



Office of the City Manager

INFORMATION CALENDAR

May 8, 2007

To: Honorable Mayor and
Members of the City Council

From:  Phil Kamlarz, City Manager

Submitted by: Michael Caplan, Acting Manager, Office of Economic Development

Subject: Sweatshop Free Berkeley Ordinance

INTRODUCTION

The Commissions on Labor and Peace and Justice would like to provide an update to Council on their efforts regarding the Sweatfree Procurement Ordinance. Because the complexity of this proposed Ordinance requires significant review by staff, and thus the time elapsed is of concern to the Commissions; the Commissions' report as written is attached to this staff report. Staff review of the Ordinance as written is also included.

CURRENT SITUATION AND ITS EFFECTS

Since receiving the referral from Council on April 18, 2006, the Commissions on Labor and Peace and Justice have collaborated on drafting a Sweatshop Free Berkeley Ordinance, modeled after the ordinance adopted in San Francisco in September 2005. Working with the Sweatfree Berkeley Coalition and Global Exchange, a non-profit group based in San Francisco, the commissions formed a Sweatshop Free Berkeley Ordinance Subcommittee to work on the Ordinance. Finance Department staff have participated in both full commission meetings and Subcommittee meetings, providing guidance on the challenges that the Ordinance will place on the procurement, compliance and enforcement processes.

BACKGROUND

On April 18, 2006, Council referred to the Commissions on Labor, Peace and Justice and Public Works, for feedback, the development of a Sweatfree Berkeley Ordinance. The Public Works Commission chose not to participate in the process as it was felt that it did not fall under their purview. Staff from the Finance Department subsequently participated in the Commission on Labor's Meeting on May 17, 2006, providing feedback on the proposed Ordinance, expressing concerns that the Ordinance as written would impede the procurement process by creating layers of compliance that would be difficult to enforce. This would significantly increase the costs of procured items and impede the City's charter bidding requirements.

On June 13, 2006, Council referred a Commission proposal to the budget process that would allocate funds for the Ordinance, and subsequently on June 20, 2006, Council approved an allocation of \$25,000 for a monitoring and compliance mechanism.

A Subcommittee was formed comprised of Commissioners from both commissions, and Finance staff continued to work with the Subcommittee, outlining the challenges in implementing the key components of the proposed Ordinance, originally modeled after San Francisco's Ordinance. Staff, while agreeing with the spirit of a Sweatshop Free Ordinance, expressed concern to the Subcommittee about multiple components of the proposed Ordinance, especially the fact that it exceeds scope of the San Francisco Ordinance, which concentrates on contracts over \$25,000 for garments, apparel and accessories. The proposed Berkeley Ordinance includes all related services and equipment for contracts over \$10,000. Additionally, the proposed Berkeley Ordinance places primary responsibility for compliance and enforcement activities on a new Compliance Officer. A new Compliance Officer position would significantly increase the needed budget for enforcement of the ordinance. Other jurisdictions with Sweatshop Free ordinances have existing staffing resource infrastructure to support compliance and enforcement. The City and County of San Francisco's Office of Contract Administration and Office of Labor Enforcement are charged with oversight of the Sweatfree Contracting Ordinance. No such infrastructure exists currently in Berkeley.

In three meetings with Commissioners, staff from the Finance department expressed concerns with specific elements of the Ordinance, making recommendations regarding more enforceable language. Those recommendations are not included in the commissions' most recent version of the draft Ordinance.

The Commission on Labor has kept the Sweatfree Procurement Ordinance as a standing agenda item so that the discussions and updates can continue. On November 6, 2006, the chairpersons of the Commission on Labor and Peace and Justice Commission received an email from the City Attorney, who provided additional guidance on the process required in researching the proposed Ordinance. The Ordinance, as drafted, places sweeping obligations on City vendors. Each vendor would be responsible for extensive investigation and monitoring in order to accurately represent that their labor practices conform to the standards in the proposed Ordinance. Clarifying the scope of regulation in addition to estimating the overall research required of such an Ordinance has been a challenge for staff given existing day-to-day work priorities. Staff from the Finance Department, the Office of Economic Development, and the City Manager's Office have devoted considerable time in meeting with commissioners, the Sweatshop Free Subcommittee, in addition to reviewing and researching other jurisdictions' ordinances along with the proposed Ordinance.

POSSIBLE FUTURE ACTION

The proposed Ordinance, as written, requires the hiring of a Compliance Officer. This would require re-instatement of the Contract Compliance Specialist position, which was removed from the City Manager's budget in 2003. The proposed Ordinance also requires contracting with an Independent Monitor.

Another option worth further research is the utilization of Social Accountability International (SAI), or SA8000, which utilizes an international standard for improving working conditions. Based on the principles of thirteen international human rights conventions, it is a tool to help

apply these norms to practical work-life situations. This certification provides a public report of good practice to consumers, buyers, and other companies and is intended to be a significant milestone in improving workplace conditions. SAI does not set a specific amount for the cost of the certification process—the size, scope and location of the facility will determine the number of days and auditors needed to conduct the audit at the facility, which would, in turn, affect the cost. In general, the costs typically range between \$500-\$1,500 per day, as determined by each individual Certification Body. The costs of an SA8000 certification are solely the responsibility of the vendor.

