



Commission on Labor

Draft Minutes

Wednesday, January 19, 2022, 7:00 p.m.

Commission Secretary: Rhianna Babka Rbabka@cityofberkeley.info

Pursuant to Section 3 of Executive Order N-29-20, issued by Governor Newsom on March 17, 2020, this meeting of the City Council will be conducted exclusively through teleconference and Zoom videoconference. Please be advised that pursuant to the Executive Order and the Shelter-in-Place Order, and to ensure the health and safety of the public by limiting human contact that could spread the COVID-19 virus, there will not be a physical meeting location available.

If you do not wish for your name to appear on the screen, then use the drop-down menu and click on "rename" to rename yourself to be anonymous. To request to speak, use the "raise hand" icon. If you wish to comment during the public comment portion of the agenda, Press *9 and wait to be recognized by the Chair.

Preliminary Matters

1. Roll Call: Present: Berne, Harlow, Osborne, Jones, Scantlebury, Katz, Schriener, Botello; Excused Absence: Unexcused Absence:
Staff: Rhianna Babka
Members of the public: 3
CALL to order at 7:03
2. Public Comments
The public may comment about any item not on the agenda. Public comments regarding agenda items will be heard while the Commission is discussing the item.
1. Approval of Draft November 17, 2021 Meeting Minutes (*Attachment 1*)
(M/S/C: Katz/Second Approve the minutes as amended
Correction to Motion: to appoint commissioners Katz and Botello to draft the Fair Workweek Council report recommending adoption of the draft ordinance and send to Council without further action from the commission

Yes: Berne, Harlow, Osborne, Jones, Scantlebury, Katz, Botello Noes:
Abstentions: Schriener.

Action Items

The Commission may take action related to any subject listed on the Agenda. Public comments regarding agenda items will be heard while the Commission is discussing the item.

2. Commission on Labor 2022 Workplan. (*Attachment 2*)
 - a. (M/S/C: M/Schriner Move to adopt the workplan with the one revision to remove Fair Workweek (done)/Second Harlow
 - b. Chair = Appoint a Subcommittee **Scantlebury, Jones, Schriner** re. Labor Education in the Schools
 - c. Chair = Appoint a 2nd Subcommittee **Schriner & Berne** re. committee on Labor shortages
 - d. Yes: Berne, Harlow, Osborne, Jones, Scantlebury, Katz, Schriner, Botello
Noes: Abstentions:.
3. Commission on Labor 2022 Meeting Schedule (*Attachment 3*)
 - a. Discussion:
 - b. Move the March meeting to Wednesday March 9 and NOT the 23
 - c. (M/S/C: M/Schriner with the amendment to March 9 , S/ Scantlebury
Yes: Berne, Harlow, Osborne, Jones, Scantlebury, Katz, Schriner, Botello
Noes: Abstentions:.
4. Information items – Elections for Chair and Vice Chair (*Attachment 4*)
5. Fair Work Week Policy – Status update regarding the Commission on Labor Council Report for the proposed Fair Workweek Ordinance (Botello and Katz) (**Attachments 5&6**)
6. Future Agenda Items
 - a. Clarity for the COL on the role of receiving disputes and providing technical assistance to the community as a role of the COL- (Botello)
 - b. Cal. Student Researchers and possible presentation (Schriner)
7. Announcements

Adjournment 8:15pm

(M/S/C: M/Berne S/Osborne Yes: Berne, Harlow, Osborne, Jones, Scantlebury, Katz, Schriner, Botello Noes: Abstentions:).

Attachments

1. Draft Nov.17, 2021 Meeting Minutes
2. Draft Workplan
3. Commission on Labor Meeting Calendar
4. Information on Elections of Chair and Vice Chair
5. Draft Fair Workweek Council Report
6. Proposed Fair Workweek Ordinance

COMMUNICATION ACCESS INFORMATION

This meeting is being held in a wheelchair accessible location. To request a disability-related accommodation(s) to participate in the meeting, including auxiliary aids or services, please contact the Disability Services specialist at 981-6418 (V) or 981-6347 (TDD) at least three business days before the meeting date. Please refrain from wearing scented products to this meeting.

Communications to Berkeley boards, commissions or committees are public record and will become part of the City's electronic records, which are accessible through the City's website. **Please note: e-mail addresses, names, addresses, and other contact information are not required, but if included in any communication to a City board, commission or committee, will become part of the public record.** If you do not want your e-mail address or any other contact information to be made public, you may deliver communications via U.S. Postal Service or in person to the secretary of the relevant board, commission or committee. If you do not want your contact information included in the public record, please do not include that information in your communication. Please contact the commission secretary for further information.

Written material may be viewed in advance of the meeting at the Housing & Community Services Department, 2180 Milvia, 2nd Floor, during regular business hours or at the Berkeley Public Library, Shattuck/Kittredge Streets, during regular library hours at the Reference Desk. The Commission Agenda and Minutes may be viewed on the City of Berkeley website: <http://www.cityofberkeley.info/commissions>.

Rhianna Babka 2/8/2022

Secretary:

Rhianna Babka
Health, Housing & Community Services
Department
(510) 981-5410
E-mail: Rbabka@cityofberkeley.info

Mailing Address:

Commission on Labor, Secretary
2180 Milvia, 2nd Floor
Berkeley, CA 94704



Commission on Labor

Draft Minutes

Wednesday, November 17th, 2021, 7:00 p.m.

To join the meeting online:

Commission Secretary: Nathan Dahl Ndaahl@cityofberkeley.info; 510-981-5405

Pursuant to Section 3 of Executive Order N-29-20, issued by Governor Newsom on March 17, 2020, this meeting of the City Council will be conducted exclusively through teleconference and Zoom videoconference. Please be advised that pursuant to the Executive Order and the Shelter-in-Place Order, and to ensure the health and safety of the public by limiting human contact that could spread the COVID-19 virus, there will not be a physical meeting location available.

