



Kriss Worthington

Councilmember, City of Berkeley, District 7
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CONSENT CALENDAR

November 27, 2018

To: Honorable Mayor and Members of the City Council
 From: Councilmember Kriss Worthington and Mayor Jesse Arreguin
 Subject: Refer to the City Manager to add a condition to Zoning Board Approved permits to bring attention to the Pay Transparency policy to project applicants, and consider these Pay Transparency Ordinance amendments.

RECOMMENDATION:

That the Council refer to the City Manager to add a condition to Zoning Board Approved permits in order to bring attention to the Pay Transparency policy to project applicants, and consideration of amendments to the Pay Transparency Ordinance.

BACKGROUND:

Under the Berkeley Municipal Code, the Pay Transparency law states that within 30 days of the issuance of a building permit, owners must provide the City an attestation that indicates at least one of the following: (1) employees of the contractor or subcontractor have received Labor Code compliant notices and have itemized wage statements and/or (2) have met one or more of the criteria of Labor Code Section 2810.5(c). One of these attestations must be provided for each contractor or subcontractor whose portion of the work exceeds \$100,000 or 1% of the value of construction costs.

However, many property owners are not aware of this law's existence.. By adding the recommended condition to Zoning Board Approved permits, the City Manager can ensure that the volume of Pay Transparency violations is minimized.

Compliance with the Pay Transparency law aids in the prevention of instances of wage theft in which workers have not been paid for hours worked, overtime hours, and breaks. In order to make compliance clearer, the City will be consulting with the Northern CA Carpenters Regional Council and the Building Trades Council to make improvements to the Pay Transparency ordinance.

As we consult with these groups, here are key recommendations to consider:

- 1) Whoever applies for the permit (i.e owner, developer) needs to sign stating that they will be responsible for informing the subcontractors of any tier of their responsibilities.
- 2) Contractors whose employees are covered by a collective bargaining agreement (CBA) are not subject to the ordinance per the labor code.
- 3) This must be turned in before the permit is approved, as this is the final attestation that needs to be signed by the person applying for the permit and all the subcontractors who are subject to the ordinance.
- 4) In addition, the attestation can be kept as a single document with signature

pages for the subcontractors. This will make the process less cumbersome and help those applying for a permit keep the documents in order.

FINANCIAL IMPLICATIONS: Minimal

ENVIRONMENTAL SUSTAINABILITY:

Consistent with Berkeley's Environmental Sustainability Goals and no negative impact

CONTACT PERSON:

Councilmember Kriss Worthington 510-981-7170

Brian Gan brianjgan@berkeley.edu

ATTACHMENTS:

- 1: Acknowledgement Letter (Item 33_ Attachment 1_ Acknowledgment Letter Final)
- 2: Final Attestation Berkeley (Item 33_ Attachment 2_ Final Attestation Berkeley)
3. DRAFT Ordinance Amendments (Item 33_ Attachment 3_ Ordinance Amendments)

Date

(Contact Name)

(Business Name)

(Address)

(City), (State) (Zip)

RE: Berkeley Municipal Code 13.104, Wage Theft Prevention and Certificates of Occupancy

Are your employees protected by a collective bargaining agreement? Yes ___ No ___

If yes, please list the unions to which you are under contract and disregard the rest of this form per Labor Code 2810.5. and Berkeley Municipal Code 13.104. _____

(Name)

(Company)

(LIC#)

If no, please continue.

Dear (First Name): In July of 2016 a resolution was adopted by the Berkeley City Council to ensure that contractors performing construction projects on multi-unit housing projects of 30,000 sq ft or more followed California Labor Code 2810.5. This added Code 13.104 the Wage Theft Prevention Ordinance to the Municipal Code found here <http://www.codepublishing.com/CA/Berkeley/html/Berkeley13/Berkeley13104/Berkeley13104030.html>

2810.5.

(a) (1) At the time of hiring, an employer shall provide to each employee a written notice, in the language the employer normally uses to communicate employment-related information to the employee, containing the following information:

(A) The rate or rates of pay and basis thereof, whether paid by the hour, shift, day, week, salary, piece, commission, or otherwise, including any rates for overtime, as applicable.

(B) Allowances, if any, claimed as part of the minimum wage, including meal or lodging allowances.

(C) The regular payday designated by the employer in accordance with the requirements of this code.

(D) The name of the employer, including any "doing business as" names used by the employer.

(E) The physical address of the employer's main office or principal place of business, and a mailing address, if different.

(F) The telephone number of the employer.

(G) The name, address, and telephone number of the employer's workers' compensation insurance carrier.

(H) That an employee: may accrue and use sick leave; has a right to request and use accrued paid sick leave; may not be terminated or retaliated against for using or requesting the use of accrued paid sick leave; and has the right to file a complaint against an employer who retaliates.

(I) Any other information the Labor Commissioner deems material and necessary.

(2) The Labor Commissioner shall prepare a template that complies with the requirements of paragraph (1). The template shall be made available to employers in such manner as determined by the Labor Commissioner.

(3) If the employer is a temporary services employer, as defined in Section 201.3, the notice described in paragraph (1) must also include the name, the physical address of the main office, the mailing address if different from the physical address of the main office, and the telephone number of the legal entity for whom the employee will perform work, and any other information the Labor Commissioner deems material and necessary. The requirements of this paragraph do not apply to a security services company that is licensed by the Department of Consumer Affairs and that solely provides security services.

(b) An employer shall notify his or her employees in writing of any changes to the information set forth in the notice within seven calendar days after the time of the changes, unless one of the following applies:

- (1) All changes are reflected on a timely wage statement furnished in accordance with Section 226.
- (2) Notice of all changes is provided in another writing required by law within seven days of the changes.