The Designated Supplier Program (DSP), a pre-qualifying approach initially described in the City Manager's report on June 13, 2006, would require further research by staff. This approach aims at locating a sweat-free compliant group of suppliers pre-qualified by leveraging large aggregate spending from all the universities in the consortium and offering multi-year agreements. It was scheduled for implementation by a consortium of Universities in January 2007, and staff does not have new information thus far. Prior information demonstrated that the monitoring program had not been successful in developing sweat-free compliant supply chains so it is important to obtain feedback on this recent endeavor.

Staff recommends integrating a Sweatshop Free self-certification process such as is currently done with the Equal Benefits, Living Wage, Oppressive States and Nuclear Free Berkeley. The City of Los Angeles has added a Sweat-free Procurement ordinance to their Administrative Code (Ord. No. 176,291, effective January 1, 2005), which is self-certifying, complaint-driven and prescribes a process for receiving and responding to complaints. Staff can conduct research on the administrative and fiscal impacts on this more simplified model. Staff has recommended to the Commission that they further explore the Los Angeles Ordinance as well as the SAI standard, Commissioners agreed to do so at future Subcommittee meetings.

FISCAL IMPACTS OF POSSIBLE FUTURE ACTION

There are numerous costs associated with development of the Ordinance in addition to recurring costs for compliance and enforcement activities. On June 13, 2006, Council approved up to \$60,000 in FY 2007 for the monitoring and compliance mechanism of the Sweatfree Ordinance. If an Independent Monitor is utilized, these funds could be used towards those costs. The costs associated with a Compliance Officer are approximately \$150,000 inclusive of all fringe benefits. The City spends approximately \$242,000 per year on apparel, garments and accessories (the originally agreed upon language between staff and commissions' Subcommittee), the hiring of a compliance officer is not fiscally sound, given the cost is less than \$100,000 of the amount spent on apparel.

If existing staff take on the role of Compliance Officer, it would need to be determined if those responsibilities would fall under the purview of General Services in the Department of Finance. There are no existing classifications in the Finance Department that could fulfill the role and responsibilities of a Compliance Officer.

Similar to the process for certifying Equal Benefits and Living Wage Ordinances, a self-certifying process incurs minimal costs, which would include modifying existing contract forms. The costs of the Designated Supplier Program are not currently known.

The Social Accountability International (SA8000) costs are unknown at this time, it is not known if vendors would pass on the costs of certification through their procurement contracts, since companies obtain certification on their own.

CONTACT PERSONS

Delfina Geiken, Commission on Labor Secretary, Office of Economic Development, 981-7551

Sharon Thygesen, General Services Manager, Finance Department, 981-7329

Manuel Hector, Peace and Justice Commission Secretary, Health & Human Services, 981-5110

Attachments:

- 1: Commissions on Labor and Peace and Justice report to Council
- 2: Commission version of draft ordinance
3. Los Angeles Sweat-free procurement ordinance

Sweatshop-Free Procurement Ordinance for the City of Berkeley

I. Purpose

The City of Berkeley finds that:

The City of Berkeley spends approximately \$90 million per year in public funds on goods, including garments, uniforms, materials and other equipment, and supplies and services provided by private vendors and manufacturers.

The City of Berkeley recognizes a public interest in avoiding subsidies to vendors and contractors who maintain sweatshop working conditions, including below-subsistence wages, excessively long working hours, unhealthy and unsafe working environments, child, indentured, and prison labor, disregard for local and international labor laws and workplace regulations; disregard for fundamental women's rights, and repression of workers' rights to assemble and bargain collectively.

In its role as a market participant, the City of Berkeley seeks to assure that the integrity of the procurement process is not undermined by vendors and contractors who engage in sweatshop practices. Contractors who use sweatshop labor are able to underbid responsible contractors who pay fair wages and maintain humane work environments and conditions. Such practices place responsible contractors at a competitive disadvantage, which may dissuade them from participating in the City of Berkeley's procurement process.

The City of Berkeley must be cognizant of the working conditions it may support by its actions as a market participant. Better working conditions assure consistently better quality goods for the City of Berkeley, by assuring fewer disruptions in the workplace due to workers' grievances, fewer absences due to illnesses, less fatigue and fewer workplace injuries, less turnover of workers, and greater incentive to perform.

The City of Berkeley recognizes the rights of its citizens to information about working conditions and choice with regard to the expenditure of its tax money.

As a participant in the marketplace, the City of Berkeley seeks to protect the interests of local citizens, 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, and other equipment, materials, supplies, and services procured by the City of Berkeley, its agencies, or its employees through contracts, purchase orders, or voucher programs, be produced in workplaces free of sweatshop conditions.

The City of Berkeley has an interest in providing incentives for responsible vendors and contractors.

The City of Berkeley has adopted various policies, including its Pest Management Policy, Precautionary Principle, Green Purchasing Policy, and others that seek to protect human health and the environment by minimizing the use of pesticides and considering environmental factors when selecting vendors and products for its operations.

