursued to address violations of this Chapter. Actions taken pursuant to this Chapter shall not prejudice or adversely affect any other action, civil or criminal, that may be brought to abate a violation or to seek compensation for damages suffered.

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#### **12Z.12013Z.100 EXEMPTION OF CERTAIN JOB CLASSIFICATIONS PERTAINING TO PUBLIC HEALTH AND PUBLIC SAFETY**

A. Department Director may request an exemption from this Chapter from the Director of Human Resources for certain classifications of City employees working in public health or public safety functions, based upon operational requirements according to criteria developed by the Director of Human Resources. Such criteria shall promote efficiency and advance public safety or public health.

B. The Department, in consultation with the Director of Human Resources, may exempt non-City Employees working in public safety or public health functions, upon request of those non-City Employers, based upon operational requirements according to criteria developed by the Agency and the Director of Human Resources. Such criteria shall promote efficiency and advance public safety or public health.

**13Z.110 WAIVER THROUGH COLLECTIVE BARGAINING.** All and any portions of the applicable requirements of this

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. The City of Berkeley is exempt from providing the entitlements of this ordinance to employees until the City and its Unions have had the opportunity in successor contract negotiations to negotiate an express waiver of this Ordinance in its collective bargaining agreements.

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#### **12Z.13013Z.120 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, standard, or provision of a collective bargaining

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agreement, that provides for greater or other rights of or protections for Employees or that extends other rights or protections to Employees.

**~~42Z.140~~13Z.130 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.~~

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**~~42Z.150~~13Z.140 OUTREACH.**

The ~~Department~~Agency and the City of Berkeley's 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.

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**~~42Z.160~~13Z.150 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.

**~~42Z.170~~13Z.160 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.

**~~42Z.180~~**

**~~13Z.170~~ 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.

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**Section 3. Effective**

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

Section 2. Copies of this Ordinance shall be posted for two days prior to adoption in the display case located near the walkway in front of Council Chambers, 2134 Martin Luther King Jr. Way. Within 15 days of adoption, copies of this Ordinance shall be filed at each

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branch of the Berkeley Public Library and the title shall be published in a newspaper of general circulation.

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ORDINANCE NO. -N.S.

ADDING BERKELEY MUNICIPAL CODE CHAPTER 13Z BERKELEY FAMILY FRIENDLY  
AND ENVIRONMENT FRIENDLY WORKPLACE ORDINANCE

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

Section 1. That Chapter 13Z is hereby added to the Berkeley Municipal Code to read  
as follows:

**CHAPTER 13.Z**

**BERKELEY FAMILY FRIENDLY AND ENVIRONMENT FRIENDLY WORKPLACE  
ORDINANCE**

**Sections:**

**13Z.010 Title**

**13Z.020 Findings**

**13Z.030 Definitions**

**13Z.040 Right to Request Flexible or Predictable Working Arrangement**

**13Z.050 Response to Request for Flexible or Predictable Working Arrangement**

**13Z.060 Exercise of Rights and Caregiver Status Protected: Retaliation Prohibited**

**13Z.070 Notice and Posting Requirements for Employers**

**13Z.080 Employer Records**

**13Z.090 Implementation and Enforcement**

**13Z.100 Exemption of Certain Job Classifications Pertaining to Public Health and  
Public Safety**

**13Z.110 Waiver Through Collective Bargaining**

**13Z.120 Other Legal Requirements**

**13Z.130 Rulemaking**

**13Z.140 Outreach**

**13Z.150 Preemption**

**13Z.160 Severability**

### **13Z.010 TITLE**

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

### **13Z.020 FINDINGS**

- A. Over the last few decades, the demographics of the nation's workforce and family structures have significantly changed. These changes include an increased number of women in the workforce; fewer households with children that have at least one parent staying at home full-time; and more single-parent households. As a result of these and other changes, the demands placed on workers with family responsibilities are greater and more complex today than they have been previously.
- B. Many families have direct caregiving responsibilities for elderly parents or other older relatives. Family members serving this caregiving role face the same work/family pressures as parents with minor children, and are even more challenged when they also have caregiving responsibilities for minor children.
- C. Many employees who live outside city centers have lengthy commutes to their jobs. Traffic patterns during rush hour elongate those commutes. Commutes of long duration leave less time for employees to balance work and caregiving responsibilities and also contribute to greenhouse gas emissions. Flexible working hours and telecommuting options will reduce demands on streets and highways and mass transportation systems during rush hour. Berkeley and the Bay Area will likely benefit from both a caregiving and environmental standpoint.
- D. Studies indicate that providing employees with access to flexible work arrangements reduces the conflicts many face between their work responsibilities and their family obligations, with the effect of enhancing employee satisfaction and morale and overall well-being.
- E. Flexible work arrangements may also benefit businesses at minimal cost. Implementing workplace flexibility helps businesses attract and retain key talent, increase employee retention and reduce turnover, reduce overtime needs, reduce absenteeism, and enhance employee productivity, effectiveness, and engagement.
- F. In 2014, over 78% of Berkeley residents voted in favor of Measure Q, an advisory measure to inform the Berkeley City Council that the voters request it to adopt an ordinance that would give public sector and private sector employees in the City of Berkeley the right to request to work part-time.

### **13Z.030 DEFINITIONS**

For purposes of this Chapter, the following definitions apply.

"City" means the City of Berkeley.

"Department" means the City of Berkeley's Health, Housing, and Community Services Department, or any successor department, or any other Department as designated by the City Manager.

"Director" means the Director of the Health, Housing and Community Services Department or his or her designee or any other person as designated by the City Manager.

"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 that provides flexibility, including but 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.

"Major Life Event" means the birth of an Employee's child, the placement with an Employee of a child through adoption or foster care, or an increase in an Employee's care giving duties for a person with a Serious Health Condition who is in a Family Relationship with the Employee.

"Predictable Working Arrangement" means a change in an Employee's terms and conditions of employment that provides a consistent or reliable pattern of work assignment, including but not limited to days scheduled to work, start time and end time and work site location with at least seven (7) calendar days' notice prior to the start of the scheduled shift.