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Preliminary Matters

1. Roll Call
Commissioners Present: Botello, Berne, Scantlebury, Schriener, Harlow, Jones, Osborne, Katz, Absent: Medak
Staff: Nathan Dahl, Rhianna Babka
Members of the Public: 22
2. Public Comments
The public may comment about any item not on the agenda. Public comments regarding agenda items will be heard while the Commission is discussing the item.
3. Approval of Draft September 22, 2021 Meeting Minutes (*Attachment 1*)

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

Action Items

The Commission may take action related to any subject listed on the Agenda. Public comments regarding agenda items will be heard while the Commission is discussing the item.

1. Head Start – Layoffs and cuts to programming.
Presentation – No Action

2. Fair Work Week Policy – Review and consideration of draft ordinance.
(Attachment 2)

Motion: 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).

Substitute Motion: Recommend approval of draft Fair Workweek Ordinance to the Berkeley City Council with an amendment to Section 13.110.020(b)(1) – changing the applicability from 50 to 100 employees.

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

Motion: to Extend Meeting to 9:15p.m.

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

Motion: to appoint Commissioners Katz and Botello to draft the Fair Workweek council report to recommendation adoption of the draft ordinance.

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

3. Discussion of the labor shortage and its impact on economic recovery.
Presentation – No Action
4. Commission on Labor 2022 Workplan. (Attachment 3)
No Action
5. Healthcare worker strike at Kaiser and Sutter
No Action
6. Future Agenda Items
Head Start Cuts to Programming
2022 Workplan
Healthcare worker strike at Kaiser and Sutter
7. Announcements
None.

Adjournment

9:16 p.m.

Attachments

1. Draft September 22, 2021 Meeting Minutes
2. Draft Fair Work Week Ordinance
3. Draft Workplan From July 21, 2021 Meeting
4. Memo from Commissioner Botello on behalf of the Fair Workweek Subcommittee Submitted to the Secretary at 3:49 p.m. on 11/17/21, distributed to Commissioners at 4:24 p.m. 11/17/21.

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Secretary:

Nathan Dahl
Health, Housing & Community Services
Department
(510) 981-5405
E-mail: Ndahl@cityofberkeley.info

Mailing Address:

Commission on Labor
Nathan Dahl, Secretary
2180 Milvia, 2nd Floor
Berkeley, CA 94704



11/17/21

Draft Work Plan

Research and gather information to report to City Council and support Commission's recommendations to City Council:

a. Conclude consideration of the proposed Fair Work Week Ordinance and forward it to City Council with the recommendation of the Commission on Labor.

a. Invite speakers to present relevant and current information regarding labor issues: including approaches to addressing potential labor shortages.

b. Develop policies for recommendation to City Council in formal coordination with

other City of Berkeley commissions to maximize the availability of subject matter experts and identify connections between labor and other relevant issues including, but not limited to, economic development and human rights.

c. Examine City's policies and practices regarding workplace sexual harassment.

d. Examine the University of California at Berkeley's policies and practices regarding workplace sexual harassment.

Labor bill of rights:

Review and update the Labor Bill of Rights and submit recommended revisions to City Council.

Education

a. Facilitate education of workers in Berkeley about their rights and the process for addressing workplace sexual harassment.

~~b. Facilitate education of workers in Berkeley about the City's policies and practices regarding Immigration and Customs Enforcement (ICE).~~

c. Facilitate education of children and young adults in Berkeley about the benefits and opportunities of organized labor.

Local labor disputes

a. Monitor on-going and new labor disputes

b. Hold public hearings on labor disputes as requested/required

c. Submit recommendations to Council based on information gathered from both sides of disputing parties.

2022 Commission Meeting Dates

Please complete this form and email it to the
[Commission Inbox](#) by: **Friday, January 7, 2022**

Name of Commission: Commission on Labor

Commission Secretary: Nathan Dahl/Rhianna Babka

Please Note the Commission Meeting Dates for 2022 Below

Please fill in meeting date below. If no meeting for the month is scheduled please note as "No Meeting."

Example

Month	Meeting Day and Date	Time
February 2022	Wednesday 2/10/2022	7:00 pm

Month	Meeting Day and Date	Time
July 2022	No Meeting	

2022 Meeting Dates

Month	Meeting Day and Date	Time
January 2022	Wednesday 1/19/2022	7pm
February 2022	No Meeting	
March 2022	Wednesday 3/9/2022	7pm
	No March 16 th due to Purim	
April 2022	No Meeting	
May 2022	Wednesday 5/18/2022	7pm
June 2022	No Meeting	

Month	Meeting Day and Date	Time
July 2022	Wednesday 7/20/2022	7pm
August 2022	No Meeting	
September 2022	Wednesday 9/21/2022	7pm
October 2022	No Meeting	
November 2022	Wednesday 11/16/2022	7pm
December 2022	No Meeting	

commission@cityofberkeley.info

City Clerk Department

Please contact our office at (510) 981-6908 with any questions.

3) Incompatible Public Offices

The common law doctrine of incompatible public offices prohibits a public official from occupying two public offices that are incompatible in terms of their duties and/or the likelihood of divided loyalties. However, in Berkeley, serving on two or more City boards or commissions, including quasi-judicial bodies, is permitted (BMC Chapter 3.80). A commissioner who already occupies an elected or appointed office other than a City board or commission and wants to apply for appointment to a City commission should seek the City Attorney's advice as to whether the two offices may be deemed incompatible.

4) Incompatible Activities for Compensation

Government Code Section 1126 prohibits a public official from engaging in activities for compensation that are incompatible with his or her public office. A commissioner engaged in compensated activities that may be incompatible with his or her duties as a commissioner should consult the City Attorney.

5) State-Mandated Ethics Training

State law (AB 1234) requires certain local agency officials to receive training in ethics. In Berkeley, the officials identified for requirement are Mayor and City Council, City Auditor, Rent Stabilization Board Commissioners, Board of Library Trustees, and Police Review Commissioners.

These officials will receive a notice from the City Clerk advising them of the required training. The training may be completed on the FPCC website. The training must be completed within one year of the date of appointment and every two years thereafter. A certification of completion must be filed with the City Clerk. For more information, please contact the City Clerk Department.