II. Scope and Phase-In

This policy applies to any procurement or laundering of all goods and services in an amount greater than \$10,000, including apparel and garments, for the City of Berkeley. Procurement includes contract, purchase, rental, lease, and voucher programs. The policy shall be phased in as set forth below:

A. During the first full fiscal year after the effective date of this ordinance, the City shall target for enforcement Contracts for apparel, garments and corresponding accessories, materials, supplies or equipment. Agreements for other goods and services shall be targeted for enforcement in accordance with the following:

1. No later than the end of the first full fiscal year after the effective date of this ordinance and annually thereafter, Compliance Officers shall have a maximum of ninety (90) days to report to the Commission on Labor on the status of enforcement regarding items listed in Paragraph (A) of this section, and recommendations for subsequent enforcement for other goods and services. Once the Commission on Labor receives this report, the Commission shall have a maximum of ninety (90) days to submit a report, in consultation with Compliance Officers, to the City Council with final recommendations for subsequent contracts for goods and services to enforce or consider enforcing.

2. The report from Commission on Labor to the City Council shall include if available, but not be limited to: (a) the amount the City has spent and anticipates spending for relevant goods and services, (b) evidence of Sweatshop Labor or other conditions prohibited by this Chapter in the manufacturing, assemblage or distribution of such goods or provision of such services; and (c) any financial impact that targeting the goods or services for enforcement will have on the City.

III. Definitions

66 A. "Contractor" or "vendor" means a person or entity with whom the City of Berkeley has a current procurement relationship, or
67 who bids or proposes to provide goods or services to the City of Berkeley. The City may exempt from the provisions of this
68 Chapter any Subcontractor whose contribution does not exceed 10% of any contract in which the subcontractor participates.
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70 B. "Independent monitor" means a non-profit organization with expertise in monitoring factory working conditions that is neither
71 funded nor controlled, in whole or in part, by a corporation that is engaged in production.
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73 C. "Non-poverty wage" in the U.S. is the level of wages required for a full-time worker to produce an annual income equal to or
74 greater than the United States Department of Health and Human Services' most recent poverty guideline for a family of three plus
75 an additional 20% of the wage level paid either as hourly wages or health benefits. Outside the United States, a non-poverty wage
76 is a comparable nationwide wage and benefit level, adjusted to reflect that country's level of economic development using a factor
77 such as the relative national standard of living index in order to raise a family of three out of poverty. The factor used to
78 determine a non-poverty wage outside of the U.S. shall be determined by the City Council (and may be changed by subsequent
79 Council action) after submission of a detailed description of the proposed factor to the Commission on Labor and the Peace and
80 Justice Commission and publication following the same procedures as are specified for exemptions under Section X(A) of this
81 Chapter.
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83 D. "Production" means the manufacture, finishing, warehouse distribution and laundering (where applicable) of goods or the
84 provision of services.
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86 E. "Subcontractor" means a person, partnership, corporation or other entity that enters into a contract with a contractor or vendor
87 to perform all or some work for City of Berkeley procurement. "Subcontractor" shall include beneficiaries of bankruptcies,
88 assignment, transfer, sales of operations, or other successors as well as the traditional meaning of the term.
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90 F. "Just Cause" is the standard by which an employer may punish or terminate an employee. To be considered sweatshop-free,
91 employers must provide for "just cause" for punishing or terminating their employees, including:
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- 93 1) Proper warning of employees that a particular behavior could / would result in discipline.
- 94 2) Clear and substantial evidence that an employee committed the acts alleged. Proof of these acts will vary, but evidence cannot
95 consist of only rumors or unsubstantiated accusations.
- 96 3) Application of company rules in a fair, just, and consistent manner, and the application of "progressive discipline" as defined
97 below.
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99 G. "Progressive Discipline" is the application of penalties for prohibited behavior such that penalties increase for subsequent
100 offenses. It does not preclude immediate dismissal for grave misconduct (such as violence toward or harassment of other
101 employees), as long as employees have received previous notice that such conduct can lead to immediate dismissal.
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105 H. "Compliance Officers" are those City of Berkeley personnel designated by the City Manager with the responsibility of
106 implementing this chapter.
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108 I. "Cut and Run " is when contractors and subcontractors shut down or reduce orders to a production or service facility in order to
109 deny workers their right to freely associate or bargain collectively or in order to escape their responsibilities to take corrective
110 action following the determination of a violation of this chapter.
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113 IV. Prohibition of Sweatshop Conditions 114

115 Vendors and contractors shall adhere to or exceed the following Sweatshop-free Code of Conduct and require subcontractors to
116 do the same.
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118 A. Legal Requirements. Contractors shall comply with all applicable laws, ordinances, workplace regulations, and treaties
119 imposed on the city, state, and/or country in which the goods are made or assembled or services provided, including those
120 regarding wages and benefits, workplace health and safety, environmental safety and freedom of association, and the fundamental
121 conventions of the International Labor Organization, including those regarding forced and child labor and freedom of association.
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123 B. Wages and Benefits. Contractors shall, at minimum, pay wages that are the highest of the following: (a) the legal minimum
124 wage if applicable to the country of origin; or (b) a non-poverty wage as defined in Section III C.
125

126 C. Wage and Hour Records. Contractors shall maintain verifiable wage and hour records for each production or service worker.
127 Such records shall include the following for each production or service worker: (a) name and job classification; (b) a general
128 description of the work the worker performed each day and the rate of pay (including rates of contributions for, or costs assumed
129 to provide fringe benefits); (c) the daily and weekly number of hours worked, (d) deductions made; (e) actual wages paid; and (f)

130 certified payroll records.