"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.

### **13Z.040 RIGHT TO REQUEST FLEXIBLE OR PREDICTABLE WORKING ARRANGEMENT**

A. An Employee who has been employed with an Employer for three months or more and works at least eight hours per week on a regular basis may request a Flexible or Predictable Working Arrangement.

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.

C. A request made under this Section may be made two times within any twelve month period, unless the Employee experiences a Major Life Event, in which case the Employee may make, and the Employer must consider, an additional request.

D. Nothing in this Chapter shall prohibit an Employee from making requests in addition to those permitted in subdivision c of this Section, but any such requests will not be covered by this Chapter.

### **13Z.050 RESPONSE TO REQUEST FOR FLEXIBLE OR PREDICTABLE WORKING ARRANGEMENT**

A. An Employer to whom an Employee submits a request under Section 13Z.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 business reason for the denial.

D. Nothing in this Chapter prevents an Employer from later revoking or modifying a Flexible or Predictable Working Arrangement for business reasons, including but not limited to reducing the number of hours assigned to an Employee if the Employer has insufficient work for the Employee during the period of the Predictable Working Arrangement.

### **13Z.060 EXERCISE OF RIGHTS PROTECTED; RETALIATION PROHIBITED**

A. 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 cooperate with the Agency or other persons in the investigation of any alleged violation of this Chapter;

(5) the right to inform any person of his or her rights under this Chapter.

### **13Z.070 NOTICE AND POSTING REQUIREMENTS FOR EMPLOYERS**

A. The Department 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 Department 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 Department may combine the notice required herein with any other Department 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.

### **13Z.080 EMPLOYER RECORDS**

Employers shall retain documentation of the written response required under Section 13.Z.050(B) for a period of one year from the date of issuance of the written response, and shall allow the Department access to such records, with appropriate notice and at a mutually agreeable time, to monitor compliance with the requirements of this Chapter.

### **13Z.090 IMPLEMENTATION AND ENFORCEMENT**

A. If the Employer fails to provide a response to the Employee in accordance with the procedures outlined in BMC Section 13Z.050, or an Employee believes that retaliation as described in 13Z.060 has taken place, the Employee may file a complaint with the City on a form provided by the Department. Upon receipt of a complaint, the Department may investigate possible violations of this Chapter. Where the Department has reason to believe that a violation has occurred, the Department shall make every effort to resolve complaints informally, in a timely manner, before initiating an enforcement action.

B. Complaints filed with the Department by City of Berkeley Employees who are not exempt from this Chapter under Sections 13Z.100(a) or 13Z.110, shall be forwarded to the City's Human Resources Department or to the City Manager or her designee for investigation and resolution under City of Berkeley internal rules and procedures.

C. Where the Department determines that a violation has occurred, it may issue an administrative penalty pursuant to Chapter 1.28. The Department's finding of a violation shall not be based on the validity of the Employer's business reason for denying an

Employee's request for a Flexible or Predictable Working Arrangement. Instead, the Department'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 13Z.060.

D. Any Employee affected by his or her Employer's willful violation of this Chapter may bring a civil action in a court of competent jurisdiction against the Employer and, upon prevailing, shall be awarded reasonable attorneys' fees and costs and shall be entitled to such legal or equitable relief as may be appropriate to remedy the violation.

E. The remedies, penalties and procedures provided under this Chapter are cumulative and are not intended to be exclusive of any other available remedies, penalties and procedures established by law which may be pursued to address violations of this Chapter. Actions taken pursuant to this Chapter shall not prejudice or adversely affect any other action, civil or criminal, that may be brought to abate a violation or to seek compensation for damages suffered.

### **13Z.100 EXEMPTION OF CERTAIN JOB CLASSIFICATIONS PERTAINING TO PUBLIC HEALTH AND PUBLIC SAFETY**

A. Department Director may request an exemption from this Chapter from the Director of Human Resources for certain classifications of City employees working in public health or public safety functions, based upon operational requirements according to criteria developed by the Director of Human Resources. Such criteria shall promote efficiency and advance public safety or public health.

B. The Department, in consultation with the Director of Human Resources, may exempt non-City Employees working in public safety or public health functions, upon request of those non-City Employers, based upon operational requirements according to criteria developed by the Agency and the Director of Human Resources. Such criteria shall promote efficiency and advance public safety or public health.

### **13Z.110 WAIVER THROUGH COLLECTIVE BARGAINING**

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. The City of Berkeley is exempt from providing the entitlements of this ordinance to employees until the City and its Unions have had the opportunity in successor contract negotiations to negotiate an express waiver of this Ordinance in its collective bargaining agreements.

### **13Z.120 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, 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.

### **13Z.130 RULEMAKING AUTHORITY**

The Director shall have authority to issue regulations or develop guidelines that implement provisions of this Chapter.

### **13Z.140 OUTREACH**

The Agency and the City of Berkeley's 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.

### **13Z.150 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.

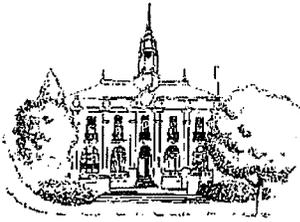
### **13Z.160 CITY UNDERTAKING LIMITED TO PROMOTION OF GENERAL WELFARE**

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.

### **13Z.170 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 2. Copies of this Ordinance shall be posted for two days prior to adoption in the display case located near the walkway in front of Council Chambers, 2134 Martin Luther King Jr. Way. Within 15 days of adoption, copies of this Ordinance shall be filed at each branch of the Berkeley Public Library and the title shall be published in a newspaper of general circulation.



