



Susan Wengraf
Councilmember District 6

SUPPLEMENTAL AGENDA MATERIAL

Meeting Date: November 3, 2022

Item Number: 35

Item Description: Fair Workweek Ordinance; Adding Berkeley Municipal Code Chapter 13.102

Supplemental/Revision Submitted By: Councilmember Wengraf

“Good of the City” Analysis:

The analysis below must demonstrate how accepting this supplement/revision is for the “good of the City” and outweighs the lack of time for citizen review or evaluation by the Council.

This Comparison Chart of the Fair Workweek Ordinances of Emeryville, San Francisco, San Jose, Chicago and Berkeley’s proposed should help facilitate informed decision making.

Consideration of supplemental or revised agenda material is subject to approval by a two-thirds vote of the City Council. (BMC 2.06.070)

A minimum of **42 copies** must be submitted to the City Clerk for distribution at the Council meeting. This completed cover page must accompany every copy.

Copies of the supplemental/revision agenda material may be delivered to the City Clerk Department by 12:00 p.m. the day of the meeting. Copies that are ready after 12:00 p.m. must be delivered directly to the City Clerk at Council Chambers prior to the start of the meeting.

Supplements or Revisions submitted pursuant to BMC § 2.06.070 may only be revisions of the original report included in the Agenda Packet.

Fair Workweek Ordinance Comparison Table

TOPIC	Berkeley	Emeryville	San Francisco	San Jose	Chicago
Title & effective date	Fair Workweek Employment Standards	Fair Workweek Employment Standards July 1, 2017	Formula Retail Employee Rights July 3, 2015	Opportunity to Work March 13, 2017	Chicago Fair Workweek April 1, 2020
Sectors applies to	(1) building services; (2) healthcare; (3) hotel; (4) manufacturing; (5) restaurant; (6) retail; (7) warehouse services; (8) Nonprofits; (9) City of Berkeley	(1) Retail Firms (2) Fast Food Firms	(1) Formula Retail Establishments, including their Janitorial and Security Contractors = Chain retail including: amusement arcades, cannabis retail, general grocery, gyms, movie theaters, pharmacies, bars, limited restaurants, some financial services	Private and Nonprofit Employers. Does not apply to Government Employers.	Except for City employees, same sectors as Berkeley. Employees with pay greater than current 40 th percentile of Midwest Census Region as determined by US Dept of Labor, not included.
# of employees applies to	Employs 10 or more in Berkeley and : <u>Restaurants</u> : 100 or more globally <u>All other sectors</u> : 56 or more employees globally <u>Franchisee</u> : 100 or more globally <u>Nonprofits</u> : 100 or more globally	<u>Retail Firms</u> : 56 or more employees globally. <u>Fast Food Firms</u> : 56 employees or more globally and 20 or more employees within Emeryville.	<u>Chain Retail</u> : with 11 or more establishments. Number of employees irrelevant.	<u>Employers subject to the San Jose Business License Tax</u> : 36 or more employees. Includes total # of employees in a chain not owned by a franchisee, or total # working under same franchisee.	<u>Restaurants</u> : At least 30 locations globally and 250 employees. <u>All other sectors</u> : # of employees irrelevant.

TOPIC	Berkeley	Emeryville	San Francisco	San Jose	Chicago
Waiver through Collective Bargaining	Yes	Yes	Yes	Yes	Yes
Schedule advance notice	2-weeks	2-weeks	2-weeks	N/A – Ordinance only mandates offer of additional hours	14 days
The right to to decline additional hours	Yes	Yes	Right to request modification of proposed schedule.	Yes	Yes
Right to “predictability pay”	Yes	Yes	Yes	N/A – Ordinance only mandates offer of additional hours	Yes
Offer of Work to Existing Employees	Yes	Yes	Yes	Yes	Yes
Right to Rest: The right to refuse “clopening” shifts	Yes Clopening = <u>Less than 11</u> hours after the end of the previous shift. <i>Compensation = time and a half</i>	Yes Same as Berkeley	Not included	N/A – Ordinance only mandates offer of additional hours	Yes <u>Less than 10</u> hours after the end of the previous day’s shift. <i>Compensation = time and a half</i>
Right to request a flexible work arrangement	Yes	Yes	Not included	N/A – Ordinance only mandates offer of additional hours	Yes

TOPIC	Berkeley	Emeryville	San Francisco	San Jose	Chicago
Notice & Posting	Yes: City shall make notices in English and other languages available for employers Employers must notify each employee in writing and post prominently at worksite.	Yes: Same as Berkeley	Yes: Similar to Berkeley but notices translated into all languages spoken by more than 5% of the San Francisco working population.	Yes: Similar to Berkeley but translated into 4 languages: English, Spanish, Vietnamese and Cantonese.	Yes: Similar to Berkeley
Implementation	City coordinates implementation	City coordinates implementation	City coordinates implementation	City coordinates implementation	City coordinates implementation
Enforcement	City Manager's Department implements and enforces the program and holds authority to issue Administrative Citations and Fines. Private right of action for employees and members of the public.	City of Emeryville implements and enforces the program and holds authority to issue Administrative Citations & Fines. Private right of action for employees only (not members of the public).	Office of Labor Standards Enforcement oversees program and complaints. On-line form for employee to complete and turn in. The Office issues Administrative Citations and Fines.	The City's Office of Equality Assurance is responsible for implementation and enforcement of the Opportunity to Work Ordinance	Department of Business Affairs and Consumer Protection implements the program and holds authority to investigate and issue Administrative Citations & Fines.
Retaliation Prohibited	Yes	Yes	Yes	Yes	Yes
Retention of Records	Employers must maintain 3 years of records for each employee	Same as Berkeley	Same as Berkeley	Employers must maintain records no less than 4 years	Same as Berkeley
City Access	Employers shall permit access to work sites and relevant records for complaint investigation; compliance monitoring	Same as Berkeley	Same as Berkeley	Not included	Same as Berkeley

TOPIC	Berkeley	Emeryville	San Francisco	San Jose	Chicago
Implementation Timing	Not included	Soft launch July 1 – Dec 31, 2017. Full enforcement began Jan 1, 2018 NOTE: Due to COVID-19, employers are not required to provide premium pay for schedule changes if business operations “cannot begin or continue” during the period of the State and County emergency orders.	180 days after effective date	Approved by voters in Nov 2016 election. Effective date March 13, 2017.	July 1, 2020 (after May 2019 approval)
Renewal Business Tax Certificate	Not included	Covered businesses must provide written statement with total number of employees at each location in Emeryville and worldwide, before tax certificate expires.	Not included	Not included	Not included

Sources: [Berkeley](#); [Emeryville Ordinance](#); [Emeryville Regulations](#); [San Francisco](#); [Chicago](#); [Fair Workweek overview](#); [Economic Policy Institute 2018 Review](#)

11/3/2022