

ORDINANCE NO. #,###- N.S.

SWEATSHOP-FREE PROCUREMENT ORDINANCE

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

Section 1. That a new Chapter 13.97 is added to the Berkeley Municipal Code to read as follows:

SWEATSHOP-FREE PROCUREMENT ORDINANCE

Sections:

13.97.010	Findings and purpose
13.97.020	Applicability and prohibition on contracting with vendors of sweatshop products
13.97.030	Definitions
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13.97.010 Findings and purpose

The City of Berkeley finds that:

A. The City of Berkeley spends millions of dollars per year in public funds on goods, including garments, uniforms, materials and other equipment, and supplies and services provided by private vendors and manufacturers.

B. The City of Berkeley recognizes a public interest in avoiding payments to vendors 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 vendors who engage in sweatshop practices do not undermine the integrity of the

procurement process. Vendors who use sweatshop labor are able to underbid responsible vendors who pay fair wages and maintain humane work environments and conditions. Such practices place responsible vendors 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 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 residents 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 residents, workers, and businesses by exercising its sovereignty to establish a "sweatshop-free" procurement policy and Code of Conduct that ensures that items of apparel, garments and corresponding accessories, procured by the City of Berkeley or its agencies, through contracts or purchase orders be produced in workplaces free of sweatshop conditions.

G. The City of Berkeley has an interest in providing incentives for responsible vendors.

H. Accordingly, the purposes of this Chapter are to end taxpayer support for sweatshops; protect the basic labor rights and human rights of Workers who produce apparel for the City of Berkeley; level the playing field for ethical vendors; and begin the creation of a sweatshop-free procurement policy consistent with federal law and United States trade obligations.

13.97.020 Applicability and prohibition on contracting with vendors of sweatshop products

A. This Chapter applies only to the Procurement of Apparel by the City of Berkeley pursuant to any contract that totals more than \$25,000 in any given fiscal year.

B. The City of Berkeley shall not procure Apparel from a Vendor if that Vendor violates any requirement enumerated in this Chapter.

13.97.020 Definitions

A. "Apparel" means clothes, shoes, and garments and accessories thereto.

B. "City Manager" means the City Manager of the City of Berkeley or his or her designee, which may include an independent monitor.

C. "Procure" or "Procurement" means acquiring through contract, purchase, rental, lease, or in any other manner for use by the City of Berkeley or its employees.

D. "Production Facility" (or "Facilities") means the facility that manufactures (including cutting and assembly by weaving, sewing, knitting or felting), the finished Apparel, including, when the context requires, the owners and managers thereof.

E. "Vendor" means a person or entity with whom the City of Berkeley has a current procurement relationship, or who bids or proposes to provide apparel to the City of Berkeley, in an amount greater than \$25,000 per fiscal year.

F. "Worker" means those workers engaged in the production of the Apparel covered by this Chapter.

13.97.040 Required policies and practices for Production Facilities

The City of Berkeley may only Procure Apparel from Vendors that purchase from Production Facilities that adhere to or exceed the following practices and policies regarding applicable Workers.

A. Legal Requirements. Production Facilities shall comply with all applicable domestic labor, employment, health and safety, environmental, and building laws; and the "core" conventions of the International Labor Organization, including those regarding forced and child labor, non-discrimination, and freedom of association and collective bargaining, to the extent adopted and approved by the United States; and other internationally recognized labor rights, including those regarding health and safety, maternity leave, hour of work, wages, and homework.

B. Wages and Benefits. Production Facilities shall pay a non-poverty wage. In the United States, the non-poverty wage 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 wage, health benefits, or pension benefits. Outside the United States, a non-poverty wage is a comparable nationwide wage and benefit level, adjusted to reflect the local cost of living, sufficient to raise a family of average size out of poverty, in accordance with standards specified by the World Bank.