## Kriss Worthington

Councilmember, City of Berkeley, District 7  
2180 Milvia Street, 5<sup>th</sup> Floor, Berkeley, CA 94704  
PHONE 510-981-7170, FAX 510-981-7177, EMAIL  
kworthington@ci.berkeley.ca.us

### ACTION CALENDAR

September 27, 2016

*(Continued from July 19, 2016)*

To: Honorable Mayor and Members of the City Council  
From: Councilmember Kriss Worthington  
Subject: Labor Commission Referral: Housing Wage for Major Residential Mix-Use Projects

#### RECOMMENDATION:

Refer to the Labor Commission to develop an ordinance to create a housing wage for major residential mix-use projects.

#### BACKGROUND:

There is a gigantic gap between the wages of people who build housing in Berkeley and the ability to afford the rising cost of housing in Berkeley. While the City has undergone an explosion of housing development, the people building new housing are frequently unable to afford the housing they build.

#### FINANCIAL IMPLICATIONS:

Unknown.

#### ENVIRONMENTAL SUSTAINABILITY:

Consistent with Berkeley's Environmental Sustainability Goals and no negative impact.

#### CONTACT PERSON:

Councilmember Kriss Worthington      510-981-7170

Carpenters Local Union 713 re: City Council's 9/27/16 "Housing Wage" Referral  
**Housing Wage for Major Residential Mix-Use Projects**

**Proposal Summary:**

The City can and ought to create a minimum hourly "housing wage" standard for workers in apprenticeable occupations who build major residential and mixed-use projects with gross building areas greater than or equal to 30,000 square feet within City limits. The hourly housing wage for a construction worker in FY 2017 would be **\$30.74** under the formula proposed below. A housing wage ordinance ought to permit employers of construction workers employed on covered projects to pay a lower wage to registered apprentices from State of California-approved apprenticeship training programs, while adhering to applicable California Code of Regulations sections regarding wages, benefits and working conditions.<sup>1</sup> The standard would be enforced through the compliance mechanisms that exist under Berkeley's minimum wage ordinance (BMC 13.99) and Wage Theft Prevention ordinance (BMC 13.104).

The proposed housing wage standard is indexed to the "fair market rent" for an Alameda County studio apartment, as published annually by the federal Department of Housing and Urban Development (HUD).<sup>2</sup>

The proposed formula for the housing wage is as follows:

$$\text{Housing Wage} = ((\text{FMR} \times 12 \text{ months}) \div \text{Affordable rent burden}) \div (\text{Avg BCCW Hours})$$

Where:

**FMR** = Current "final" Fair Market Rent for an Alameda County efficiency apartment<sup>3</sup>

**Affordable rent burden** = 30 percent<sup>4</sup>

**Avg BCCW Hours** is the average annual number of hours worked by construction workers employed by California specialty trade contractors (NAICS 238), calculated with quincennial Economic Census data. The average hours per BCCW in 2012 was 1,867.<sup>5</sup>

<sup>1</sup> See 8 CCR § 208 (Wages, Employee Benefits, and Other Compensation for Apprentices) and 8 CCR § 210 (Working Conditions, "Apprentices shall work under and with competent journeymen ...")

<sup>2</sup> See HUD's data via <https://www.huduser.gov/portal/datasets/fmr.html> (this year's final fair market rents may be accessed via this [link](#)). The "housing wage" is calculated via for those who build housing is adjusted by dividing the full-time/year-round housing wage by 90%, which is the adjustment one must make to take into account the fact that workers in the seasonal and volatile construction industry on average obtain only approximately 1,872 hours of work per year.

<sup>3</sup> See <https://www.huduser.gov/portal/datasets/fmr.html>.

<sup>4</sup> See [http://portal.hud.gov/hudportal/HUD?src=/program\\_offices/comm\\_planning/affordablehousing/](http://portal.hud.gov/hudportal/HUD?src=/program_offices/comm_planning/affordablehousing/)

<sup>5</sup> See [http://factfinder.census.gov/bkmk/table/1.0/en/ECN/2012\\_US/23A1](http://factfinder.census.gov/bkmk/table/1.0/en/ECN/2012_US/23A1)

Carpenters Local Union 713 re: City Council's 9/27/16 "Housing Wage" Referral  
**Background**

- *Construction wages have declined drastically:* A generation ago, the annual wage income of the median Alameda County blue collar construction worker exceeded the income necessary to afford an Alameda County studio apartment priced at the HUD-defined "fair market rent," possibly by more than 25 percent.<sup>6</sup> By 2010-2014, however, the median annual wage income of a blue collar construction workers who lived in Alameda was 25 percent below the county "fair market rent" studio apartment housing wage.
- *Construction productivity is higher than minimum wage industries:* Construction is an industry characterized by productivity (gross output per production employee) that is two times as great as the productivity of grocery stores, general merchandise stores, and restaurants, as measured by nationwide Gross Domestic Product data compiled by the United States Bureau of Economic Analysis.
- *Construction industry owners captured most of value added:* Since 1992 the construction industry's gross operating surplus has increased 50% more than either the price of materials or construction wages, according to the Economic Census.<sup>7</sup>
- *Community welfare:* Housing is a long-lasting community asset; the quality of installation of the structure and the component systems will affect the durability of both; the quality of installation of the structures and component systems affect the value-retention of Berkeley's real property tax base.
- *Community welfare/public health:* California construction workers have higher rates of not having health insurance coverage than most other non-college-educated workers, according to our analysis of the most recent data from the American Community Survey.
- *Regional labor market:* Construction and real estate development leaders proclaim there are shortages of building and construction trades people, which is an indication that the labor market is inefficient; current pay and benefits are failing to attract sufficient entrants into the trades.
- *Addressing racial/ethnic pay disparities:* People of color are overrepresented among lower-wage construction workers: statewide, they are 71 percent of all blue collar construction workers but are 85% of all lower-income blue collar construction workers. Controlling for the specific vocational preparation level of the various construction

<sup>6</sup> A precise estimate is not possible. Decennial Census data are from 1980; the earliest available HUD Fair Market Rent data are from 1983. The 1979 median annual wage income of a BCCW from Alameda County was \$17,580. The annual Alameda county studio apartment "housing wage" for 1983 was \$13,360, 31 percent lower than the median.