F. COMMISSION ORGANIZATION**1) Election of Officers and Terms of Office**

Unless otherwise provided by ordinance,² the chair and vice-chair are elected by the majority of the commission for a one-year term and hold office until their successors are elected or until their terms as members of the commission expire. No commissioner shall serve as chair for more than two consecutive years. There is no term limit for vice-chair.

Unless otherwise provided for in the enabling legislation, the annual election of commission officers should occur during the month of February. The election of officers must be listed as an item on the agenda.

Two meetings prior to the meeting at which officers will be elected, commissions are encouraged to list as an agenda item a discussion of the election, to inform all commissioners of the opportunity to seek nomination and election for the offices of chair and vice chair, to discuss and agree to the nomination process and timing for nominations (if no policy has been enacted by the commission), and to add clarity for commissioners and the

² Election of officers to the Police Review Commission, Board of Library Trustees, and Landmarks Preservation Commission are regulated by BMC Sections 3.32.050, 3.04.040, and 3.24.030, respectively.

public. In order to facilitate an orderly and fair nomination process, commissions may open nominations at the January meeting (or the meeting prior to the February meeting) and then hold the vote on officers at the February meeting. A Commission may enact a policy on officer elections in conformance with the requirements stated below, specifying the timing for nominations, the order in which nominations will be voted upon, and any other details that support a fair, orderly and transparent process for election of officers.

If there are multiple nominees for chair or vice-chair, the commission may wish to use a process by which all nominations can be made prior to voting. Full discussion of nominations is recommended, including the ability of nominees to speak on behalf of their own candidacy.

Additional regulations for officer elections:

- Nominations for chair and vice-chair require a motion (with second).
- A commissioner may nominate himself or herself.
- Any member of the commission, regardless of length of tenure on the commission may be elected chair or vice-chair.
- There is no automatic succession from vice-chair to chair.
- Motions to nominate must be voted on in the public forum, and no secret ballots are allowed.
- A roll call vote is recommended for votes on commission officers, and is required if any commissioner requests a roll call vote.
- The results of the vote must be publicly announced and the vote recorded in the minutes (Resolution No. 60,531-N.S.).
- A commissioner may not be elected chair if he or she will not be able to finish the term due to the two-year limitation.

Terms of office for officers are determined by the date the election regularly occurs, not by the date it may have actually occurred. If there is a slight variation in the date of the election, the sitting chair may serve on an interim basis provided that they do not exceed the two-year limit.

Scenario:

The chair is elected in February 2016. The chair resigns in April 2016. A new chair is elected in May 2016. The newly elected chair will serve from May 2016 to February 2017, when the next regular election is held.

2) Mandatory Annual Training for Chairs and Vice-Chairs

Chairs and vice-chairs are required to complete mandatory annual training. Resolution No. 63,876-N.S. was adopted by the City Council to implement video training for commission officers to satisfy the requirements of Resolution No. 60,531-N.S.

The chair and vice-chair must view, in its entirety, a training video on commission procedures and legal requirements. Upon completion, the chair and vice-chair must file with the City Clerk an Affirmation of Completion.

This training video must be viewed and the Affirmation of Completion must be filed with the City Clerk no later than 60 calendar days from the date of election as chair or vice-chair. Failure to complete the video training and file the Affirmation of Completion within 60 days of election will result in the immediate forfeiture of the position of chair or vice-chair.

Commission officers must file an Affirmation of Completion within 60 days from the date of election or forfeit their seat as chair or vice-chair.

While not mandatory for commissioners other than the chair and vice-chair, completion of this training is encouraged for all commissioners.

The required training video may be viewed online through the city website - <https://www.cityofberkeley.info/commissions/> or a DVD may be obtained from the City Clerk Department at 2180 Milvia Street, 1st Floor. The City Clerk also offers a video terminal at its office for commissioners to view the training video.

3) **Duties of Officers**

The “presiding officer” (chair or, in his or her absence, the vice-chair), performs the following duties.

- Presides at all meetings of the commission and ensures that the work of the commission is accomplished. To this end, the chair must exert sufficient control of the meeting to eliminate irrelevant, repetitious, or otherwise unproductive discussion. At the same time, the chair must ensure that all viewpoints are heard and are considered in a fair and impartial manner.
- Ensures that commission bylaws, if any, and procedures are followed. The chair cannot make rules related to the conduct of meetings; only the full commission may do so.
- Appoints commissioners to temporary subcommittees subject to the approval of the full commission.
- Approves the agenda prior to distribution. This is limited to the structure and order of the agenda and does not grant the chair the authority to remove an item submitted by commissioners or staff if submitted by the established deadline.
- Signs correspondence on behalf of the commission.
- Represents the commission before the City Council. Other commissioners may be the representative with the formal approval of the commission by motion and vote.
- Approves commission reports to Council. The chair cannot modify content that was approved by the full commission.
- The chair or a quorum of the commission may call a special meeting.
- The chair and vice-chair have full rights to vote and to make or second motions.



Commission on Labor

ACTION CALENDAR
February 22, 2022

To: Honorable Mayor and Members of the City Council
From: Commission on Labor
Submitted by: Michael Berne, Chairperson, Commission on Labor
Subject: Fair Workweek Ordinance

RECOMMENDATION

Adopt first reading of the proposed Fair Workweek Ordinance.

FISCAL IMPACTS OF RECOMMENDATION

This ordinance provides for both private enforcement and enforcement by the City. Comparable jurisdictions report a small number of complaints annually, but additional staffing may be required to investigate complaints and hold enforcement hearings. Temporary staffing and one-time mailing costs will be required to conduct outreach to covered employers. The Commission anticipates that these cost projections will be quantified in a companion staff report.

SUMMARY

Key features of the proposed ordinance include:

Scheduling Notification and Requests

- Schedules must be given 14 days in advance
- Employees must be provided with an initial estimate of hours
- Employees have the right to decline hours they are given with less than 14 days notice
- Employees shall have the right to request flexible and predictable schedules to accommodate childcare, education, second jobs etc.
- Employees have the right to decline any shift that either occurs less than 11 hours after the end of their previous shift; if accepting such a shift, will be compensated at 1½ times their regular rate of pay.

