



# City of Emeryville

CALIFORNIA

## MEMORANDUM

**DATE:** October 18, 2016

**TO:** Carolyn Lehr, City Manager

**FROM:** Charles S. Bryant, Community Development Director

**SUBJECT:** **An Ordinance Of The City Council Of The City Of Emeryville Adding Chapter 39 To Title 5 Of The Emeryville Municipal Code, “Fair Workweek Employment Standards”, And Amending Sections 3-11.08 And 3-1.141 Of Chapter 1 Of Title 3 Of The Emeryville Municipal Code, “Business Taxes”**

### **ACTION REQUESTED**

The City Council is requested to consider and may then adopt the first reading of the attached ordinance adding Chapter 39 to Title 5 of the Emeryville Municipal Code, “Fair Workweek Employment Standards” and amending Sections 3-1.108 and 3-1.141 of Chapter 1 of Title 3 of the Emeryville Municipal Code, “Business Taxes”.

### **BACKGROUND**

At a study session on May 17, 2016, the City Council directed staff to prepare a draft “Fair Workweek” ordinance for review. The City Council requested that staff tailor the draft ordinance to Emeryville’s economy and administrative capacity, and conduct outreach with the business community.

Staff met with City Council members individually to confirm the policy objectives to be achieved. Three goals were raised consistently, including:

- Increase stability of schedules for retail and restaurant workers;
- Reduce employee turnover in retail and restaurant businesses; and
- Increase the number of hours worked by individual employees (i.e., decrease “underemployment”).

With this direction, staff conducted extensive research and outreach, and the findings from this process led to the development of two sets of options: a set of high-level “Policy Options” designed to achieve the stated policy objectives; and several “Ordinance Options” to consider if the selected Policy Option included a regulatory element. The research, outreach summary, Policy Options and Ordinance Options were presented to the City Council at a study session held on August 16, 2016, where the City Council selected various options and directed staff to draft an ordinance accordingly.

## DISCUSSION

### Study Session Direction

At the August 16, 2016 study session, the City Council selected the “Regulation with Incentive” Policy Option, that is, a cooperative incentive program combined with an ordinance.

Through the selection of various Ordinance Options, the Council directed staff to draft an ordinance that includes the following elements:

- Covered employers include retailers and fast food restaurant businesses with 12 or more locations globally and more than 15 employees in Emeryville, or, alternatively, retail businesses with 56 or more employees globally, and fast food businesses with 56 or more employees globally and 20 or more employees in Emeryville.
- Employers must provide two weeks’ advance notice of work schedules to employees.
- Employees have a right to decline any employer-initiated changes to the posted work schedule that occur less than seven days but more than 24 hours before the changed work shift.
- Employers must provide predictability pay to employees for all employer-initiated changes to the posted work schedule that occur less than 24 hours before the changed work shift.
- Predictability pay is not due for schedule changes due to natural disasters, power failures, etc.
- Employees have a right to decline back-to-back closing and opening shifts separated by 11 hours or less (“clopenings”).
- Employees have a right to request a flexible work arrangement.
- Employers must offer additional hours to existing part-time employees before hiring new employees.
- Employers are prohibited from retaliating against employees for exercising their rights under the ordinance.

- Employers who participate and are certified under the cooperative incentive program are deemed to have met an alternative means of compliance with the ordinance if they achieve and maintain “fair workweek certified” status.

At the August 16, 2016 study session, the Council had consensus to include retail and fast food firms with more than 12 locations globally and 16 or more employees in Emeryville. The Mayor requested that staff also consider retail firms with 56 or more employees globally and fast food firms with 56 or more employees globally and 20 or more employees in Emeryville. The first option would include about 39 retail establishments with 2,088 employees in Emeryville (about 86% of the Emeryville retail workforce), and 12 fast food establishments with 174 employees in Emeryville (about 13% of the Emeryville restaurant workforce). The second option would include about 77 retail establishments with 2,362 employees in Emeryville (about 97% of the Emeryville retail workforce), and 11 fast food establishments with 157 employees in Emeryville (about 12% of the Emeryville restaurant workforce). Please see Attachment 2 for a list of employers that would be covered under each option.

The Fair Workweek Certification Program would be open to all retail and food service businesses (i.e. including those not covered by the ordinance) and could include technical and financial assistance for small, independent businesses. Certification would only be granted to those businesses that demonstrate best practices in employee scheduling in combination with other related employee benefits, including educational advancement, child care assistance, flexible leave policies, reduced thresholds for health and other benefits, and other employee-supportive programs and policies. Participating businesses would be required to demonstrate that the offered programs and policies are valued by employees.