<sup>7</sup> Gross operating surplus is the basis for profitability. The Northern California Carpenters Union Research Department examined average BCCW wage trends over the past decades in comparison to various construction industry price indices tracked by the Federal Reserve; in every instance BCCW wages increased less than the construction industry's output price index.

Carpenters Local Union 713 re: City Council's 9/27/16 "Housing Wage" Referral occupations, Latino blue collar construction workers are paid 30% less than "white only" blue collar construction workers, analysis of current U.S. Census Bureau data indicated.

- *Community safety*: Employers who pay higher hourly wages have significantly lower "loss cost ratios" of workers compensation payouts to payroll in construction crafts such as masonry, carpentry, and drywall, according to the California Workers Compensation Insurance Rating Bureau, which suggests that better paid workers work more safely.<sup>8</sup>
- *Apprenticeship opportunities*: The nonresidential building and non-building construction sectors have generated the most opportunities for apprentices. There are as-of-yet largely untapped opportunities to expand apprenticeship programs through more opportunities for apprentices to work in the residential building industry;
- *Substantial welfare returns to apprenticeship*: Establishing a housing wage that is approximately equal to or higher than the minimum wage standards for State of California registered apprentices may incentivize employers to participate in state-approved apprenticeship training programs. Apprenticeship programs combine on-the-job-training and classroom training over the span of 3-5 years, and have proven to yield positive returns for both the individual participants as well as for society. A 2012 study conducted for the U.S. Department of Labor found that apprentices who completed their programs had career earnings that were, on average, \$240,000 higher than similar nonparticipants in apprenticeship.<sup>9</sup>
- *Local contractors' labor costs not likely to be impacted significantly*: According to a U.S. Bureau of Labor Statistics survey of employers, the average of construction occupation wages of employers domiciled in the Oakland-Hayward-Berkeley metropolitan division in the first quarter of 2016 was \$31.21. Labor cost increases from the housing wage standard, at least for most Alameda County employers who work on major housing development projects, therefore will be negligible or modest.
- *Housing development cost not likely to be impacted significantly*: Blue collar construction labor is, on average, only 14 percent of total housing development costs.<sup>10</sup> Increases in labor costs that aren't offset by productivity increases therefore will have modest-scale effects on the total development costs of major housing or mixed-use projects. The proposed housing wage standard only increases as rents increase. Increases in actual and expected rents, in turn, increase the tolerance of housing developments for higher costs.

<sup>8</sup> See <http://www.wcirb.com/document/4815>

<sup>9</sup> See [https://wdr.doleta.gov/research/FullText\\_Documents/ETAOP\\_2012\\_10.pdf](https://wdr.doleta.gov/research/FullText_Documents/ETAOP_2012_10.pdf)

<sup>10</sup> Estimate calculated using statewide, detailed construction industry data from the U.S. Economic Census and non-construction development costs from the State of California housing agencies' 2014 "Affordable Housing Cost Study."

Carpenters Local Union 713 re: City Council's 9/27/16 "Housing Wage" Referral  
**DRAFT Proposed Recitals**

*Whereas* residential construction workers build structures in Berkeley that provide shelter for households for decades and add hundreds of millions of dollars annually to the City's property tax base.

*Whereas* the annual income required to afford a fair market rate zero-bedroom "studio" apartment in Alameda County without being rent-burdened is \$57,400 in FY 2017.

*Whereas* household Census surveys indicate that fewer than a quarter of Alameda County blue collar construction workers earned equal to or greater than the metropolitan area's studio apartment annualized housing wage for FY 2016<sup>11</sup>; and the average weekly pay of *residential* specialty trade construction workers is 20% lower than construction workers' overall average pay, according to the Bureau of Labor Statistics Quarterly Census of Employment & Wages.

*Whereas* most registered apprentices in State of California-approved apprenticeship programs earn hourly wages that are less than the Housing Wage<sup>12</sup>, but are on pathways to careers that will yield substantially higher lifetime earnings than peers who have not participated in registered apprenticeship, according to a 2012 Mathematica study for the federal Department of Labor.

*Whereas* the City of Berkeley has a public welfare interest in the quality of construction of larger multifamily residential projects as well as in the fit between wages of people who build housing in Alameda County and local housing costs.

*Whereas* the City of Berkeley has a public welfare interest in promoting an adequately-sized, trained, skilled and stable residential construction workforce in the local area.

## **Proposed Requirements**

- (a) Residential and Residential Mixed-Use development projects shall be required to pay all Covered Workers who perform construction work on projects that entail new construction of at least 30,000 gross square feet of building floor area no less than a straight-time "Housing Wage" hourly rate of pay, which shall be calculated as follows:

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<sup>11</sup> Of an estimate 12,800 blue collar construction workers residing in Alameda County, 2010-2014, an estimated 9,800 made less than \$55,200. (Carpenters Research analysis of American Community Survey 2010-2014 data courtesy IPUMS-USA, University of Minnesota, [www.ipums.org](http://www.ipums.org))

<sup>12</sup> For apprenticeable crafts & public works apprentice prevailing wages, go to <http://www.dir.ca.gov/OPRL/pwappwage/PWAppWageStart.asp>

Carpenters Local Union 713 re: City Council's 9/27/16 "Housing Wage" Referral  
**Housing Wage** =  $((\text{FMR} \times 12 \text{ months}) \div \text{Affordable rent burden}) \div (\text{Avg BCCW Hours})$ <sup>13</sup>

Where:

**FMR** is the final Fair Market Rent for an Alameda County efficiency apartment in the current fiscal year<sup>14</sup>

**Affordable rent burden** is 30 percent<sup>15</sup>

**Avg BCCW Hours** is the average annual number of hours worked by construction workers employed by California specialty trade contractors (NAICS 238), calculated with quincennial Economic Census data. The average hours per BCCW in 2012 was 1,867.<sup>16</sup>

- (b) The City shall update the housing wage annually, within 30 days of the release by HUD of final Fair Market Rents for the area that includes Alameda County
- (c) Construction workers who are registered Apprentices, enrolled by a State-approved apprenticeship program, may receive less than the hourly wage specified in (a), provided that the hourly wage they receive comply with the requirements of 8 CCR § 208 (Wages, Employee Benefits, and Other Compensation for Apprentices).
  - (i) Contractor(s) shall only employ Apprentices to perform such work as is within their capabilities and which is customarily performed by the craft in which they are indentured.
  - (ii) Contractor(s) shall comply with the requirements of 8 CCR § 210 (Working Conditions, "Apprentices shall work under and with competent journeymen ...").