Predictability Pay

- Employees will receive predictability pay equal to a specified number of hours at their hourly rate of pay as compensation for schedule changes, ranging from 1 hour of pay for a shift scheduled less than 14 days in advance but at least 24 hours up to 4 hours of pay or hours equal to the amount of hours lost when a

shift is canceled or reduced

Offer of Work to Existing Employees

- Before hiring new employees, employers must offer additional hours to existing part-time employees for any new hours available
- Employees shall have 24 hours to accept additional hours

Applicability

- In general, employers in Berkeley with 50 or more employees globally engaged in the following industry sectors: building services, healthcare, hotel, manufacturing, retail, or warehouse services;
- Restaurant employers with at least 100 employees globally and 10 or more in Berkeley;
- Franchisees associated with a network of franchises employing 100 or more employees globally and 10 or more; and
- The City of Berkeley as an employer.
- Specifically **excluded** are nonprofit organizations with fewer than 100 employees globally (which includes most arts organizations).

BACKGROUND

The City Council referred to the Commission on Labor in 2018 to draft an Ordinance to establish regulations governing the scheduling and hiring practices of qualifying businesses in Berkeley.

The City Council's referral observed that:

Even with sick pay and strong minimum wage laws, workers in Berkeley, particularly shift workers, still face unfair and exploitative work practices. Since the passage of the Affordable Care Act, a frequent issue that has arisen is the practice of businesses keeping their employees below 30 hours a week to avoid having to provide them health care. Workers may be forced to take "clopening" shifts, where an employee covers the closing shift one day and the opening shift the next day, giving them little time for rest. Shift workers frequently have shifts added or removed hours before they are set to begin, making scheduling impossible and creating financial difficulties for those with children who need child care.

At the time of the City Council's referral, multiple jurisdictions had introduced or enacted measures to address these inequitable conditions, including the Cities of Emeryville, San Jose, San Francisco, and New York, and the State of Oregon, with the strongest at the time being the City of Emeryville. The referral directed the ordinance to be based on the City of Emeryville, strengthened with the following principles:

- The right to refuse “clopening” shifts, the right to request a flexible work arrangement, and a prohibition on refusing hours to prevent the application of benefits should apply to all employers and employees
- The right to at least two week notice of work schedule, to decline additional hours, and to “predictability pay” if changes are made to the schedule after the 2 two week deadline should apply to all businesses of at least 25 employees
- The requirement that new shifts first be offered to all qualified existing employees until they have at least 35 hours of work per week on average should apply to all Retail, Hotel, and Restaurant firms with at least 25 employees
- All requirements of the ordinance apply to the City of Berkeley and the Berkeley Rent Stabilization Board.

Since the referral, several of the above-mentioned jurisdictions passed the introduced ordinances, in addition to the City of Chicago. Sectoral coverage in the proposed ordinance is generally modeled after Chicago, while firm size is generally modeled after Emeryville.

After many deliberative meetings before the full Commission and a dedicated subcommittee, and considering input from stakeholders including affected employers and workers, the Commission developed a proposed ordinance taking into account the Council’s direction. By passing this ordinance, Berkeley has the opportunity to be at the forefront of worker protections and to support the essential workers that have gotten us through this pandemic.

The Commission found many of the workers employed in the retail, restaurant, and hospitality industries suffer from low wages and unpredictable schedules, while needing to work multiple jobs just to get by. Volatile scheduling leads to difficulty in managing multiple jobs, school work, and childcare. Following the model adopted by the City of Chicago, the proposed ordinance would cover building services (including janitorial and security), healthcare, manufacturing, and warehouse services.

In response to input received by stakeholders, the proposed ordinance applies only to employers employing fifty or more employees globally (similar to Emeryville), but for restaurants or franchises would apply if the employer employed at least ten employees in the City of Berkeley and at least one hundred globally. This attempts to balance an interest in achieving the broadest coverage of any ordinance or law in the United States, while avoiding coverage of locally owned businesses that do not have the human resources support of a franchisor.

The strengthening elements requested by the City Council are mostly incorporated, except for the applicability thresholds based on our deliberative process, compliance

with federal laws as applicable, the requirement for new shift offers reflects a forty-hour workweek, and the Rent Stabilization Board employees are presumed incorporated within City of Berkeley employees.

The City Council may wish to consider a delayed effectiveness date, such as until the beginning of the following calendar year, for private sector employers to allow for the time necessary for staff to provide outreach and education to affected businesses. While private sector employers should be provided a reasonable amount of time to set up systems to ensure compliance with the ordinance, the subcommittee recommends that the City of Berkeley as an employer can and should implement the new procedures promptly.

ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

None.

CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)

This action is not expected to have any impact on the environment and is exempt from CEQA.

RATIONALE FOR RECOMMENDATION

Enactment of workplace protections. See background discussion.

ALTERNATIVE ACTIONS CONSIDERED

The Commission recognizes the labor standards benefits of applying the right to refuse “clopening” shifts, and refusal of hours to prevent employees from attaining thirty hours per week to all employers, and applying the two week notice and predictability pay to all sectors of the economy. The right to request a flexible working arrangement remains applicable to all employers that employ ten or more employees under the Berkeley Family Friendly and Environment Friendly Workplace Ordinance, adopted in 2017. The proposed ordinance’s focus on uniform application to the seven sectors covered in Chicago’s model reflects (a) the expected education and outreach required for compliance, (b) the sectors where working conditions require intervention the most, and (c) that the employers covered by the proposed ordinance are in the best position to comply with its provisions in the near term, and does not preclude broadening coverage in the future.

CITY MANAGER

See companion report.

CONTACT PERSON

Nathan Dahl, Secretary, Commission on Labor, Department of Health, Housing, and Community Services, 510-981-5405

Attachments:

Fair Workweek Ordinance

1: Ordinance

Exhibit A: Fair Workweek Ordinance

ORDINANCE NO. -N.S.