C. Hours of Work and Overtime. Production Facilities shall not require hourly and quota-based Workers 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,

Production Facilities shall provide at least one day off in every seven-day period, as well as holidays and vacations. Production Facilities shall ensure that all hours worked beyond the limits on working hours are voluntary, except as provided for by both national law and a bona fide collective bargaining contract. Required overtime should only be permitted when one of the following conditions exists: a) national law permits mandatory overtime; or b) the facility is party to a collectively negotiated contract with a representative labor union and this contract permits mandatory overtime, and mandatory overtime does not exceed the amount allowed by the collective contract. Workers 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.

D. Discrimination and Women's Rights. Production Facilities shall not discriminate in employment - including in hiring, salary, benefits, advancement, discipline, termination, retirement, or any other term or condition of employment or employer practice - on the basis of gender, race, religion, age, disability, sexual orientation, nationality, political opinion, or social or ethnic origin. Production facilities shall not require pregnancy tests as a condition of employment, or demand pregnancy tests of employees. Women (including pregnant) Workers shall receive equal remuneration, including equal pay; benefits, treatment, and opportunity to fill positions open to male Workers.

E. Freedom of Association. In compliance with applicable laws, Production Facilities shall respect Workers' rights to freedom of association, collective bargaining, striking or other concerted protest, and filing of grievances. Production Facilities or any of its agents shall not retaliate against, intimidate, coerce, harass, or take any other adverse action against Workers for exercising these rights. Production Facilities or any of its agents shall not initiate, dominate, or support organizations in which Workers participate or are represented. Production Facilities shall allow union organizers access to Workers and shall recognize the union of the Workers' choice.

Examples of steps Production Facilities may take that demonstrate commitment to freedom of association include:

1. Communicating the Production Facility's openness to Workers' exercising their associational rights;
2. Negotiating in good faith with any union or other representative worker body duly constituted by Workers;
3. Implementing effective procedures and training programs to safeguard Workers against retaliation, intimidation, coercion, harassment or other adverse action by managers, supervisors, and co-workers; and
4. Remaining strictly neutral on the matter of Workers' choice to unionize or not unionize. That is, employers shall not campaign in any way against or in favor of Workers' efforts to unionize. However, employers are not barred from stating that Workers have a right to unionize, in the exercise of their freedom of association.

F. Complaints of Violations. Production Facilities shall not engage in any reprisal, coercion, intimidation or take any other adverse action against Workers including undocumented workers (in compliance with any local, state or federal law or other requirements) for filing complaints, giving evidence, or otherwise cooperating with monitoring, enforcement, remediation or other activity by the City of Berkeley or its designee, any government agency, or other entity authorized to enforce the employers' obligations under this Chapter.

13.97.050 Procurement requirements – Vendor Affidavits

A. Before it may Procure apparel from a Vendor, the City must receive from that Vendor a statement under penalty of perjury that include the following information:

1. The complete physical addresses and phone number of the Production Facility involved in the production of goods;

2. A statement by the Vendor indicating that it:

a. understands its obligation to ensure that the Production Facilities adhere to the practices and policies in Section 13.97.040;

b. understands that if the City finds any of the Production Facilities from which it obtains the apparel sold to the City to be out of compliance with any of the provisions of Section 13.97.040, and the vendor fails to take all reasonable steps as specified by the City to compel the production facility to remedy that non-compliance within a time period specified by the City, the vendor will be deemed out of compliance with this Chapter.

c. has furnished a copy of the practices and policies in Section 13.97.040 to be posted in the principal language spoken at the production facility, if applicable.

3. Any other information deemed necessary by the City Manager for the administration and enforcement of this Chapter.

B. If any information provided by the Vendor pursuant to this Section changes during the duration of the contract, the Vendor shall submit or cause to be submitted to the City Manager a statement under penalty of perjury with the updated information.

13.97.060 Verification and compliance

A. Vendors shall ensure compliance with practices and policies in Section 13.97.040 in all Production Facilities from which they acquire Apparel for the City.

B. Vendors shall cooperate fully with any investigation of the City, to assist in the implementation, administration, or enforcement of this Chapter. Refusal of a Vendor to facilitate monitoring by the City or to cooperate fully in the City's monitoring process, may result in disqualification from future contracts, termination of a contract, or other sanctions at the discretion of the City Manager.