## Proposed: Reporting, Implementation, Enforcement

The obligation of a Covered Project with respect to these requirements runs with the Project. Except where prohibited by state or federal law, City agencies or departments may revoke or suspend any Project-related, city-issued certificates, permits or licenses held or requested by the Project Applicant or related Contractor(s) until such time as violation of this [section?] is remedied. The City shall not renew any such license of an Employer with outstanding violations, as finally determined under this Chapter, until such time as the violation is remedied. [reference: BMC 13.99.090(D)]

<sup>13</sup> To see annual housing wages that have been calculated using a variant of this formula, see the National Low Income Housing Coalition's "Out of Reach" report <http://nlihc.org/oor/california>. Divide the annual housing wage for a zero-bedroom apartment by 1,867 hours per year instead of by 2,080 hours per year. The housing wages in the report are based on FY 2016 HUD Fair Market Rents, not final FY 2017 FMRs.

<sup>14</sup> See <https://www.huduser.gov/portal/datasets/fmr.html>.

<sup>15</sup> See [http://portal.hud.gov/hudportal/HUD?src=/program\\_offices/comm\\_planning/affordablehousing/](http://portal.hud.gov/hudportal/HUD?src=/program_offices/comm_planning/affordablehousing/)

<sup>16</sup> See [http://factfinder.census.gov/bkmk/table/1.0/en/ECN/2012\\_US/23A1](http://factfinder.census.gov/bkmk/table/1.0/en/ECN/2012_US/23A1)

Carpenters Local Union 713 re: City Council's 9/27/16 "Housing Wage" Referral  
A violation of this Chapter shall trigger the compliance & enforcement provisions of the Wage Theft Prevention ordinance (BMC 13.104).

Contractor(s) shall retain payroll records pertaining to Apprentices and Journeymen for a period of four years, and shall allow the City access to such records, with appropriate notice and at a mutually agreeable time, to monitor compliance with the requirements of this [section]. Where a Contractor does not maintain or retain adequate records documenting wages paid or does not allow the City reasonable access to such records, the Employee's account of how much he or she was paid shall be presumed to be accurate, absent clear and convincing evidence otherwise. Furthermore, failure to maintain such records or to allow the City reasonable access shall render the Employer subject to administrative citation, pursuant to Section 90, Subsection A, of Chapter 13.99 of the BMC.

The implementation measures included in the BMC 13.99.080 shall be applicable to implementation of this ordinance.

The enforcement remedies included in BMC 13.99.090, A - F shall be applicable to violations of this ordinance.

### **Proposed Definitions:**

"Apprenticeable craft", for the purposes of this chapter/section only, is an occupation in the building and construction industry which requires independent judgment and the application of manual, mechanical, technical, or professional skills and is best learned through an organized system of on-the-job training together with related and supplemental instruction, and for which a State of California-approved apprenticeship program program(s) exists.

"Apprentice" is a person who is enrolled in a State of California approved apprenticeship program. An apprentice registered in an approved apprenticeship program in any of the building and construction trades shall be employed only as an apprentice when performing any construction work for an employer that is a party, individually or through an employer association, to any apprenticeship agreement or standards covering that individual. (Ref: Labor Code § 3098)

"Apprenticeship Program" means a California State-approved Apprenticeship Program in the respective building and construction crafts

"Contractor(s)" and/or "Subcontractor(s)" means any individual, firm, partnership or corporation, or combination thereof, including joint ventures, which is an independent business enterprise and has entered into a contract or subcontract with respect to construction work necessary for any part of a Development Standards Bonus Project. As applicable depending on its context, "Contractor" shall refer to Contractor or Contractor and Subcontractor.

Carpenters Local Union 713 re: City Council's 9/27/16 "Housing Wage" Referral  
"Covered Project" shall mean new construction of greater than 30,000 square feet that is not subject to local, state or federal prevailing wage requirements and does not have a valid Project Labor or Community Workforce Agreement that encompasses the work of all Apprenticeable Crafts.

"Covered Worker" means, for the purposes of this chapter/section only, an employee of a Contractor or Subcontractor that is performing the work of an Apprenticeable Craft on the site of a Covered Project.

"Journeyman" means a person who has either (1) completed an accredited apprenticeship in his/her craft, or (2) who has completed the equivalent of an apprenticeship in length and content of work experience and all other requirements in the craft which has workers classified as journeyman in the apprenticeable occupation.

*To: Commission on Labor*  
*From: Diana Bohn*

Attachment 5

**PROPOSED RESOLUTION TO ELIMINATE THRESHOLD OF SWEATSHOP-FREE PROCUREMENT ORDINANCE**

WHEREAS, according to Berkeley Municipal Code, Section 3.62.080, the Commission on Labor advises the City Council on matters relating to the City of Berkeley's role in labor disputes and issues of workers' rights; and

WHEREAS, on July 7, 2009, the Sweatshop-Free Procurement Ordinance was adopted; and

WHEREAS, the "threshold" as described in section 13.97.02-A of the Sweatshop-Free Procurement Ordinance was set at \$25,000; and

WHEREAS, on July 6, 2011, the "threshold" was lowered to \$10,000 effective July 1, 2013; and

WHEREAS, few textile-related vendors are affected by the ordinance at this threshold; and

WHEREAS, sweatshop labor remains a serious and extant problem the world;