(c) For purposes of this section, "employee" does not include any of the following:

- (1) An employee directly employed by the state or any political subdivision thereof, including any city, county, city and county, or special district.
- (2) An employee who is exempt from the payment of overtime wages by statute or the wage orders of the Industrial Welfare Commission.

(3) An employee who is covered by a valid collective bargaining agreement if the agreement expressly provides for the wages, hours of work, and working conditions of the employee, and if the agreement provides premium wage rates for all overtime hours worked and a regular hourly rate of pay for those employees of not less than 30 percent more than the state minimum wage.

Please review Labor Code 2810.5 at

http://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?lawCode=LAB§ionNum=2810.5.

. If we you have any questions regarding these requirements, or our wage theft prevention efforts overall, we encourage you to contact us at (xxx)-xxx-xxxx.

Sincerely,

(Name)

(Title)

I, _____, am the _____ with the authority to act for and on behalf
(Name) (Title)

of _____, _____ acknowledge receipt and notification of
(Developer/General or Sub-Contractor) (LIC#)

the policies listed above on _____ for _____,
(Project) (Developer/General or Sub-Contractor)

(LIC#)

Are your employees protected by a collective bargaining agreement? Yes ___ No ___

If yes, please list the unions to which you are under contract and disregard the rest of this form per Labor Code 2810.5. and Berkeley Municipal Code 13.104. _____

(Name) (Company) (LIC#)

If no, please continue.

I, _____, am the _____ with the authority to act for and on behalf

(Name) (Title)

for _____, _____ certify under penalty of perjury that the

(Contractor) (LIC#)

work performed at _____ for _____, _____

(Project) (General Contractor) (LIC#)

and that will fulfill all the provisions of Labor Code 2810.5. and Berkeley Municipal Code 13.104 also

known as the Wage Theft Prevention Ordinance. The following provisions have been followed.

1. At the time of hiring, an employer shall provide to each employee a written notice, in the language the employer normally uses to communicate employment-related information to the employee, containing the following information:
2. The rate or rates of pay and basis thereof, whether paid by the hour, shift, day, week, salary, piece, commission, or otherwise, including any rates for overtime, as applicable.
3. Any benefits provided by the employer.
4. Allowances, if any, claimed as part of the minimum wage, including meal or lodging allowances.
5. The regular payday designated by the employer in accordance with the requirements of this code.
6. The name of the employer, including any "doing business as" names used by the employer.
7. The physical address of the employer's main office or principal place of business, and a mailing address, if different.
8. The telephone number of the employer.
9. The name, address, and telephone number of the employer's workers' compensation insurance carrier.

10. That an employee: may accrue and use sick leave; has a right to request and use accrued paid sick leave; may not be terminated or retaliated against for using or requesting the use of accrued paid sick leave; and has the right to file a complaint against an employer who retaliates.
11. An employer shall notify his or her employees in writing of any changes to the information set forth in the notice within seven calendar days after the time of the changes, unless one of the following applies:
12. All changes are reflected on a timely wage statement furnished in accordance with Section 226.
13. Notice of all changes is provided in another writing required by law within seven days of the changes.

By signing this document you are declaring that all workers in under your employment have been paid all wages and benefits that were promised in section 2.

For purposes of this section, "employee" does not include any of the following:

An employee directly employed by the state or any political subdivision thereof, including any city, county, city and county or special district.

An employee who is exempt from the payment of overtime wages by statute or the wage orders of the Industrial Welfare Commission.

An employee who is covered by a valid collective bargaining agreement if the agreement expressly provides for the wages, hours of work, and working conditions of the employee, and if the agreement provides premium wage rates for all overtime hours worked and a regular hourly rate of pay for those employees of not less than 30 percent more than the state minimum wage.

I sign under penalty of perjury that the foregoing is true:

Date:

Name:

Signature:

This form is to be turned in to the general contractor within 30 days of the completion of work performed.

1. Signed **acknowledgment** by Developer/GC/Owner that they will be responsible for themselves and all subs of any tier whose portion of work is \$100k or 1% of the project to follow **Chapter 13.104 of the Berkeley Municipal Code and California Labor Code 2810.5 and 226(a)**. These are to be signed by an officer of the company/contractor during the permit process. GC/Developer/Owner. Which of these would sign is based on which of the three applied for the permit. It would be turned into the planning department and that would make it accessible to a PRA request.
2. Developer/GC/Owner will be responsible for all subs of any tier whose portion is \$100k or 1% of the project having served with notices of the requirements of the ordinance.
3. **Acknowledgments** provide that in the event of a complaint or noncompliance it will be the responsibility of the Developer/GC/Owner to furnish proof of payment or following of 2810.5 and 226(a). Whichever one is the alleged violation.
4. Should any contractor be found in violation or under investigation of any of the provisions in the mentioned ordinance or labor code, the notice of occupancy will be withheld until they have successfully fulfilled their obligations, been proven innocent or the developer/GC has bonded for the liability. **It has been decided that this is not in the purview of the planning department.**
5. Notice to workers will provide contact info to the correct department to file a confidential complaint.
6. Signed **attestations** under penalty of perjury by GC/Developer/Owner and all subs meeting the minimum requirements at the end of the project stating that they have complied with **Chapter 13.104 of the Berkeley Municipal Code and California Labor Code 2810.5 and 226(a)**. This will be turned into the planning department and that will make it accessible to a PRA request. These are to be signed by an officer of the company/contractor before a notice of occupancy is granted. **This can be a single notice with signatures from all the officers of the subs on a sign in sheet rather than several separate documents.**
7. Posting of the ordinance in a conspicuous place. Similar to the other postings that tell workers their rights.

