

ORDINANCE NO. 7,893-N.S.

ADOPTING CHAPTER 13.108 OF THE BERKELEY MUNICIPAL CODE  
PREVAILING WAGE REQUIREMENTS

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

Section 1. Chapter 13.108 is hereby added to the Berkeley Municipal Code to read as follows:

**Chapter 13.108**

**PREVAILING WAGE REQUIREMENTS IN SOUTHSIDE PLAN AREA**

- 13.108.010 Title and Purpose**
- 13.108.020 Definitions**
- 13.108.030 Prevailing Wage Requirements**
- 13.108.040 Enforceability**
- 13.108.050 Severability**

**13.108.010 Title and Purpose.**

- A. This Chapter shall be referred to as the Prevailing Wage Requirements Ordinance.
- B. The purpose of this Chapter is to ensure that developers or contractors involved in the construction of large projects in the Southside Plan area pay workers at least the general prevailing rate set forth in the California Labor Code.

**13.108.020 Definitions.**

- A. "Contractor" shall mean a contractor or subcontractor of any tier that has contracted to perform work on the Covered Project.
- B. "Covered Project" shall mean a private development project located in the C-T, R-S, or R-SMU zoning districts that consists of construction or alteration of at least 50 units or 50,000 square feet or more of floor area and which has not received its final approvals (whether in the form of permits, variances, or other entitlements) by the effective date of this Ordinance.
- C. "Covered Construction Worker" shall mean any construction worker employed by a Contractor at any time over the duration of the Covered Project.
- D. "Registered Apprenticeship Program" shall mean an apprenticeship program jointly managed and administered by both a union and contractor or contractor association, and (i) approved by the State of California's Division of Apprenticeship

Standards; (ii) registered with the U.S. Department of Labor; or (iii) registered with a state apprenticeship agency granted authority by the U.S. Department of Labor to register apprenticeship programs for federal purposes, pursuant to 29 CFR Part 29.

### **13.108.030 Prevailing Wage Requirements.**

A. A Covered Project is subject to the following requirements:

1. Each Contractor shall pay all Covered Construction Workers at least the general prevailing rate of per diem wages as set forth in Section 1771 of the California Labor Code, except that apprentices participating in a Registered Apprenticeship Program may be paid at least the applicable apprentice prevailing rate.

2. Each Contractor shall maintain and verify payroll records pursuant to Section 1776 of the Labor Code and make those records available for inspection and copying as provided in that section.

B. Subsections A(1) and A(2) above do not apply if all Contractors are subject to a project labor agreement (or community workforce agreement or similar agreement) with the local Building and Construction Trades Council.

### **13.108.040 Enforcement**

A. Each Contractor must sign a declaration attesting to compliance with this Chapter under penalty of perjury at the time of permit issuance for the Covered Project.

B. *Private Right of Action.* A Covered Construction Worker, or a joint labor-management committee established pursuant to the federal Labor Management Cooperation Act of 1978 (29 U.S.C. sec. 175a) on a Covered Construction Worker's behalf, may bring a civil action in a court of competent jurisdiction against any Contractor that violates 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 appropriate to remedy the violation. Nothing in this Chapter creates a private right of action or otherwise authorizes legal action against the City, its officers, agents, or employees.

### **13.108.050 Severability**

If any part or provision of this Chapter, or the application of this Chapter to any person or circumstance, is held invalid, the remainder of this Chapter, including the application of such part or provision to other persons or circumstances, shall not be affected by such a holding 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 the Maudelle Shirek Building, 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.

At a regular meeting of the Council of the City of Berkeley held on January 16, 2024, this Ordinance was passed to print and ordered published by posting by the following vote:

Ayes: Bartlett, Hahn, Harrison, Humbert, Taplin, Wengraf, and Arreguin.

Noes: None.

Abstain: Kesarwani.

Absent: None.

