



Office of the City Manager

ACTION CALENDAR
October 11, 2022

To: Honorable Mayor and Members of the City Council
 From: Dee Williams-Ridley, City Manager
 Submitted by: Lisa Warhuus, Director, Health, Housing, and Community Services
 Subject: Companion Report: Fair Workweek Ordinance; Adding Berkeley Municipal Code Chapter 13.110

RECOMMENDATION

Direct this item to the Health, Life Enrichment, Equity, and Community Policy Committee for the following:

- Review and evaluate the proposed policy; and
- Evaluate resources needed to conduct the necessary analysis of impacts and costs associated with implementing the proposed policy.

POLICY COMMITTEE RECOMMENDATION

On September 22, 2022, the Health, Life Enrichment, Equity & Community Committee adopted the following action: M/S/C (Hahn/Taplin) to forward the Commission on Labor's item to Council with a positive recommendation to adopt the version of the ordinance dated "7/7/22" that was presented to the Committee at the July 11, 2022 meeting. Vote: All Ayes.

FISCAL IMPACTS OF RECOMMENDATION

The costs of implementing the proposed Fair Workweek policy are currently unknown but are expected to be significant. If implemented correctly, and with an equitable approach, this important policy is expected to positively impact many low-income workers in Berkeley. The City currently does not have a full understanding of the impacted businesses, employees, and how to implement this policy for the unique needs of the Berkeley community.

A comprehensive impact analysis of this proposed policy is required to fully determine the upfront and future costs and ongoing staffing needs associated with effectively administering and enforcing the ordinance. Impacted City departments will include Health, Housing, and Community Services, Finance, Neighborhood Services, the City Attorney's Office, and the Office of Economic Development. Resources are also needed to conduct a comprehensive impact analysis.

The cost of ongoing implementation and administration of a Fair Workweek policy depends on many factors including, but not limited to:

- The final determination and consideration for which industry sectors shall be covered;
- The size of employers (based on the number of global and local employees);
- The total number of employers covered by the policy;
- The success of proactive efforts to educate affected employers; and
- A clear expectation of the level of technical assistance provided by City staff to employers and employees covered under the policy.

These factors will inform the breadth of the policy's impact on City employers (how many total employers will be covered) and are necessary to determine how much staff time will be needed to effectively setup and administer the program.

Neighboring jurisdictions that have passed similar policies, including San Francisco and Emeryville, have dedicated additional funds for outreach and education to impacted employers. For the policy to be successful, these proactive efforts are essential in that they aim to reduce the number of enforcement complaints by proactively working with affected employers to build business practices that conform to the noticing and documentation standards required by the ordinance.

Further, significant staff time will be required to accurately identify which employers would be covered by this policy. This is anticipated to be a time-intensive process due to the complexity of screening local employers against the applicable criteria used to determine employer eligibility. It is also expected that the Finance Department would need to make substantial changes to the business license application to help properly identify businesses subject to the regulations; including information about an employer's status as a franchise, their total employee counts worldwide, and employee counts within Berkeley.

CURRENT SITUATION AND ITS EFFECTS

Adding a Fair Workweek policy to Berkeley's labor standards is an important consideration for the community. This policy has been contemplated for many years by Council, the Commission on Labor, and the City's labor standards staff. Many thoughtful hours of work have already gone into drafting the proposed ordinance. Experts on the commission took public comment multiple times and discussed at length the potential impacts to local employers, given the ongoing financial, staffing, and operational struggles some businesses have faced throughout the pandemic. With that in mind, the commission moved this policy forward in consideration of the urgent need for equitable and fair treatment of Berkeley workers, and in support of the essential service workers

who have gotten us through the pandemic, many of whom are lower-income and persons of color.

City staff have a similar approach. If adopted, the City first needs to better understand the probable impacts to the business community, employees, and City staff. This includes understanding what is really needed in order to effectively and equitably implement an important and wide-reaching policy such as this. The current economic circumstances also warrant especially careful analysis of the impacts to local employers as they continue to face ongoing challenges related to the pandemic, including compounding supply chain and inflation issues.

Additionally, adding this policy to the current labor standards and enforcement portfolio will require additional staff resources for initial outreach and education as well as ongoing administration and enforcement. However, even prior that, in order to fully understand the staffing needs and cost associated with administering and enforcing this policy, a comprehensive impact analysis of this proposed policy is required to fully determine the upfront and future costs and ongoing staffing needs associated with effectively administering and enforcing the ordinance. This approach aims to ensure the policy is implemented in the best way for Berkeley, its businesses, and local low-income workers.

The current portfolio of local labor standards and enforcement policies in Berkeley includes: 1) The Minimum Wage Ordinance, 2) The Living Wage Ordinance, 3) The Berkeley Paid Sick Leave Ordinance, and 4) The Berkeley Family Friendly and Environment Friendly Workplace Ordinance. The work to administer these policies, including providing general information as well as conducting formal investigations and enforcement of the policies is considerable. Adding the Fair Workweek Policy to this portfolio significantly expands this body of work and should be considered alongside a cost analysis.

It should be noted that Berkeley Municipal Code Chapter 13.110 is currently dedicated to the COVID-19 Emergency Response Ordinance. If the Fair Workweek Ordinance is to proceed to a first reading, it would need a different Chapter number in Title 13. If adopted as-is, the Fair Workweek Ordinance would supersede the existing Chapter 13.110 and replace the existing language regarding COVID-19 Response.

BACKGROUND

In 2018, the City Council referred this item to the Commission on Labor and directed them to “draft an Ordinance to establish regulations governing the scheduling and hiring practices of qualifying businesses in Berkeley...” The referral included a copy of the Emeryville Fair Workweek Ordinance as a template for consideration.

The Commission appointed a subcommittee to work on the draft ordinance and held several public meetings which were attended by dozens of participants from the public, representing both workers and employers with interest in the policy. The Subcommittee

ultimately presented a draft policy that took elements from both the City of Emeryville Fair Workweek Ordinance and the Fair Workweek Ordinance from the City of Chicago that covered more business industries than the Emeryville Ordinance does.

At the November 17, 2021 Commission on Labor Meeting, The Commission approved a motion to recommend the draft policy to the City Council with the motion and vote below:

Recommend approval of draft Fair Workweek Ordinance to the Berkeley City Council.

(M/S/C: Scantlebury/Katz. Yes: Botello, Harlow, Osborne, Jones. Noes: Schriener, Berne. Abstentions: None. Absent: Medak).

ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

None.

RATIONALE FOR RECOMMENDATION

Staff is recommending that the Council direct the draft Fair Workweek Ordinance to the Health, Life Enrichment, Equity, and Community Policy Committee to evaluate the Commission's recommendations and also evaluate the availability of existing resources to conduct a more thorough analysis of the policy's impacts.

ALTERNATIVE ACTIONS CONSIDERED

The Council could adopt the ordinance now as written, but without an evaluation of the resources needed to enforce the ordinance and commitment of those resources, the ordinance is unlikely to achieve the desired impact. Outreach, education and consistent responses will be key to achieving the goal of a fair workweek for Berkeley workers.

CONTACT PERSON

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