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132 D. Working Hours. Contractors shall not require hourly and quota-based employees to work more than 48 hours per week or the
133 limits on regular hours allowed by the law of the country, state, or locale of manufacture, whichever is lower. In addition,
134 contractors shall provide at least one day off in every seven-day period, as well as holidays and vacations.
135

136 E. Overtime Compensation. Contractors shall ensure that workers work overtime hours only voluntarily. In addition to their
137 compensation for regular hours of work, hourly and quota-based employees shall be compensated for overtime hours at such a
138 premium rate as is legally required in the country of manufacture or service.
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140 G. Harassment and Abuse. Contractors shall not harass or abuse workers sexually, psychologically, or verbally, or use corporal
141 punishment. Contractors shall discipline or dismiss employees confirmed to have harassed or abused other employees.
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143 H. Women's Rights. Contractors shall not require pregnancy tests or use of contraceptives as a condition of employment, nor
144 demand pregnancy tests or use of contraceptives by employees. Women workers shall receive equal pay, benefits, treatment, and
145 opportunity to fill positions open to male workers.
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147 I. Just Cause Termination. Contractors shall not terminate employees without just cause.
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149 J. Cut and Run. Contractors and subcontractors shall not shut down or reduce orders to a production or service facility in order to
150 deny workers their right to freely associate or bargain collectively or in order to escape their responsibilities to take corrective
151 action following the determination of a violation of this chapter. Provisions and enforcements that govern cut and run are
152 regulated in conformance with state and federal laws.
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154 K. Freedom of Association. Contractors shall respect employees' rights to freedom of association and collective bargaining. No
155 employee shall be subject to harassment, intimidation or retaliation as a result of efforts to freely associate or bargain collectively.
156 Contractors shall allow union organizers reasonable access to employees and shall recognize the union of the employees' choice.
157 Contractors shall demonstrate their commitment to freedom of association by taking steps such as:
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- 159 1. Providing clear channels through which workers can voice their complaints regarding working conditions, and addressing such
160 complaints in a prompt and effective manner;
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- 162 2. Ensuring that workers have a representative voice in workplace decisions;
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- 164 3. Negotiating with workers in good faith.
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166 L. Exposure to Toxins. Contractors shall take appropriate protective measures when the work requires exposure to toxic
167 chemicals. Where occupational safety and health laws or regulations apply, a contractor's compliance with said laws or
168 regulations shall not be considered a violation of this subsection.
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170 M. Child Labor. No person under 18 shall be employed when the person does not voluntarily seek the work or the person is
171 threatened with physical, mental, or emotional harm for non-employment or non-performance. No person under 18 shall be
172 employed in violation of any applicable law of the country of production or service governing the minimum age of employment,
173 compulsory education, or occupational health and safety. No person under 18 shall be employed for illicit activities, in particular
174 for the production of trafficking of illicit drugs or for prostitution.
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176 N. Forced Labor: There shall be no form of forced labor of any kind, including slave labor, prison labor, indentured labor, or
177 bonded labor, including forced overtime hours.
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179 V. Requirements - Contractor Affidavits, Public Records and Reporting
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181 A. The City of Berkeley shall procure goods covered by this policy from contractors that adhere to the Sweatshop-free Code of
182 Conduct as defined in Section IV.
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184 B. Compliance Officers or their designee shall have the right, upon request, to review invoices, bills of lading, or any other
185 procurement-related documents. These shall include the following, if available:
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- 187 1. The country of production or service; and the names, addresses, and phone numbers of each facility involved in the production
188 of goods or provision of services covered by this policy, in both English and the principal language of the country of production
189 or service.
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- 191 2. The names, business addresses, and phone numbers of the principal officers of each facility involved in the production of goods
192 or provision of services covered by this policy.
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- 194 3. The minimum base hourly wage of non-supervisory production or service employees, percent of wage level paid as health
195 benefit, other benefits, regular deductions from paychecks, normal working hours per day and week, actual working hours per day