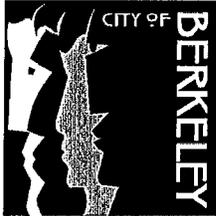
NOW THEREFORE BE IT RESOLVED that the Commission on Labor of the City of Berkeley recommends that the Berkeley City Council lower the "threshold" of the Sweatshop-Free Procurement Ordinance to \$2,000.00, effective July 1, 2014; and

BE IT FURTHER RESOLVED that the Commission on Labor of the City of Berkeley recommends that the Berkeley City Council lower the "threshold" of the Sweatshop-Free Procurement Ordinance to \$0, effective January 1, 2015; and

BE IT FURTHER RESOLVED that the Commission on Labor of the City of Berkeley recommends that the definition of "Production Facility" laid out in Chapter 13.97.020 of the Berkeley Municipal Code be amended to read: "Production Facility" (or "Facilities") means the facility that manufactures (including cutting and assembly by weaving, sewing, knitting or felting), any component of the finished Apparel, including, when the context requires, the owners and managers thereof"; and

BE IT FURTHER RESOLVED that Commission on Labor of the City of Berkeley recommends that Subsection B2 of Chapter 13.97.080 of the Berkeley Municipal Code be amended to read:

Sole Supplier. In the event that a Vendor is not in full compliance with the provisions of this ordinance but is the sole supplier of an Apparel, the City Manager or its designee may exempt the vendor from provisions of this Chapter. No contract awarded under this section may exceed one year in term ~~unless the City Manager or its designee determines, no later than 6 months prior to the expiration of the original term of the contract, that the Vendor has achieved an additional level of compliance with the terms of this Chapter that warrants exercise of an option to extend the contract for an additional year.~~ The City Manager shall not renew any existing contract with an exempted Vendor, or award an exempted Vendor any new contract, unless the Vendor has furnished the City of Berkeley with evidence of having achieved an increased level of compliance with the terms of this chapter. The Labor Commission is tasked with reviewing this evidence and making a recommendation to the City Manager, who shall not issue more than five such exemptions to one Vendor."



Office of the City Manager

CONSENT CALENDAR  
October 7, 2014

To: Honorable Mayor and Members of the City Council  
 From: *CD* Christine Daniel, City Manager  
 Submitted by: Henry Oyekanmi, General Services Manager, Finance Department  
 Subject: Enforcement of Ordinance No. 7,099-N.S. Sweatshop-Free Procurement Ordinance; Amending BMC Chapter 13.97

RECOMMENDATION

Adopt first reading of an Ordinance amending Berkeley Municipal Code Chapter 13.97 to lower the current established threshold of \$25,000 to \$1,000 for the Sweatshop-Free Procurement Ordinance No. 7,099-N.S. effective July 1, 2014, that was approved April 29, 2014.

FISCAL IMPACTS OF RECOMMENDATION

There will be additional costs to vendors, which might be passed back to the City in the form of cost increases.

There will be less competition, since vendor selection will be limited to those that are able to implement the Ordinance, and it could possibly harm small businesses that cannot compete.

City staff will have to spend additional time researching to ensure that vendors can and are willing to sign an affidavit that it is in compliance with the Ordinance.

CURRENT SITUATION AND ITS EFFECTS

During FY 2013, the City of Berkeley spent a total of \$227,455 on apparel. The total spend was procured through nine vendors. The distribution of these vendors are as follows: the City spent over \$25,000 with one (1) vendor, spent over \$10,000 with three (3) vendors, and under \$10,000 with five(5) vendors. The types of purchases the City made during the fiscal year were T-shirts for Camps, Polo shirts, T-shirts, work clothes, Police uniforms, and rental and laundry of uniforms.

Rental and laundry makes up the largest outlay of the total spend for the fiscal year and it constituted approximately 70.39% of the total annual expenditure. The vendor that the City procured these services from is Aramark Uniform Services. Aramark Uniform Services is the City's primary vendor for the rental of uniforms, towels and floor mats. Aramark Uniform Services signed a Sweatshop-Free Procurement Ordinance Affidavit.

### BACKGROUND

On July 7, 2009, The Berkeley City Council passed Ordinance No. 7,099-N.S. called "Sweatshop-Free Procurement Ordinance". The Ordinance was added to the Berkeley Municipal Code in Chapter 13.97. The purpose of this Chapter is for the City of Berkeley to seek to protect the interests of local residents, workers and businesses by exercising its sovereignty to establish a Sweatshop –Free Procurement policy and code of conduct that ensures that items of apparel, garments and corresponding accessories, procured by the City of Berkeley or its agencies, through contracts or purchase orders, be produced in workplaces free of sweatshop conditions; end taxpayer support for sweatshops; protect the basic labor rights and human rights of workers who product apparel for the City of Berkeley; level the playing field for ethical vendors; and, begin the creation of a Sweatshop-Free Procurement policy consistent with federal law and United States trade obligations.

### ENVIRONMENTAL SUSTAINABILITY

There are no identifiable environmental effects or opportunities associated with the subject of this report.

### RATIONALE FOR RECOMMENDATION

Staff is comfortable reducing the threshold from \$25,000 to \$1,000 since there has been continuous out-reach to all the vendors that the city purchases apparel from. All vendors that the city purchased from during the last fiscal year have been informed and notified about the ordinance and its requirements (a copy of the ordinance was attached to the communication). The primary objective is for these vendors to understand the requirements of the ordinance and get certified. The city's objective is to purchase from vendors who have been certified, even if the threshold has not been reached.

The following will be impacted by lowering the threshold established by the Sweatshop Free Procurement Ordinance to \$1,000: Vendors, the City and City Staff.

- 1) Impacts on Vendors:
  - a) Delayed lead times to purchase products.
  - b) Burden for smaller vendors to track the finishing manufacturing plant and have it certified for small dollar purchases.
  - c) Burden for smaller vendors to compete based on economy of scale.
  - d) There will be additional requirements for smaller businesses to get contracts with the City, which might mean added cost of doing business with the City.
  - e) Possible additional expense to hire an attorney to read, understand and confirm that the business is in compliance with the Ordinance through their affidavit.