FAIR WORKWEEK EMPLOYMENT STANDARDS

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

Section 1. That Berkeley Municipal Code Chapter 13.110 is added to read as follows:

**CHAPTER 13.110
FAIR WORKWEEK EMPLOYMENT STANDARDS**

Sections:

- 13.110.010 Purpose and Intent**
- 13.110.020 Definitions.**
- 13.110.030 Applicability.**
- 13.110.040 Waiver through Collective Bargaining**
- 13.110.050 Advance Notice of Work Schedules.**
- 13.110.060 Notice, Right to Decline, and Compensation for Schedule Changes.**
- 13.110.070 Offer of Work to Existing Employees.**
- 13.110.080 Right to Rest.**
- 13.110.090 Right to Request a Flexible Working Arrangement.**
- 13.110.100 Notice and Posting.**
- 13.110.110 Implementation.**
- 13.110.120 Enforcement.**
- 13.110.130 Retaliation Prohibited**
- 13.110.140 Retention of Records.**
- 13.110.150 City Access.**
- 13.110.160 No Preemption of Higher Standards.**
- 13.110.170 Severability.**

13.110.010 Purpose and Intent

This chapter shall be known and may be cited as the “Berkeley Fair Workweek Ordinance”. It is the purpose of this chapter and the policy of the City: (i) to enact and enforce fair and equitable employment scheduling practices in the City of Berkeley; (ii) to provide the working people of Berkeley with protections that ensure employer scheduling practices do not unreasonably prevent workers from attending to their families, health, education, and other obligations; and (iii) to require Employers needing additional hours, whether temporary or permanent, to first offer those hours to current part-time Employees.

13.110.020 Definitions

As used in this chapter, the following terms shall have the following meanings:

- (a) "Calendar week" shall mean a period of seven (7) consecutive days starting on Sunday.
- (b) "City" shall mean the City of Berkeley.
- (c) "Covered employer" shall mean an employer subject to the provisions of this chapter, as specified in Section 13.110.030.
- (d) "Department" shall mean the Department of Finance or other City department or agency as the City shall by resolution designate.
- (e) "Employee" shall mean any person who:
 - (1) In a calendar week performs at least two (2) hours of work within the geographic boundaries of the City of Berkeley for an employer;
 - (2) Qualifies as an employee entitled to payment of a minimum wage from any employer under the California minimum wage law, as provided under Labor Code Section [1197](#) and wage orders published by the California Industrial Welfare Commission. Employees shall include learners, as defined by the California Industrial Welfare Commission; and
 - (3) Is (i) not exempt from payment of an overtime rate of compensation pursuant to Labor Code Section 510; and (ii) is not paid a monthly salary equivalent to at least forty hours per week at a rate of pay of twice the minimum wage required by Berkeley Municipal Code Section 13.99.040.
- (f) "Employer" shall mean any person, including corporate officers or executives, as defined in Section [18](#) of the California Labor Code, who directly or indirectly through any other person, including through the services of a temporary employment agency, staffing agency, subcontractor or similar entity, employs or exercises control over the wages, hours or working conditions of any Employee, or any person receiving or holding a business license through Title [9](#) of the Berkeley Municipal Code.
- (g) "Firm" shall mean a business organization or entity consisting of one (1) or more establishments under common ownership or control. In the case of a franchise, the franchisor shall be considered the firm.
- (h) "Franchise" shall have the meaning in California Business and Professions Code Section [20001](#).
- (i) "Franchisee" shall have the meaning in California Business and Professions Code Section [20002](#).
- (j) "Franchisor" shall have the meaning in California Business and Professions Code Section [20003](#).
- (k) "Good faith" shall mean a sincere intention to deal fairly with others.
- (l) "Predictability pay" shall mean wages paid to an employee, calculated on an hourly basis at the employee's regular rate of pay as that term is used in [29](#) U.S.C. Section

[207](#)(e), as compensation for schedule changes made by a covered employer to an employee's schedule pursuant to Section 13.110.060, in addition to any wages earned for work performed by that employee.

(m) "Shift" shall mean the consecutive hours an employer requires an employee to work including employer-approved meal periods and rest periods.

(n) "Work schedule" shall mean all of an employee's shifts, including specific start and end times for each shift, during a calendar week.

(o) "Building services" means the care and maintenance of property, including, but not limited to, janitorial services, building maintenance services, and security services.

(p) "Healthcare" shall mean either a Hospital, Medical Practitioner Office, Nursing Home, or Supportive Housing as defined in BMC Section 23F.04.10, or a facility that provides outpatient maintenance dialysis.

(q) "Hotel" shall mean Tourist Hotel as defined in BMC Section 23F.04.10.

(r) "Manufacturing" shall mean a Manufacturing Use as defined in BMC Section 23F.04.10.

(s) "Restaurant" shall mean a Food Service Establishment as defined in BMC Section 23F.04.10.

(t) "Retail" shall mean a Retail Products Store as defined in BMC Section 23F.04.10.

(u) "Warehouse services" shall mean Warehouse Based Non-Store Retail as defined in BMC Section 23F.04.10.

13.110.030 Applicability

(a) All sections of this chapter shall apply to: the City of Berkeley as an employer, and all employers in the City of Berkeley who are primarily engaged in any of the following industries:

- (1) building services;
- (2) healthcare;
- (3) hotel;
- (4) manufacturing;
- (5) restaurant;
- (6) retail; or
- (7) warehouse services.

(b) Notwithstanding subdivision (a), this chapter shall apply only to an employer that

- (1) is not a restaurant and employs fifty (50) or more employees globally;
- (2) is a restaurant operator employing ten (10) or more employees in the city of Berkeley and employs one hundred (100) or more globally; or

(3) is a franchisee employing ten (10) or more employees in the city of Berkeley and is associated with a network of franchises employing one hundred (100) or more employees globally.

(c) This chapter does not apply to a not-for-profit corporation organized under Section 501 of the United States Internal Revenue Code unless it employs one hundred (100) or more employees globally.

(d) In determining the number of employees performing work for a covered employer during a given week, all employees performing work for the covered employer for compensation on a full-time, part-time, or temporary basis, at any location, shall be counted, including employees made available to work through the services of a temporary services or staffing agency or similar entity.