196 and week over the last three months, and overtime policy.
197

198 4. A sworn statement that each of the proposed suppliers, including any subcontractors, adheres to this chapter; that the bidder has
199 furnished a copy of the Sweatshop-free Code of Conduct to each such supplier, including any subcontractors; and that the bidder
200 has required each supplier to:
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- 202 a) Inform the bidder of whether the supplier is in compliance with this chapter;
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 - 204 b) Furnish a copy of the Code of Conduct, in the workers' language, to each worker, and post a copy, in the workers' language, in
205 a visible and accessible location in the factory; and,
 - 206
 - 207 c) Conduct a training session, attended by all workers, to inform the workers of their rights under this chapter.
208
- 209 5. All claims or legal actions related to discrimination or worker wages, hours, and/or working conditions filed against the
210 contractor or subcontractor within the previous five years with any local, state, or federal/national administrative agency or court.
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- 212 6. Any other information deemed necessary by the City of Berkeley for the administration and enforcement of this policy.
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215 C. Updated Information. If any information provided by the contractor or subcontractor pursuant to this section changes during
216 the specified time period of the contract, the contractor shall submit or cause to be submitted to the City of Berkeley affidavits
217 with the updated information.
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219 D. Monitoring Reports. The contractor shall submit or cause to be submitted annual public reports documenting internal working
220 condition monitoring programs and their results, external audits if available, problems discovered, and corrective action plans.
221 Contractors shall provide access to the City of Berkeley and the City of Berkeley's independent monitoring agency, if any, to
222 archived and contemporary inspection and monitoring reports for all facilities producing goods or providing services for the
223 contract in question and shall require their subcontractors to allow the same access.
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225 VI. Preferences
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- 227 A. Procurement shall be subject to local preference policies currently in city code.
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- 229 B. Preference shall be given to vendors paying at least the prevailing wage in the industry in the country of production or service,
230 when such prevailing wage levels can reasonably be ascertained.
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- 232 C. In those locations where overtime-compensation laws do not exist, preference shall be given to vendors that pay for overtime
233 at least one-and-one-half the regular hourly compensation rate.
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- 235 D. Preference shall be given to Contractors that do not discriminate in employment - including in hiring, salary, benefits,
236 advancement, discipline, termination, or retirement - on the basis of actual or perceived gender, race, religion or creed, age,
237 mental or physical disability, sexual orientation, nationality, political opinion, marital status, medical condition, pregnancy, or
238 social or ethnic origin, or any physical or other attributes unrelated to job requirements.
239
- 240 E. Preference shall be given to Contractors that provide for an optional mediation or grievance process to resolve workplace
241 disputes. For production or services provided in the United States, this provision shall be limited to disputes not regulated by the
242 National Labor Relations Board or any other regulatory bodies.
243
- 244 F. Implementation. Compliance Officers shall develop (with assistance from Commissions, if desired) regulations to implement
245 the Preferences section of this Ordinance, such as a system of awarding "points" to vendors meeting the preferences. The system
246 for implementing these Preferences shall be submitted to the Commission on Labor for comment and then to the City Council for
247 approval following the same procedures as delineated for requests for exemptions in Section X, Exemptions.
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250 VII. Purchase of Organic and Fair Trade Certified Products
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- 252 A. Organic Policy. The City of Berkeley shall purchase, when available, Organic Certified products in the process of procuring
253 goods in accordance with this ordinance, including, but not limited to, non-genetically modified organism (GMO) cotton.
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- 255 B. Fair Trade Policy. The City of Berkeley shall purchase, when available, Fair Trade Certified products in the process of
256 procuring goods in accordance with this ordinance, including, but not limited to, coffee, cocoa, chocolate, tea, and fresh fruits.
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258 VIII. Verification and Compliance
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260 A. It shall be the responsibility of contractors to ensure compliance with this chapter in their own production or service facilities
261 and in those of their suppliers, including all subcontractors.

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B. City of Berkeley shall enter into an agreement with a nonprofit independent monitor for assistance in monitoring the compliance of contractors. The independent monitor shall investigate complaints and provide monitoring, inspection, investigation, and remediation services at facilities producing goods or providing services for City of Berkeley. Refusal of a vendor to permit independent monitoring shall result in disqualification for bidding. The recommended choice of independent monitor, extension of an agreement with a monitor, or selection of a different monitor shall be submitted to the Commission on Labor and to the Peace and Justice Commission for advice, shall be published, and shall be decided by the City Council, following the same procedures as delineated for requests for exemptions in Section X, Exemptions.

C. Each contractor and subcontractor shall cooperate fully with any investigation of the City of Berkeley, including without limitation any independent monitor, and other City of Berkeley employees and agents authorized to assist in the implementation, administration or enforcement of this Chapter. Such persons or entities shall, in the performance of their duties, have the right to engage in random inspections of any work-site where the contract or any subcontract is performed and have access to any worker or any record required to be maintained in Section V.

D. The City of Berkeley shall explore mechanisms employed by other governmental entities to ensure that businesses that contract with the City of Berkeley are in compliance with this Chapter and any regulations or requirements promulgated in conformance with this Chapter. The mechanisms explored shall include, but not be limited to:

1. Establishing working relationships with other public agencies that have enacted Sweatshop-free procurement laws.
2. Establishing working relationships with advocacy groups, labor organizations, and other appropriate entities to share information regarding manufacturers, vendors, and suppliers.
3. Developing a Sweatshop-free consortium with other states, cities, school boards, or public entities for the purpose of collaborating in the enforcement of Sweatshop-free codes of conduct, including sharing the cost of monitoring and inspection activities by an independent monitor, and consolidating purchasing power.

E. Compliance Officers shall make periodic reports on the progress implementing and executing this ordinance to the Commission on Labor. The purpose of these reports shall be to:

1. Receive and assess evidence of bidders' and contractors' compliance or noncompliance with this chapter from workers, labor unions, governments, businesses, non-government organizations, and human rights advocates.
2. Provide advice on bidding guidelines, dissemination of information to workers, and collaboration with other public entities.
3. Evaluate the implementation of this Chapter.
4. Evaluate industries engaged in manufacture and sale of goods other than apparel and garments or provision of services to determine whether procurement of goods or services, in addition to apparel and garments, should be subject to this Chapter. To determine whether a particular good shall be targeted for enforcement, the factors to be considered shall include, but not be limited to: (a) the amount the City of Berkeley has spent and anticipates spending for such good or service; (b) evidence of sweatshop labor or other conditions prohibited by this Chapter in the manufacturing, assemblage or distribution of such good or provision of such service; and (c) any financial impact that targeting the good or service for enforcement will have on the City of Berkeley.

