



Office of the Mayor

CONSENT CALENDAR

April 18, 2006

To: Members of the City Council

From: Mayor Tom Bates
Councilmember Kriss Worthington
Councilmember Max Anderson
Councilmember Darryl Moore

Subject: Support for a Sweatfree Berkeley Ordinance

RECOMMENDATION:

That the Berkeley City Council refer to the Commission on Labor, as well as to the Peace and Justice Commission and the Public Works Commission for feedback, the development of a Sweatfree Berkeley Ordinance.

BACKGROUND:

Over the past year, a number of cities around the country have joined a worldwide campaign to denounce and cease the use of sweatshop labor. Working in conjunction with a coalition of over 50 labor, faith-based, student and community groups, including SF based human rights organization Global Exchange, the Cities of Los Angeles and San Francisco have already adopted strong versions of anti-sweatshop legislation.

The San Francisco sweatfree legislation includes a sweatfree code of conduct to be signed by all city contractors, subcontractors, and vendors. The code of conduct mandates that these companies' workers are paid a living wage, adjusted by labor market; afforded the right to freedom of association and collective bargaining; and provided with safe working conditions and a non-discriminatory environment. The code of conduct also bans child labor. In order to ensure good results, funding for enforcement by the city as well as a non-profit, independent monitor was included in the city's budget.

Copies of other municipal sweatfree ordinances, as well as a model ordinance developed by Global Exchange are available.

FINANCIAL IMPLICATIONS: None at this time.

CONTACT PERSONS:

Mayor Tom Bates	981-7100
Councilmember Kriss Worthington	981-7170.
Councilmember Darryl Moore	981-7120
Councilmember Max Anderson	981-7130

ATTACHMENTS: Draft Ordinance

Sweatfree Procurement Ordinance for the City of Berkeley

I. Purpose

The City of Berkeley finds that:

- A. The City of Berkeley spends \$XX in public funds on goods, including garments, uniforms, materials and other equipment, materials, and supplies provided by private vendors and manufacturers.
- B. 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.
- C. 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.
- D. The City of Berkeley must be cognizant of the working conditions it may support by its actions as a major 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.
- E. 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.
- F. 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 "sweatfree" procurement policy and code of conduct that ensures that items of apparel, garments and corresponding accessories, and other equipment, materials, and supplies procured by the City of Berkeley, its agencies, or its employees through contracts, purchase orders, or uniform allowances or voucher programs, be produced in workplaces free of sweatshop conditions.
- G. The City of Berkeley has an interest in providing incentives for responsible vendors and contractors.
- H. The City of Berkeley has adopted various policies, including its Pest Management Policy, Precautionary Principle, and Green Purchasing Policy, which 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

This policy applies to the procurement and laundering of *all* goods, including apparel, garments and corresponding accessories, and the procurement of equipment, materials, and other supplies for the City of Berkeley. Procurement includes contract, purchase, rental, lease, or allowance and voucher programs.

III. Definition

A. “Contractor” or “vendor” means a person or entity *with* whom the City of Berkeley has a current procurement relationship, or who is bidding or proposing to provide products to the City of Berkeley.

B. “Independent monitor” means a non-profit organization with expertise in monitoring factory working conditions that is neither funded nor controlled, in whole or in part, by a corporation that is engaged in production of apparel, footwear, or textiles.

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 greater than the United States Department of Health and Human Services’ most recent poverty guideline for a family of three plus an additional 20% of the wage level paid either as hourly wages or health benefits. Outside the United States, a non-poverty wage is a comparable nationwide wage and benefit level, adjusted to reflect that country's level of economic development using a factor such as the relative national standard of living index in order to raise a family of three out of poverty.

D. “Production” means the manufacture (including cutting and assembly by weaving, sewing, knitting or felting), finishing, warehouse distribution and laundering (where applicable) of apparel and other products.

E. “Subcontractor” means a person, partnership, corporation or other entity that enters into a contract with a contractor or vendor for performance of all or some of the work for City of Berkeley procurement. “Subcontractor” shall include beneficiaries of bankruptcies, assignment, transfer, sales of operations, or other successors intended to evade responsibility or liability for any wrongful conduct enumerated herein.

IV. Prohibition of Sweatshop Conditions

Vendors and contractors shall adhere to or exceed the following sweatfree code of conduct and require subcontractors to do the same.

A. Legal Requirements. Contractors shall comply with all applicable laws, ordinances, workplace regulations, and treaties imposed on the city, state, and/or country in which the goods are made or assembled, including those regarding wages and benefits, workplace health and safety, environmental safety and freedom of association, and the fundamental conventions of the International Labor Organization, including those regarding forced and child labor and freedom of association.