(e) For the purposes of determining whether a nonfranchisee entity is a covered employer as defined by this chapter, separate entities that form an integrated enterprise shall be considered a single employer under this chapter. Separate entities will be considered an integrated enterprise and a single employer under this chapter where a separate entity controls the operation of another entity. The factors to consider in making this assessment include, but are not limited to:

- (1) Degree of interrelation between the operations of multiple entities;
- (2) Degree to which the entities share common management;
- (3) Centralized control of labor relations; and
- (4) Degree of common ownership or financial control over the entities.

There shall be a presumption that separate legal entities, which may share some degree of interrelated operations and common management with one another, shall be considered separate employers for purposes of this chapter as long as (i) the separate legal entities operate substantially in separate physical locations from one another, and (ii) each separate legal entity has partially different ultimate ownership.

13.110.040 Waiver through Collective Bargaining

To the extent permitted by law, all or any portion of the applicable requirements of this chapter may be waived in a bona fide collective bargaining agreement; provided, that such waiver is explicitly set forth in such agreement in clear and unambiguous terms that the parties thereto intend to and do thereby waive all of or a specific portion(s) of this chapter.

13.110.050 Advance Notice of Work Schedules.

(a) Initial Estimate of Minimum Hours.

(1) Prior to or on commencement of employment, a covered employer shall provide each employee with a good faith estimate in writing of the employee's work schedule.

(2) Prior to or on commencement of employment, the employee may request that the covered employer modify the estimated work schedule provided under subsection (a)(1) of this section. The covered employer shall consider any such request, and in its sole discretion may accept or reject the request; provided, that the covered employer shall notify the employee of covered employer's determination in writing prior to or on commencement of employment.

(b) Two (2) Weeks' Advance Notice of Work Schedule. A covered employer shall provide its employees with at least two (2) weeks' notice of their work schedules by doing one (1) of the following: (1) posting the work schedule in a conspicuous place at the workplace that is readily accessible and visible to all employees; or (2) transmitting the work schedule by electronic means, so long as all employees are given access to the electronic schedule at the workplace. For new employees, a covered employer shall provide the new employee prior to or on their first day of employment with an initial work schedule. Thereafter, the covered employer shall include the new employee in an existing schedule with other employees. If the covered employer changes an employee's work schedule after it is posted and/or transmitted, such changes shall be subject to the notice and compensation requirements set forth in this chapter.

(c) An Employee who is a victim of domestic violence or sexual violence may request that the Employee's Work Schedule not be posted or transmitted to other employees. An oral or written request shall be sufficient and implemented immediately and is sufficient until the Employee gives written permission to post the Employee's schedule. An Employer may request a written statement from the Employee that states that the Employee is a victim of domestic violence or sexual violence. The written statement shall constitute the documentation needed for the Employer to implement the request. The Employer may not require a written statement more than once in a calendar year from any Covered Employee for this purpose.

13.110.060 Notice, Right to Decline, and Compensation for Schedule Changes.

(a) A covered employer shall provide an employee notice of any change to the employee's posted or transmitted work schedule. The covered employer shall provide such notice by in-person conversation, telephone call, email, text message, or other electronic communication. If the Employee accepts the additional shift via a verbal conversation, the Employer shall immediately follow up with written confirmation to document the agreement and when it was accepted. This notice requirement shall not apply to any schedule changes the employee initiates, such as employee requested sick leave, time off, shift trades, or additional shifts.

(b) Subject to the exceptions in subsection (d) of this section, an employee has the right to decline any previously unscheduled hours that the covered employer adds to the employee's schedule, and for which the employee has been provided advance notice of less than fourteen (14) days.

(c) Subject to the exceptions in subsection (d) of this section, a covered employer shall provide an employee with the following compensation per shift for each previously scheduled shift that the covered employer adds or subtracts hours, moves to another date or time, cancels, or each previously unscheduled shift that the covered employer adds to the employee's schedule: (1) with less than fourteen (14) days' notice, but twenty-four (24) hours or more notice to the employee: one (1) hour of predictability pay; (2) with less than twenty-four (24) hours to the employee, (i) four (4) hours or the number of hours in the employee's scheduled shift, whichever is less, when hours are canceled or reduced; (ii) one (1) hour of predictability pay for all other changes. The compensation required by this subsection shall be in addition to the employee's regular pay for working that shift.

(d) Exceptions. The requirements of this section shall not apply under any of the following circumstances:

- (1) Operations cannot begin or continue due to threats to covered employers, employees or property, or when civil authorities recommend that work not begin or continue;
- (2) Operations cannot begin or continue because public utilities fail to supply electricity, water, or gas, or there is a failure in the public utilities or sewer system;
- (3) Operations cannot begin or continue due to: acts of nature (including but not limited to flood, fire, explosion, earthquake, tidal wave, drought), war, civil unrest, strikes, or other cause not within the covered employer's control;
- (4) Mutually agreed-upon work shift swaps or coverage arrangements among employees.
- (5) Employee initiated voluntary shift modifications, such as voluntary requests to leave a scheduled shift prior to the end of the shift or to use sick leave, vacation leave, or other policies offered by the Employer. This paragraph shall apply only to the employee initiating the voluntary shift modification.
- (6) To accommodate the following transitions in shifts:
 - (i) If an employee works past the end of a scheduled shift to complete service to a customer, which service would entitle the employee to receive a commission, tip, or other incentive pay based on the completion of that service, provided the employee is compensated at their regular rate of pay for the additional work performed by the employee.
 - (ii) An employee begins or ends their scheduled shift no more than ten minutes prior to or after the scheduled shift, provided the employee is

compensated at their regular rate of pay for the additional work performed by the employee.

(7) When, in manufacturing, events outside of the control of the manufacturer result in a reduction in the need for Covered Employees, including, but not limited to, when a customer requests the manufacturer to delay production or there is a delay in the receipt of raw materials or component parts needed for production.