IX. Violations and Enforcement

A. Complaints. Any person may complain that the Sweatshop-free Code of Conduct of this chapter is being violated. The City of Berkeley or an independent monitoring agency acting on behalf of the City of Berkeley shall receive complaints and investigate the merits of such complaints.

B. Request for Information. After receiving a complaint alleging noncompliance with this chapter, the City of Berkeley must contact in a timely manner, in writing and by certified letter, the contractor that is the subject of the complaint or whose subcontractor is the subject of the complaint. The City of Berkeley shall describe the alleged violation and the requirements for responding to the notice. The contractor must respond in a timely manner with evidence that the violation did not occur, or a detailed plan for corrective action.

C. Access to Factories. Any contractor or subcontractor shall provide the City of Berkeley and agents authorized to assist in the administration and enforcement of this Chapter immediate access to the facility or operation where the violation has occurred for an inspection of the facility or operation and records, and interviews with workers.

D. Independent Audit. The City of Berkeley may require an independent audit by an independent monitor, at the expense of the contractor or its subcontractor, followed by a public report, verifying that the violation did or did not occur, and, if it did, that corrective action has or has not been effective.

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E. Remediation. Upon determination of a violation of this chapter at a production or service facility of a contractor or its supplier, including all subcontractors, the City of Berkeley and the contractor shall consult for the purpose of agreeing to a remediation plan. The intention is for the situation to be corrected in order to comply with this chapter. Corrective action includes all steps necessary to correct the violations, including, but not limited to:

1. Paying back wages to workers who made manufactured products or provided services supplied to the City of Berkeley.
2. Reinstating any worker who has been unlawfully dismissed.
3. Training on worker rights and best practices education for managers and workers at the facility or operation where the violation occurred to ensure future compliance. Any such training and education shall be at the expense of the contractor or subcontractor. Upon request by the City of Berkeley, the contractor or subcontractor shall submit such materials for training and education for the City of Berkeley's review and approval prior to distribution to managers and employees.
4. Finding a source of factors of production that partakes in equitable labor practices.

F. Report. The City of Berkeley may require the contractor or subcontractor to provide a written summary of the steps taken to remedy the noncompliance with this chapter and any difficulties encountered in correcting the noncompliance. The request may require the response to be submitted under penalty of perjury. The contractor or subcontractor shall provide the written summary within the time period specified by the City of Berkeley.

G. Sanctions. Sanctions will be used as a last-resort if the contractor knowingly provides misinformation under Section V, or if the contractor, one of its suppliers, including subcontractors, refuses to remedy a violation in a timely manner. Sanctions can include termination of a contract without notice and without liability for unpaid amounts that otherwise would have been payable, a financial penalty, or removal of the contractor from the bidder's list for a period to be determined by Compliance Officers.

X. Exemptions

A. Requests for Exemption: Published, Submitted to Commission on Labor. Compliance Officers may request that the City Council grant an exemption to the provisions of this ordinance with respect to a specific contract with a specific vendor, for a specific good or service, or for a type of good or service. Before the City Council may decide whether to grant an exemption, the request must, at least 15 days before a meeting of the Commission on Labor, be submitted in writing to the Commission and published on the City Web site. The City Council may not act upon the request until at least 7 days after such Commission on Labor meeting or receipt by the Council of the Commission's recommendation, whichever comes first.

1. Expedited Requests for Exemption: If Compliance Officers determine that procurement for a good or goods is required with a shorter time-frame than specified above, and procuring the goods is in the best interest of the city, Compliance Officers may execute the procurement and be required to provide a report to the Commission on Labor with reasons for the expedited procurement. The Commission on Labor may submit comments to the City Council after reviewing the Compliance Officers' rationale.

B. Reasons for Exemption. The reasons for requesting an exemption must be specified in the request. Reasons may include:

1. In the case of a proposed Contract to be funded by revenues received by the City from outside funders under specified terms or conditions, provisions of this Chapter would violate or be inconsistent with such terms or conditions.
2. No responsible Contractor meeting the provisions of this Chapter is available to provide the goods or services, and the goods or services are necessary to the City or the public.
3. The proposed Contract is with a public entity.
4. Enforcement is not possible because the resources necessary to collect or evaluate information about a class of vendors are not available - for example, no Independent Monitor yet exists that evaluates prospective Vendors of the goods or services sought under the Contract.
5. If reasons other than those enumerated herein are put forth, the request for exemption should clearly describe public policy interests that outweigh the interests served by this Chapter.

C. Recommendation. The City Council may approve or disapprove a request for exemption from the provisions of this Chapter only after considering the recommendation of the Commission on Labor, unless the Commission fails to issue a recommendation according to the schedule specified in Paragraph (A) of this section.