2) Impacts on the City:

- a) Increase prices
- b) Delays in supplying products, as this adds another step to the process, and the City must wait for a vendor to send the affidavit that it complies with the Ordinance.

3) Impacts on City Staff:

Adding more steps to the procurement process will have some impacts on the General Services Division when sourcing for products this Ordinance covers. Staff will have to spend additional time finding a vendor that is in compliance already or that is willing to provide an affidavit to comply.

ALTERNATIVE ACTIONS CONSIDERED

Staff considered lowering the threshold to zero (0) but is not recommending this action because of the inflexibility and requirement that the purchasing of any amount will have on the purchasing process. For instance; if a department wants to buy five (5) T-shirts from a local vendor down the street on Shattuck for \$60, that purchase cannot be done without the vendor certification. The \$60 purchase will trigger an affidavit from the vendor before it can be purchased. This seems very cumbersome and ineffectual. It will inhibit efficiency and effective purchasing. In addition, during an emergency in which time is of the essence, this will have an impact on procurement.

CONTACT PERSON

Henry Oyekanmi, General Services Manager, 981-7326

Attachments:

- 1: Ordinance

ORDINANCE NO. X,XXX– N.S.

AMENDING SECTIONS 13.97.020 AND 13.97.030 OF THE BERKELEY MUNICIPAL CODE REGARDING SWEATSHOP-FREE PROCUREMENT TO LOWER THE ESTABLISHED THRESHOLD OF \$25,000 TO \$1,000

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

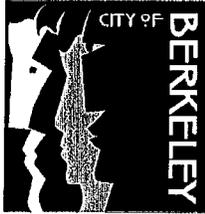
Section 1. That Sub-section 13.97.020.A of the Berkeley Municipal Code is amended to read as follows:

A. This Chapter applies only to the Procurement of Apparel by the City of Berkeley pursuant to any contract that totals more than ~~\$25,000~~ \$1,000 in any given fiscal year.

Section 2. That Sub-section 13.97.030.E of the Berkeley Municipal Code is amended to read as follows:

E. "Vendor" means a person or entity with whom the City of Berkeley has a current procurement relationship, or who bids or proposes to provide apparel to the City of Berkeley, in an amount greater than ~~\$25,000~~ \$1,000 per fiscal year.

Section 3. Copies of this Ordinance shall be posted for two days prior to adoption in the display case located near the walkway in front of Old City Hall, 2134 Martin Luther King, Jr. Way. Within 15 days of adoption, copies of this Ordinance shall be filed at each branch of the Berkeley Public Library and the title shall be published in a newspaper of general circulation.



Department of Finance

INFORMATION CALENDAR  
December 16, 2015

To: Commission on Labor

From: Dee Williams-Ridley, Interim City Manager

Submitted by: Henry Oyekanmi, Director of Finance

Subject: Ordinance No. 7,099-N.S. (Sweatshop-Free Procurement) – Annual Report on Apparel Purchases and Compliance

BACKGROUND

On July 7, 2009 the Berkeley City Council passed Ordinance No. 7,099-N.S. referred to as the “Sweatshop-Free Procurement Ordinance”. The Ordinance was added to the Berkeley Municipal Code as Chapter 13.97. The purpose of this Chapter is to protect the interests of local residents, workers and businesses by establishing a sweatshop-free procurement policy and code of conduct that ensures that items of apparel procured by the City of Berkeley or its agents through contracts or purchase orders be produced in workplaces free of sweatshop conditions. By this ordinance, the City seeks to end taxpayer support for sweatshops, protect the basic labor rights and human rights of workers who produce apparel for the City of Berkeley, level the playing field for ethical vendors, and begin the creation of a sweatshop-free procurement policy consistent with federal law and United States trade obligations.

On October 21, 2014, Ordinance No. 7,378-N.S. was adopted lowering the sweatshop free procurement threshold from a prior established value of greater than \$25,000 for a vendor, to that “...who bids or proposes to provide apparel to the City of Berkeley, in an amount greater than \$1,000 per fiscal year.”

CURRENT SITUATION AND ITS EFFECTS

Section 13.97.090 of the Ordinance requires the City Manager to provide a written report after the first full fiscal year after the effective date of this Chapter and annually thereafter.

During FY 2015 extending from July 1, 2014 through June 30, 2015, the City of Berkeley spent a total of \$189,553 on apparel procured through ten vendors. Purchase amounts by vendor are shown in the table below. The distribution of these vendors is as follows: the City spent over \$25,000 with two (2) vendors, over \$10,000 with one (1) vendor, and under \$10,000 with seven (7) vendors of which one (1) fell below the current \$1,000 purchases compliance threshold. The types of purchases the City made during the fiscal year were t-shirts for camps, t-shirts and caps for Library programs, shirts and work clothes, rental and laundry, Police uniforms, and miscellaneous apparel goods.

**FY 2015 APPAREL PURCHASES BY VENDOR**

Vendor		FY15	Description
Name	No.	Total	
ARAMARK UNIFORM SERVICES	17525	\$127,855	Rental and Laundry
BRICKER-MINCOLLA UNIFORM C	1129	25,730	Police Uniforms
MATRIX PROMOTIONAL MARKETI	27488	16,038	Jackets, Swim shorts
BLUE SKY SPORTS	9519	8,212	Shirts, T-shirts, Hoodies
4IMPRINT INC.	20144	2,310	T-shirts, Caps
SPARTAN VILLIAGE LLC	28864	1,785	Helmet Covers
ALLIANCE GRAPHICS	5321	1,659	Shirts
D.G.H. OUTFITERS	27469	1,477	Shirts
ARAMARK NATIONAL ACCOUNTS	21738	1,284	Polo Shirts
MVP SPORTS & RECREATION, I	15792	856	T-shirts
<b>Total Purchases in FY15</b>		<b>\$187,207</b>	

Rental and laundry at 68.3%, made up the single largest share of total apparel expenditures for the fiscal year of which Aramark Uniform Services is the contracted vendor. Aramark Uniform Services provides laundering services, and rentals of uniforms, towels, and floor mats to the City. Aramark Uniform Services is a signatory to the Sweatshop-Free Procurement Ordinance Affidavit that states the address of the plant where garments are finished; Aramark has stated that it has posted a copy of the BMC in the Oakland facility. It also understands that should its facilities be found to be out of compliance with any provisions of the Chapter and fails to take reasonable steps within a certain time period specified by the City of Berkeley, it will be found to be out of compliance with the Sweatshop-Free Procurement Ordinance and potentially risks termination of the contract.