(8) With regard to healthcare employers, in (i) any declared national, State, or municipal disaster or other catastrophic event, or any implementation of an Employer's disaster plan, or incident causing a hospital to activate its Emergency Operations Plan, that will substantially affect or increase the need for healthcare services; (ii) any circumstance in which patient care needs require specialized skills through the completion of a procedure; or (iii) any unexpected substantial increase in demand for healthcare due to large public events, severe weather, violence, or other circumstances beyond the Employer's control.

(e) Nothing in this section shall be construed to prohibit a covered employer from providing greater advance notice of employee's work schedules and/or changes in schedules than that required by this section.

13.110.070 Offer of Work to Existing Employees.

(a) Subject to the limitations herein, before hiring new employees or contract employees, including hiring through the use of temporary services or staffing agencies, a covered employer shall first offer additional hours of work to existing part-time employee(s) who have worked on behalf of the employer for more than two weeks, and if the part-time employee(s) are qualified to do the additional work, as reasonably and in good faith determined by the covered employer. This section requires covered employers to offer to part-time employees only up to the number of hours required to schedule a part-time employee forty (40) hours of work in a calendar week. In order to facilitate communication with current employees who may be interested in additional work, an Employer may specify how employees may in advance communicate their interest of additional work and which positions and hours of work employees would be interested in covering.

(b) A covered employer has discretion to divide the additional work hours among part-time employees consistent with this section; provided, that: (1) the employer's system for distribution of hours must not discriminate on the basis of race, color, creed, religion, ancestry, national origin, sex, sexual orientation, gender identity or expression, disability, age, marital or familial status, nor on the basis of family caregiving responsibilities or status as a student; and (2) the employer may not distribute hours in a manner intended to avoid an increase in the number of employees working 30 or more hours per week, or with regard to the City of Berkeley, to avoid a the granting of any benefits that an employee earns based on hours worked.

(c) A part-time employee may, but is not required to, accept the covered employer's offer of additional work under this section.

(1) A part-time employee shall have twenty-four (24) hours to accept an offer of additional hours of work under this section, after which time the covered employer may hire new employees to work the additional hours.

(2) The twenty-four (24) hour period referred to in this subsection begins either when the employee receives the written offer of additional hours, or when the covered employer posts the offer of additional hours as described in subsection (d) of this section, whichever is sooner. A part-time employee who wishes to accept the additional hours must do so in writing.

(d) When this section requires a covered employer to offer additional hours to existing part-time employees, the covered employer shall make the offer either in writing or by posting the offer in a conspicuous location in the workplace where notices to employees are customarily posted. Covered employers may post the notice electronically on an internal website in a conspicuous location and which website is readily accessible to all employees. The notice shall include the total hours of work being offered, the schedule of available shifts, whether those shifts will occur at the same time each week, and the length of time the covered employer anticipates requiring coverage of the additional hours, and the process by which part-time employees may notify the covered employer of their desire to work the offered hours.

(e) The covered employer shall retain each written offer no less than three (3) years as required under Section [13.110.140](#).

(f) This section shall not be construed to require any covered employer to offer employees work hours paid at a premium rate under California Labor Code Section [510](#) nor to prohibit any covered employer from offering such work hours.

13.110.080 Right to Rest.

(a) An employee has the right to decline work hours that occur:

- (1) Less than eleven (11) hours after the end of the previous day's shift; or
- (2) During the eleven (11) hours following the end of a shift that spanned two (2) days.

(b) An employee who agrees in writing to work hours described in this section shall be compensated at one and one-half (1-1/2) times the employee's regular rate of pay for any hours worked less than eleven (11) hours following the end of a previous shift.

13.110.090 Right to Request a Flexible Working Arrangement.

An employee has the right to request a modified work schedule, including but not limited to additional shifts or hours; changes in days of work or start and/or end times for the shift; permission to exchange shifts with other employees; limitations on availability; part-time employment; job sharing arrangements; reduction or change in work duties; or

part-year employment. A covered employer shall not retaliate against an employee for exercising their rights under this section or the rights outlined in the Berkeley Family Friendly and Environment Friendly Workplace Ordinance, Berkeley Municipal Code Chapter 13.101.

13.110.100 Notice and Posting.

(a) The Department shall publish and make available to covered employers, in English and other languages as provided in any implementing regulations, a notice suitable for posting by covered employers in the workplace informing employees of their rights under this chapter.

(b) Each covered employer shall give written notification to each current employee and to each new employee at time of hire of their rights under this chapter. The notification shall be in English and other languages as provided in any implementing regulations, and shall also be posted prominently in areas at the work site where it will be seen by all employees. Every covered employer shall also provide each employee at the time of hire with the covered employer's name, address, and telephone number in writing. Failure to post such notice shall render the covered employer subject to administrative citation, pursuant to the provisions of this chapter. The Department is authorized to prepare sample notices and covered employer use of such notices shall constitute compliance with this subsection.

13.110.110 Implementation.

(a) The Department shall be authorized to coordinate implementation and enforcement of this chapter and may promulgate appropriate guidelines or rules for such purposes. Any guidelines or rules promulgated by the City shall have the force and effect of law and may be relied on by covered employers, employees and other parties to determine their rights and responsibilities under this chapter. Any guidelines or rules may establish procedures for ensuring fair, efficient and cost-effective implementation of this chapter, including supplementary procedures for helping to inform employees of their rights under this chapter, for monitoring covered employer compliance with this chapter, and for providing administrative hearings to determine whether a covered employer has violated the requirements of this chapter.

(b) Reporting Violations. An aggrieved employee may report to the Department in writing any suspected violation of this chapter. The Department shall keep confidential, to the maximum extent permitted by applicable laws, the name and other identifying information of the employee reporting the violation; provided, however, that with the authorization of such employee, the Department may disclose their name and identifying information as necessary to enforce this chapter or other employee protection laws.

(c) Investigation. The Department may investigate any possible violations of this chapter by a covered employer. The Department shall have the authority to inspect

workplaces, interview persons and subpoena records or other items relevant to the enforcement of this chapter.

(d) **Informal Resolution.** If the Department elects to investigate a complaint, the City shall make every effort to resolve complaints informally and in a timely manner. The City's investigation and pursuit of informal resolution does not limit or act as a prerequisite for an employee's right to bring a private action against a covered employer as provided in this chapter.