D. Emergencies. When a Contract is necessary to respond to an emergency as defined in Section 2.88.020 of the Berkeley Municipal Code or other circumstance in which serious danger to the safety of persons or property would result from the delay required to seek advice from the Labor Commission and approval from the City Council, the City may execute such Contract

393 before seeking such advice and approval, subject to the following provisions:
394

395 1. The Contract shall provide that the City may terminate or renegotiate the agreement after the shortest practical time period,
396 which shall not exceed 90 days from the date of Contract execution unless no qualified vendor will agree to a 90-day provision, in
397 which case the shortest term acceptable to a qualified vendor must be specified.
398

399 2. Concurrent with the execution of such emergency Contract, the Director of the Department executing such contract, or the
400 Director's designee, shall certify in writing to the City Manager, the Mayor, and the Secretary of the Commission on Labor that
401 the provisions of this paragraph (D) are being invoked; the name of the entity with which a Contract is being executed; and the
402 harm that would ensue if the Contract were to be submitted to the non-emergency approval process delineated in this Section.
403

404 3. At the earliest practical date after execution of the Contract, the Contract shall be submitted to the Commission on Labor for
405 evaluation, including recommendation as to the continuance or cancellation of the Contract, and shall be published on the Web
406 site, under the non-emergency terms of this Section, as if the Contract had not yet been executed. The submission and publication
407 shall take place within 90 days of the execution of the Contract unless a severe emergency persists of such magnitude that
408 meeting these submission and publication requirements would further endanger public health and safety.
409

410 E. Additional Guidelines. The City Council may adopt guidelines and restrictions related to exemptions consistent with the
411 provisions of this Section, after such guidelines are submitted to the Commission on Labor and published under the same
412 procedures as provided in this Section regarding Contracts. Such further guidelines and restrictions may, for example, limit which
413 City Departments may execute emergency Contracts under this Section, restrict the types of goods and services that may be
414 included in such emergency Contracts, or in other ways narrow the applicability of these emergency provisions.
415

416 XI. Preemption
417

418 Nothing in this Chapter shall be interpreted or applied so as to create any power or duty in conflict with any federal law. Nothing
419 in this Chapter shall be interpreted to preempt any law of a political subdivision of the City of Berkeley.
420

421 XII. Severability
422

423 If any part or provision of this Chapter, or the application of this Chapter to any person or circumstance, is held invalid, the
424 remainder of this Chapter, including the application of such part or provisions to other persons or circumstances, shall not be
425 affected by such holding and shall continue in full force and effect. To this end, the provisions of this Chapter are severable.

Los Angeles City Administrative Code

ARTICLE 17

SWEAT-FREE PROCUREMENT

Section

- [10.43](#) Purpose.
- [10.43.1](#) Definitions.
- [10.43.2](#) Application.
- [10.43.3](#) Contractor Code of Conduct.
- [10.43.4](#) Administration and Contract Language.
- [10.43.5](#) Enforcement and Remedies.
- [10.43.6](#) Exceptions.
- [10.43.7](#) Severability.

Sec. 10.43. Purpose.

Each year the City spends millions of dollars contracting with the private sector for the purchase or rental of equipment, goods, materials and supplies. The prudent expenditure of public dollars requires that the City's procurement process lead to the selection of qualified and responsible contractors who have the ability to perform the contract.

The City of Los Angeles has long supported the premise that employers should fairly compensate employees, that the health and safety of workers should be protected, and that no form of discrimination or abuse should be tolerated. Experience indicates that laws and regulations designed to safeguard basic tenets of ethical business practice are disregarded in some workplaces, commonly referred to as "sweatshops."

In its role as a market participant that procures equipment, goods, materials, and supplies, the City seeks to protect its interests by assuring that the integrity of the City's procurement process is not undermined by contractors who engage in sweatshop practices and other employment practices abhorrent to the City. When the City inadvertently contracts with these contractors, the City's ethical contractors are placed at a distinct competitive disadvantage. Many times ethical contractors are underbid by unscrupulous contractors in competition for City contracts. These ethical contractors may be dissuaded from participating in future City procurement contracts.

The City's proprietary contracting interests are served by doing business with contractors who make a good faith effort to ensure that they and their subcontractors shun sweatshop practices and adhere to workplace and wage laws. Seeking to protect these municipal interests, the City requires that all contractors subject to this Article sign an affidavit stating that they and, to the best of their knowledge, their subcontractors will comply with the City's Contractor Code of Conduct.

SECTION HISTORY

Added by Ord. No. 176,291, Eff. 1-1-05.

Sec. 10.43.1. Definitions.

The following definitions shall apply to this Article:

A. **"Abusive Forms of Child Labor"** means work performed by a person under the age of 18 when the person does not voluntarily seek the work or the person is threatened with physical, mental or emotional harm for nonperformance. It includes work performed by a person in violation of any applicable law of the country of manufacture or assembly governing the minimum age of employment, compulsory education, or occupational health and safety. It also includes the use of a person under the age of 18 for illicit activities, in particular for the production or trafficking of illicit drugs or for prostitution.

B. **"Contract"** means an agreement to procure equipment, goods, materials or supplies to the City. Contract includes, but is not limited to, the procurement of garments, uniforms, foot apparel, and related accessories.

C. **"Contractor"** means a person, partnership, corporation or other entity which has a contract with the City.

D. **"Foreign convict or forced labor"** shall have the meaning as in Section 1307 of Title 19 of the United States Code.

E. **"DAA"** means the Designated Administrative Agency which for this Article is the Department of General Services.

F. **"Procurement"** means City purchasing or renting of equipment, goods, materials or supplies.

G. **"Slave labor"** means any form of slavery or practices similar to slavery, such as the sale and trafficking of persons, debt bondage, serfdom, forced or compulsory labor, or forced or compulsory recruitment of persons below the age of 18 for use in armed conflict.