13.97.070 Violations and Enforcement

A. Any person may complain that a Production Facility is violating the policies and practices set forth in Section 13.97.040. At the request of the party submitting the complaint, or when deemed necessary by the City of Berkeley, the City of Berkeley shall keep confidential the name and contact information of the complainant, to the extent permitted by law. The City of Berkeley shall establish a procedure for receiving and investigating such complaints and taking appropriate enforcement action.

B. Upon determination by the City Manager of a violation of the policies and practices set forth in Section 13.97.040, at a Production Facility, the Vendor shall consult with the City Manager for the purpose of agreeing to a remediation plan. Failure to comply with a remediation plan proposed by the City Manager constitutes grounds for termination of the Vendor's contract for cause.

C. Corrective action includes all steps necessary to correct the violation(s), including, making good faith efforts to require the Production Facility to:

1. Pay back wages to Workers who manufactured finished apparel, garments and corresponding accessories supplied to the City of Berkeley; and
2. Reinstate any worker who has been unlawfully dismissed.

D. Sanctions may be imposed if the City Manager finds that the Vendor refuses or fails to take all reasonable steps to ensure that a violation of any requirement enumerated in this Chapter is expeditiously remedied. The City Manager or its designee may terminate the contract without notice, impose a monetary penalty not to exceed 10 percent of the total contract amount or remove the Vendor from the bidder's list for a period of two years.

13.97.080 Exemptions

A. The City Manager may grant an exemption to this Chapter with respect to a specific contract or Vendor, or for a specific type of Apparel.

B. Any request for exemption must specify the reasons. Reasons may include:

1. Emergency Procurement. In a situation in which a breakdown in service or other scenario occurs which has an immediate effect on life, health, or safety, or which will result in a work stoppage, an emergency procurement can be obtained such that Apparel vitally necessary to restore operation can be obtained. If the emergency occurs when the General Services division is not open for business or is otherwise unavailable, departments may make or request emergency procurements from the most practicable source.

2. Sole Supplier. In the event that a Vendor not in full compliance with the provisions of this ordinance but is the sole supplier of an Apparel, the City Manager or its designee may exempt the vendor from provisions of this Chapter. No contract awarded under this section may exceed one year in term unless the City Manager or its designee determines, no later than 6 months prior to the expiration of the original term of the contract, that the Vendor has achieved an additional level of compliance with the terms of this Chapter that warrants exercise of an option to extend the contract for an additional year.

3. Public Entity. The contract is with another public entity.

4. Grant Funds. In the event there are specific requirements in a grant for expenditure those requirement will supersede any requirements of this Ordinance.

C. Nothing herein shall remove the City Manager's authority to reject all bids or take any other action within its authority under this Chapter.

13.97.090 Reports

No later than December 1st of the first full fiscal year after the effective date of this Chapter, and annually thereafter, the City Manager shall provide a written report to the Commission on Labor on the status of enforcement of this Chapter. The report shall include, if available, the amount the City has spent and anticipates spending for apparel any evidence that any vendor is violating this Chapter, and any exemptions approved by the City Manager in accordance with Section 13.97.080. The first annual report shall specifically analyze the impacts of lowering the threshold established in Section 13.97.020 of this Chapter.

13.97.100 Phase In

No later than December 1st of the fourth fiscal year after the effective date of this Chapter, and every three years thereafter, the City Manager will analyze and evaluate whether additional goods should be included in the requirements of this Chapter. The City Manager will then submit his or her findings in a report to the Commission on Labor regarding whether additional goods shall be included in this Chapter. Following review by the Commission on Labor, the City Manager shall then provide his or her report to the City Council regarding the inclusion of any new goods within this Chapter, along with any recommendation from the Commission on Labor.

13.97.110 Preemption

Nothing in this Chapter shall be interpreted or applied so as to create any power or duty in conflict with any federal law.

13.97.120 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.

Section 2. Copies of this Bill shall be posted for two days prior to adoption in the display case located near the walkway in front of Old City Hall, 2134 Martin Luther King Jr. Way. Within fifteen 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.