13.110.120 Enforcement.

(a) **Enforcement by City.** Where prompt compliance with the provisions of this chapter is not forthcoming, the Department may take any appropriate enforcement action to ensure compliance, including but not limited to the following:

The Department may issue an administrative citation pursuant to Chapter 1.28 of the Berkeley Municipal Code. The amount of this fine shall vary based on the provision of this chapter violated, as specified below:

(1) A fine may be assessed for retaliation by a covered employer against an employee for exercising rights protected under this chapter. The fine shall be one thousand dollars (\$1,000.00) for each employee retaliated against.

(2) A fine of five hundred dollars (\$500.00) may be assessed for any of the following violations of this chapter:

(i) Failure to provide notice of employees' rights under this chapter.

(ii) Failure to timely provide an initial work schedule or to timely update work schedules following changes.

(iii) Failure to provide predictability pay for schedule changes with less than twenty-four (24) hours' advance notice.

(iv) Failure to offer work to existing employees before hiring new employees or temporary staff or to award work to a qualified employee.

(v) Failure to maintain payroll records for the minimum period of time as provided in this chapter.

(vi) Failure to allow the Department access to payroll records.

(3) A fine equal to the total amount of appropriate remedies, pursuant to subsection (c) of this section. Any and all money collected in this way that is the rightful property of an employee, such as back wages, interest, and civil penalty payments, shall be disbursed by the Department in a prompt manner.

(f) **City Access.** Each covered employer shall permit access to work sites and relevant records for authorized City representatives for the purpose of monitoring compliance with this chapter and investigating employee complaints of noncompliance, including production for inspection and copying of its employment records, but without allowing Social Security numbers to become a matter of public record.

(g) Any person aggrieved by a violation of this Chapter, any entity a member of which is aggrieved by a violation of this Chapter, or any other person or entity acting on behalf of the public as provided for under applicable state law, may bring a civil action in a court of competent jurisdiction against the Employer or other person violating 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 including, without limitation, the payment of any back wages unlawfully withheld, the payment of an additional sum as a civil penalty in the amount of \$50 to each Employee or person whose rights under this Chapter were violated for each day that the violation occurred or continued, reinstatement in employment and/or injunctive relief. Provided, however, that any person or entity enforcing this Chapter on behalf of the public as provided for under applicable state law shall, upon prevailing, be entitled only to equitable, injunctive or restitutionary relief to Employees, and reasonable attorneys' fees and costs.

(i) This Section shall not be construed to limit an Employee's right to bring legal action for a violation of any other laws concerning wages, hours, or other standards or rights nor shall exhaustion of remedies under this Chapter be a prerequisite to the assertion of any right.

(j) The remedies for violation of this chapter include but are not limited to:

1. Reinstatement, the payment of predictability pay unlawfully withheld, and the payment of an additional sum as a civil penalty in the amount of fifty dollars (\$50.00) to each employee whose rights under this chapter were violated for each day or portion thereof that the violation occurred or continued, and fines imposed pursuant to other provisions of this chapter or State law.
2. Interest on all due and unpaid wages at the rate of interest specified in subdivision (b) of Section 3289 of the California Civil Code, which shall accrue from the date that the wages were due and payable as provided in Part 1 (commencing with Section 200) of Division 2 of the California Labor Code, to the date the wages are paid in full.
3. Reimbursement of the City's administrative costs of enforcement and reasonable attorney's fees.
4. If a repeated violation of this chapter has been finally determined in a period from July 1 to June 30 of the following year, the Department may require the employer to pay an additional sum as a civil penalty in the amount of fifty dollars (\$50.00) to the City for each employee or person whose rights under this chapter were violated for each day or portion thereof that the violation occurred or continued, and fines imposed pursuant to other provisions of this Code or State law.

(k) The remedies, penalties and procedures provided under this chapter are cumulative and are not intended to be exclusive of any other available remedies, penalties and procedures established by law which may be pursued to address violations of this

chapter. Actions taken pursuant to this chapter shall not prejudice or adversely affect any other action, administrative or judicial, that may be brought to abate a violation or to seek compensation for damages suffered.

(l) No criminal penalties shall attach for any violation of this chapter, nor shall this chapter give rise to any cause of action for damages against the City.

13.110.130 Retaliation Prohibited.

An employer shall not discharge, reduce the compensation of, discriminate against, or take any adverse employment action against an employee, including discipline, suspension, transfer or assignment to a lesser position in terms of job classification, job security, or other condition of employment, reduction of hours or denial of additional hours, informing another employer that the person has engaged in activities protected by this chapter, or reporting or threatening to report the actual or suspected citizenship or immigration status of an employee, former employee or family member of an employee to a Federal, State or local agency, for making a complaint to the Department, participating in any of the Department's proceedings, using any civil remedies to enforce their rights, or otherwise asserting their rights under this chapter. Within one hundred twenty (120) days of an employer being notified of such activity, it shall be unlawful for the employer to discharge any employee who engaged in such activity unless the employer has clear and convincing evidence of just cause for such discharge.

13.110.140 Retention of Records.

Each employer shall maintain for at least three (3) years for each employee a record of their name, hours worked, pay rate, initial posted schedule and all subsequent changes to that schedule, consent to work hours where such consent is required by this chapter, and documentation of the time and method of offering additional hours of work to existing staff. Each employer shall provide each employee a copy of the records relating to such employee upon the employee's reasonable request.

13.110.150 City Access.

Each employer shall permit access to work sites and relevant records for authorized Department representatives for the purpose of monitoring compliance with this chapter and investigating employee complaints of noncompliance, including production for inspection and copying of its employment records, but without allowing Social Security numbers to become a matter of public record.

13.110.160 No Preemption of Higher Standards.

The purpose of this chapter is to ensure minimum labor standards. This chapter does not preempt or prevent the establishment of superior employment standards (including higher wages) or the expansion of coverage by ordinance, resolution, contract, or any

other action of the City. This chapter shall not be construed to limit a discharged employee's right to bring a common law cause of action for wrongful termination.

13.110.170 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.