Staff was directed to take great care in designing the certification program, and to offer opportunities to recognize businesses that have made a meaningful commitment to employee education.

The elements and provisions outlined above are reflected in the draft ordinance (Attachment 1).

Since the August 16, 2016 study session, stakeholders have provided additional input on the draft ordinance. Recommendations and comments from the East Bay Alliance for a Sustainable Economy (EBASE), the Alliance of Californians for Community Empowerment (ACCE) and the Center for Popular Democracy are included with this staff report as Attachments 1 and 2. In addition, on September 18, 2016 the City of Seattle adopted a “Secure Scheduling” ordinance, the full text of which is included for the City Council’s reference as Attachment 3.

### Implementation Considerations

As currently drafted, the Fair Workweek Ordinance is expected to apply to 40-90 businesses employing over 2,000 employees. Additionally, predictability pay would be due for short notice (i.e., less than 24 hours' notice) schedule changes that are employee initiated but employer facilitated (e.g. when an employee is requested to report to work because another employee has called out sick), and these types of circumstances are estimated to account for a majority of schedule changes.

Because of these two facets of the draft ordinance, implementation and enforcement is expected to be relatively resource-intensive compared to other cities' experiences (i.e. San Francisco and Seattle) since ordinances in those cities do not require predictability pay for short notice changes initiated by employees under certain circumstances<sup>1</sup>.

### *Implementation Steps*

The Fair Workweek Ordinance and accompanying Certification Program represent a service delivery challenge, where the recipients of the service include both businesses and employees. While similar in some respects to the Minimum Wage Ordinance, the Fair Workweek Ordinance is anticipated to be substantially more complex because it affects business operations that are not traditionally regulated by municipalities. Consequently, implementation of the Fair Workweek Ordinance will require an iterative process of outreach and training, development of accompanying regulations, communication with stakeholders, and process development and refinement.

To ensure the successful implementation of the Fair Workweek Ordinance, the following steps are proposed:

- 1) Prepare interpretive regulations
- 2) Develop administrative instructions for City staff to guide business communication and complaint investigation activities
- 3) Develop complaint forms, official notices, and other templates
- 4) Finalize and refine regulations and forms through meetings with stakeholders
- 5) Conduct trainings with store personnel and human resources firms to help them understand ordinance requirements
- 6) Develop "frequently asked questions" (FAQs) as a guide for both business and employees
- 7) Provide ongoing technical assistance to businesses that are subject to the ordinance's requirements
- 8) Investigate complaints on an ongoing basis

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<sup>1</sup> For example, Seattle's recently-approved Secure Scheduling ordinance does not require predictability pay for added shifts due to another employee being unable to work scheduled hours when the availability of the shift is transmitted to all employees through a mass communication by the employer and the acceptance of the available shift is voluntary and subject to employees' right to decline the shift.

- 9) Refine regulations, administrative instructions, forms, notices and FAQs as needed

In parallel with this effort, successful implementation of the certification program will require the following steps:

- 1) Develop draft program design in consultation with stakeholders
- 2) Develop draft program guidelines
- 3) Test program requirements to ensure that desired outcomes are achieved
- 4) Design application forms and informational materials
- 5) Obtain Economic Development Advisory Committee comments and City Council approval of program design
- 6) Develop strategy to promote program availability to businesses
- 7) Conduct outreach with businesses to encourage program participation
- 8) Ongoing administration of program applications for certification, monitoring, and promotion

#### *Effective Date*

To allow sufficient time for the implementation steps enumerated above, the proposed effective date of the Fair Workweek Ordinance is July 1, 2017. This provides approximately eight months to complete all of the above steps, and has the additional benefit of corresponding with the date of Minimum Wage Ordinance adjustments. This means that employer notices can be sent in a consolidated mailing.

Staging the implementation of the Fair Workweek Ordinance in this way also allows for the next business license renewal cycle in 2017 to occur prior to ordinance roll-out. This is desirable since staff is proposing to use business license application information to more accurately determine which businesses are covered by the Fair Workweek Ordinance. To accommodate this, changes to the Municipal Code provisions for Business Taxes are required. Staff is recommending changes to require the disclosure of businesses' number of employees and number of global locations as a condition of issuance of a business tax certificate. These changes are included in the attached ordinance.