B. Wages and Benefits. Contractors shall, at minimum, pay wages that are the highest of the following: (a) the legal minimum wage; (b) the prevailing wage in the industry in the country of production; or (c) a non-poverty wage as defined in Section III C.

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

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

E. Overtime Compensation. Contractors shall ensure that workers work overtime hours only voluntarily. In addition to their compensation for regular hours of work, hourly and quota-based employees shall be compensated for overtime hours at such a premium rate as is legally required in the country of manufacture or, in those locations where such laws do not exist, at a rate at least one-and-one-half their regular hourly compensation rate.

F. Discrimination. Contractors shall not discriminate in employment – including in hiring, salary, benefits, advancement, discipline, termination, or retirement – on the basis of gender, race, religion, age, disability, sexual orientation, nationality, political opinion, marital status, medical condition, pregnancy, or social or ethnic origin.

G. Harassment and Abuse. Contractors shall not harass or abuse workers sexually, psychologically, or verbally, or use corporal punishment.

H. Women's Rights. Contractors shall not require pregnancy tests or use of contraceptives as a condition of employment, nor demand pregnancy tests or use of contraceptives by employees. Women workers shall receive equal remuneration, including equal pay, benefits, treatment, and opportunity to fill positions open to male workers.

I. Just Cause Termination. Contractors shall not terminate employees without just cause. Contractors shall provide for an optional mediation or grievance process to resolve workplace disputes. For production in the United States such disputes are limited to those not regulated by the National Labor Relations Board.

J. Cut and Run. Contractors and subcontractors shall not shut down or reduce orders to a production facility in order to deny workers their right to freely associate or bargain collectively or in order to escape their responsibilities to take corrective action following the determination of a violation of the sweatfree code of conduct.

K. Freedom of Association. Contractors shall respect employees' rights to freedom of association and collective bargaining. No employee shall be subject to harassment, intimidation or retaliation as a result of their efforts to freely associate or bargain collectively. Contractors shall allow union organizers free access to employees and shall recognize the union of the

employees' choice. Contractors shall demonstrate their commitment to freedom of association by taking steps such as:

1. Providing clear channels through which workers can voice their complaints regarding working conditions, and addressing such complaints in a prompt and effective manner;
2. Ensuring that workers have a representative voice in workplace decisions;
3. Negotiating with the workers in good faith.

L. Exposure to Toxins. No workers shall be exposed to toxic chemicals, including glues and solvents, in such a way that the exposure may endanger worker health. Where occupational safety and health laws or regulations apply, a contractor's compliance with said laws or regulations shall not be considered a violation of this subsection.

M. Child Labor. No person shall be employed who is younger than the legal age of child labor in the country in which the facility is located. Regardless of legal age, no children under the age of 15 shall be employed in production facilities. Where the age for completing compulsory education is higher than the age for legal employment, the age for completing education shall apply.

N. Forced Labor: There shall be no form of forced labor of any kind, including slave labor, prison labor, indentured labor, or bonded labor, including forced overtime hours.

V. Requirements – Contractor Affidavits, Public Records and Reporting

A. The City of Berkeley shall procure goods covered by this policy from contractors that adhere to the sweatfree code of conduct as defined in Section IV

B. Affidavits. For every bid and contract for production of goods or provision of services covered by this policy, each bidder or contractor must submit affidavits that include the information set forth in this subsection to the City of Berkeley. To ensure public access and confidence, this information shall be accessible to the public through the City of Berkeley's Website as soon as possible, but in no case less than 14 days before a decision is made to award a contract to a particular bidder. The information shall include:

1. The country of production, the names, addresses, and phone numbers of each facility involved in the production of goods or provision of services covered by this policy in both English and in the principal language of the country of production.
2. The names, business addresses, and phone numbers of the principal officers of each facility involved in the production of goods or provision of services covered by this policy.
3. The minimum base hourly wage of non-supervisory production employees, percent of wage level paid as health benefit, other benefits, regular deductions from paychecks, normal working hours per day and week, actual working hours per day and week over the last three months, and overtime policy.

4. A sworn statement that each of the proposed suppliers, including any subcontractors, adheres to the sweatfree code of conduct as defined in Section IV; that the bidder has furnished a copy of the sweatfree code of conduct to each such supplier, including any subcontractors; and that the bidder has required each supplier to:

- a) Inform the bidder of whether the supplier is in compliance with the sweatfree code of conduct;
- 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 a visible and accessible location in the factory; and,
- c) Conduct a training session, attended by all workers, to inform the workers of their rights under the sweatfree code of conduct.