H. **"Subcontractor"** means a person, partnership, corporation or other entity which enters into a contract with a contractor for performance of some or all of the City contracted work.

I. **"Sweatshop labor"** means work performed by a person employed by a contractor or subcontractor which has habitually violated laws of any applicable jurisdiction governing wages, employee benefits, occupational health and safety, nondiscrimination, or freedom of association.

SECTION HISTORY

Added by Ord. No. 176,291, Eff. 1-1-05.

Sec. 10.43.2. Application.

This Article applies to contractors who enter into contracts with a value in excess of \$25,000 and a term in excess of three months.

SECTION HISTORY

Added by Ord. No. 176,291, Eff. 1-1-05.

Sec. 10.43.3. Contractor Code of Conduct.

Prior to receiving a contract, a contractor shall sign under oath the City's Contractor Code of Conduct. The City's Contractor Code of Conduct shall be developed by the DAA and shall describe the purposes of the Article as stated in Section [10.43](#). The Contractor Code of Conduct shall also require a contractor to promise the following:

A. To comply with all applicable wage, health, labor, environmental, and safety laws, legal guarantees of freedom of association, building and fire codes, and laws and ordinances relating to workplace and employment discrimination.

B. To comply with all human and labor rights and labor obligations that are imposed by treaty or law on the country in which the equipment, supplies, goods or materials are made or assembled, including but not limited to abusive forms of child labor, slave labor, foreign convict or forced labor, or sweatshop labor.

C. To take good faith measures to ensure that, to the best of the contractor's knowledge, the contractor's subcontractors also comply with the City's Contractor Code of Conduct.

D. For contracts involving the procurement of garments, uniforms, foot apparel, and related accessories, to ensure that workers are paid no less than a procurement living wage, meaning for domestic manufacturers a base hourly wage adjusted annually to the amount required to produce, for 2,080 hours worked, an annual income equal to or greater than the U.S. Department of Health and Human Services most recent poverty guideline for a family of three plus an additional 20 percent of the wage level paid either as hourly wages or health benefits. For manufacturing

operations in countries other than the United States, the DAA shall establish a procurement living wage which is comparable to the wage for domestic manufacturers as defined above, adjusted to reflect the country's level of economic development by using the World Bank's Gross National Income per capita Purchasing Power Parity index.

SECTION HISTORY

Added by Ord. No. 176,291, Eff. 1-1-05.

Sec. 10.43.4. Administration and Contract Language.

The DAA shall be responsible for the administration of this Article. The DAA shall issue written instructions on the implementation and ongoing administration of this Article. Such instructions may provide for the delegation of functions to other City departments. All contracts shall include language obligating the contractor to comply with this Article and imposing the enforcement remedies articulated in this Article.

SECTION HISTORY

Added by Ord. No. 176,291, Eff. 1-1-05.

Sec. 10.43.5. Enforcement and Remedies.

When allegations of violations of this Article are brought to the attention of the DAA, the DAA shall promptly review the allegations and, if confirmed, consider and implement appropriate enforcement action. When determining whether there is a violation of this Article, the DAA shall take into consideration relevant and reliable information including, but not limited to, information provided by the contractor and its subcontractors at the point of manufacturer, assembly or service, reports from reputable national and international organizations, documented media reports, and credible information from local groups and organizations. If the DAA determines that a contractor has violated this Article, the DAA may recommend that the awarding authority take some or all of the following measures:

- A. Demand that a contractor or its subcontractor at the point of manufacture, assembly or service provide access to independent human rights monitors.
- B. Demand that a contractor or its subcontractor at the point of manufacture, assembly or service provide management and workers with training and best practices guidelines to ensure future compliance with this Article.
- C. Retain all monies earned under the contract until compliance with this Article is achieved.

- D. Assess contractor with a statutory penalty equal to the greater of \$1,000 or 20% of the value of the procured equipment, goods, supplies, or materials.
- E. Terminate the contract for breach and pursue any and all remedies available under law.
- F. Apply the City's Contractor Responsibility Ordinance to the contractor.

SECTION HISTORY

Added by Ord. No. 176,291, Eff. 1-1-05.

Sec. 10.43.6. Exceptions.

This Article shall not apply to a contract if to do so would violate or conflict with federal or state law. The DAA may waive compliance with this Article under the following circumstances:

- A. The contract is necessary to respond to an emergency that endangers public health or safety and no contractor which is in compliance with this Article is capable of responding to the emergency.
- B. The contract is for equipment, supplies, goods, or materials that are available from only one contractor, and that contractor is otherwise qualified and acceptable to the City. Sole-source waivers to this Ordinance shall be approved by a committee with representatives from the Office of the City Administrative Officer, the Department of General Services, and the Chief Legislative Analyst. Any such waiver shall be posted on the website of the Department of General Services.
- C. The contract is with another public entity.
- D. The requirements of this Article conflict with the terms or conditions of a federal or state grant, subvention or agreement.

SECTION HISTORY

Added by Ord. No. 176,291, Eff. 1-1-05.

Sec. 10.43.7. Severability.

If any provision of this Article is found invalid by a court of competent jurisdiction, the remaining provisions shall remain in full force and effect.

SECTION HISTORY

Added by Ord. No. 176,291, Eff. 1-1-05.