#### *Staff Resources*

In view of the resource-intensive characteristics of the Fair Workweek Ordinance, and the anticipated effort necessary to successfully complete the implementation steps, staff is exploring possible alternative service delivery mechanisms, including third party contracting either with a private entity with experience in public service delivery or with a public agency that has labor standards expertise.

Staff continues to research service delivery options and anticipates requesting Council approval of a contract arrangement for administration of the City's labor standards ordinances in late 2016.

### *Measuring Effectiveness and Impacts*

As noted during the August 16, 2016 study session, staff has developed a "baseline profile" in order to provide a basis for future evaluation of the Fair Workweek Ordinance's effectiveness in achieving the policy objectives, as well as for measuring broader economic impacts. The baseline profile consists of the results of the employee survey, recent measurements of employment in the restaurant and retail sector, retail vacancy rates and lease rates and the number of restaurant and retail establishments in the City of Emeryville. These data have also been produced for comparison areas (i.e. areas outside of but proximate or similar to Emeryville).

Staff recommends evaluating the impacts of the Fair Workweek Ordinance using the baseline profile approximately one year after the effective date.

### **FISCAL IMPACT**

As part of the August 16, 2016 study session, staff presented a rough estimate of the policy development and implementation costs for the various policy option scenarios. It was noted that the estimate for the Regulation with Incentive Program policy option was difficult to determine, due to the wide array of options that could impact the resource-intensiveness of the ordinance. Upon reviewing the ordinance options selected, staff believes the initial estimate of \$95,000 annually is not sufficient to adequately implement the ordinance as presented, especially in the initial two years. As noted above, staff will continue to explore methods of service delivery to ensure successful implementation and minimize costs. At the earliest opportunity, Staff will present cost estimates for the program as adopted by Council, together with proposals to adjust current municipal expenditures and/or introduce new revenue sources in order to maintain a balanced budget.

### **ADVISORY BODY RECOMMENDATIONS**

At its regular meeting on July 20, 2016 the Economic Development Advisory Committee (EDAC) was presented with the EBASE study, and its proposed ordinance, and a staff report describing staff's approach to business outreach and policy development. In addition to general comments, EDAC members expressed a desire for additional time for review of the matter, and scheduled a special meeting for September 21, 2016.

At its special meeting on September 21, 2016, the EDAC heard a variety of public comments from businesses, community organizers, and workers. After extensive and substantive discussion, the EDAC voted five to one to support the policy objective of increasing schedule stability for retail and restaurant workers. The EDAC then voted

unanimously to support the policy objectives of reducing employee turnover and decreasing underemployment.

However, the EDAC voted five to one to recommend that the City Council not proceed with any of the four Policy Options (i.e. advocacy, regulation, cooperative incentive program, or hybrid) at this time. Further, the EDAC expressed that if any course of action is pursued, the cooperative incentive program would be the preferred policy option.

The EDAC cited lack of data on the topic, concerns about perception of the city as a place unfriendly to business, and uncertainty as to economic impacts as reasons to stop or slow the development of the ordinance. Some members questioned the necessity of the Fair Workweek policy, noting that a minority of workers stated that scheduling was a problem for them, and that a minority of affected workers are Emeryville residents. The roster of EDAC members is attached for the Council's information (see Attachment 3).

## **ALTERNATIVES**

The City Council may consider alternative provisions in the Fair Workweek Ordinance in light of further data brought forward, as well as additional input from stakeholders. Revisions to the proposed ordinance could consider: employers to be covered, the balance of regulation and incentive program, particular provisions of the proposed ordinance as described above, the timing or phasing of the Fair Workweek Ordinance, or directing staff to gather further analysis as may be desired.

## **CONCLUSION**

In summary, the City Council may consider and adopt the first reading of the attached draft Fair Workweek Ordinance. Following introduction of the ordinance, staff anticipates returning to the City Council for a second reading on November 1, 2016. As noted above, implementation activities including securing third party assistance and design of the certification program would commence immediately thereafter in anticipation of an effective date of July 1, 2017.

**PREPARED BY:** Chadrick Smalley, Economic Development and Housing Manager

**APPROVED AND FORWARDED TO THE  
CITY COUNCIL OF THE CITY OF EMERYVILLE**



Carolyn Lehr, City Manager

Attachments:

1. Draft Ordinance
2. List of Covered Employers Under Two Options
3. Roster of Economic Development Advisory Committee Members
4. EBASE/ACCE/Center for Popular Democracy Comments on Draft Ordinance dated September 9, 2016
5. EBASE Policy Comparison Table dated September 9, 2016
6. Seattle Secure Scheduling Ordinance