During FY 2015, General Services responded to one allegation of violation of the Sweatshop-Free procurement Ordinance received by the Human Resources department. General Services conducted an investigation and concluded that the cited Gilden Activewear branded t-shirts purchased at a total value of \$284.48 and bought through Blue Sky Sports were in compliance with the Sweatshop-Free Procurement Ordinance No. 7,099-N.S.

**FUTURE ACTION**

The General Services Division monitors vendor purchases on a city-wide basis. Departments, when purchasing apparel goods are reminded by General Services of the City's sweatshop-free policy and the imperativeness to communicate to and require compliance of all vendors for all purchases made with City funds. Moreover, whether communicating to internal or external parties, General Services emphasizes notification and compliance on all purchases regardless of the order value in relation to the Sweatshop-Free Procurement Ordinance's threshold.

**CONTACT PERSON**

Dennis Dang, Acting General Services Manager, Finance, 510-981-7329

## 2017 Commission Meeting Dates

Name of Commission: Labor

Commission Secretary: Delfina Geiken

**Please Note the Commission Meeting Dates for 2017 Below**

### 2017 Meeting Dates

Month	Meeting Day and Date	Time
<b>January 2016</b>	Wednesday 1/11/16 (2 <sup>nd</sup> Wednesday) OR 1/25/16* (4 <sup>th</sup> Wednesday)	7:00PM
<b>February 2016</b>	<b>No Meeting</b>	
<b>March 2016</b>	Wednesday 3/15/16	7:00PM
<b>April 2016</b>	<b>No Meeting</b>	
<b>May 2016</b>	Wednesday 5/17/16	7:00PM
<b>June 2016</b>	<b>No Meeting</b>	

Month	Meeting Day and Date	Time
<b>July 2016</b>	Wednesday 7/19/16	7:00PM
<b>August 2016</b>	<b>No Meeting</b>	
<b>September 2016</b>	Wednesday 9/20/16	7:00PM
<b>October 2016</b>	<b>No Meeting</b>	
<b>November 2016</b>	Wednesday 11/15/16	7:00PM
<b>December 2016</b>	<b>No Meeting</b>	

**2017 COUNCIL MEETING TIMELINE - HEALTH, HOUSING & COMMUNITY SERVICES  
DEPARTMENT - COMMISSIONS**

Updated 10/26/16

COUNCIL MEETING DATE	Commission needs to take action by	Reports Due to Dept. Director	Reports Due to CAO	Thursday 12:00 PM	Thursday 12:00 PM	Monday 12:00 PM	Wednesday 8:30 AM	Thursday 4:00 PM
				Dept. Reports Due to Clerk	Agenda Committee Packet to Print	Agenda Committee Meeting	Final Agenda Meeting - (Print Agenda on wed.)	Council Agenda Delivery
<b>Winter Recess [December 14, 2016 -- January 23, 2017]</b>								
24-Jan	11/24	12/1	12/8	12/22	1/5	1/9	1/11	1/12
31-Jan	12/1	12/8	12/15	12/29	1/12	1/17	1/18	1/19
14-Feb	12/15	12/22	12/29	1/12	1/26	1/30	2/1	2/2
28-Feb	12/29	1/5	1/12	1/26	2/9	2/14	2/15	2/16
14-Mar	1/12	1/19	1/26	2/9	2/23	2/27	3/1	3/2
28-Mar	1/26	2/2	2/9	2/23	3/9	3/13	3/15	3/16
4-Apr	2/2	2/9	2/16	3/2	3/16	3/20	3/22	3/23
<b>Spring Recess [April 4 -- April 24]</b>								
25-Apr	2/24	3/2	3/9	3/23	4/6	4/10	4/12	4/13
2-May	3/2	3/9	3/16	3/30	4/13	4/17	4/19	4/20
16-May	3/16	3/23	3/30	4/13	4/27	5/1	5/3	5/4
30-May	3/30	4/6	4/13	4/27	5/11	5/15	5/17	5/18
13-Jun	4/13	4/20	4/27	5/11	5/25	5/30	5/31	6/1
27-Jun	4/27	5/4	5/11	5/25	6/8	6/12	6/14	6/15
11-Jul	5/11	5/18	5/25	6/8	6/22	6/26	6/28	6/29
25-Jul	5/25	6/1	6/8	6/22	7/6	7/10	7/12	7/13
<b>Summer Recess [July 26 -- September 11]</b>								
12-Sep	7/13	7/20	7/27	8/10	8/24	8/28	8/30	8/31
26-Sep	7/27	8/3	8/10	8/24	9/7	9/11	9/13	9/14
3-Oct	8/3	8/10	8/17	8/31	9/14	9/18	9/20	9/21
17-Oct	8/17	8/24	8/31	9/14	9/28	10/2	10/4	10/5
31-Oct	8/31	9/7	9/14	9/28	10/12	10/16	10/18	10/19
14-Nov	9/14	9/21	9/28	10/12	10/26	10/30	11/1	11/2
28-Nov	9/28	10/5	10/12	10/26	11/9	11/13	11/15	11/16
5-Dec	10/5	10/12	10/19	11/2	11/16	11/20	11/22	11/22
12-Dec	10/12	10/19	10/26	11/9	11/22	11/27	11/29	11/30
<b>Winter Recess [December 13, 2017 -- January ??, 2018]</b>								