5. Any other information deemed necessary by the City of Berkeley for the administration and enforcement of this policy.

C. Updated Information. If any information provided by the contractor or subcontractor pursuant to this section changes during the specified time period of the contract, the contractor shall submit or cause to be submitted to the City of Berkeley affidavits with the updated information.

D. Monitoring Reports. The contractor shall submit or cause to be submitted annual public reports documenting internal working condition monitoring programs and their results, external audits if available, problems discovered, and corrective action plans. Contractors shall provide access to the City of Berkeley and the City of Berkeley's independent monitoring agency, if any, to archived and contemporary inspection and monitoring reports for all facilities producing goods or providing services for the contract in question and shall require their subcontractors to allow the same access.

E. Certified Payroll Records. Each contractor and subcontractor shall maintain weekly certified payroll records for submission to City of Berkeley upon demand. The contractor shall be responsible for submitting the payroll records of its subcontractors, although subcontractors shall submit such records directly to the City of Berkeley upon request. All certified payroll records shall be accompanied by a statement signed by the contractor, or subcontractor if requested by the City of Berkeley to submit the records, stating that the records are complete and correct.

VI. Preferences

A. Local Preference. Contractors who commit to responsible production in the City of Berkeley for a particular competitive bid for procurement shall be considered a preferred source for purposes of that bid where the price is not greater than ten percent higher than another comparable bid.

VII. Purchase of Organic and Fair Trade Certified Products

A. Organic Policy. The City of Berkeley shall purchase, when available, Organic Certified products in the process of procuring goods in accordance with this ordinance, including, but not limited to, non-genetically modified organism (GMO) cotton.

B. Fair Trade Policy. The City of Berkeley shall purchase, when available, Fair Trade Certified products in the process of procuring goods in accordance with this ordinance, including, but not limited to, coffee, cocoa, chocolate, tea, and fresh fruits.

VIII. Verification and Compliance

A. It shall be the responsibility of contractors to ensure compliance with the sweatfree code of conduct in their own production facilities and in those of their suppliers, including all subcontractors.

B. City of Berkeley shall enter into an agreement with an independent monitor for assistance in monitoring the compliance of contractors. The purpose of such arrangement is to receive complaints and provide monitoring, inspection, investigation, and remediation services at facilities producing goods or providing services for City of Berkeley. Refusal of an entity to permit independent monitoring shall result in disqualification for bidding.

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 worksite where the contract or any subcontract is performed and have access to any worker or any record required to be maintained in Section VI.

D. City of Berkeley shall also explore mechanisms employed by other governmental entities to ensure that businesses that contract with this 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 sweatfree 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 sweatfree consortium with other states, cities, school boards, or public entities for the purpose of collaborating in the enforcement of sweatfree codes of conduct, including sharing the cost of monitoring and inspection activities by an independent monitor, and consolidating purchasing power.

E. The City of Berkeley will establish a Sweatfree Procurement Advisory Group to address implementation and enforcement issues. The Sweatfree Procurement Advisory Group shall consist of advocates for garment workers and other workers experiencing sweatshop working

conditions, uniformed unions of employees of the City of Berkeley, representatives of agencies that employ uniformed personnel, administrators responsible for implementing this law, and other interested parties. The purpose of the Sweatfree Procurement Advisory Group shall be to:

1. Receive and assess evidence of bidders' and contractors' non-compliance with the Sweatfree Code of Conduct 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 to determine whether procurement of goods, 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 that the Sweatfree Advisory Group shall consider shall include, but not be limited to: (a) the amount the City of Berkeley has spent and anticipates spending for such good; (b) evidence of sweatshop labor or other conditions prohibited by this Chapter in the manufacturing, assemblage or distribution of such good; and (c) any financial impact that targeting the good for enforcement will have on the City of Berkeley.

IX. Violations and Enforcement

A. Complaints. Any person may complain that the sweatfree code of conduct of this Chapter is being violated. The City of Berkeley and/or any 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 the sweatfree code of conduct, 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.

E. Remediation. Upon determination of a violation of the sweatfree code of conduct at a production 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 the sweatfree code of conduct. 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.

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 the sweatfree code of conduct 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 VI, 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 of City of Berkeley.

X. Preemption

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

XI. 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 provisions to other persons or circumstances, shall not be affected by such holding and shall continue in full force and effect. To this end, the provisions of this Chapter are severable.