



October 31, 2016

The Honorable Diane Martinez  
Mayor, City of Emeryville  
1333 Park Avenue  
Emeryville, California 94608

**Re: Fair Workweek Draft Ordinance – Second Reading**

Dear Mayor Martinez:

On behalf of our members within the City of Emeryville, I respectfully submit this additional letter to continue to share our concerns and opposition to the “Fair Workweek Employment Standards” draft ordinance as amended.

At the conclusion of the May Study Session regarding the San Francisco policy, the Council specifically directed City Staff to conduct vigorous outreach to businesses along with a survey of Emeryville workers to provide further guidance on this policy topic. The Council asked this of City Staff in order to ensure that the process leading up to the development of this policy was inclusive, transparent, and thoughtful. We also understood the goal to be to find a policy that would work not only for the employees within the City of Emeryville but also the employers.

The business community was left with the understanding that this offering of collaboration with City Staff would mean that concerns surrounding this policy would be heard and incorporated by the Council as valid stakeholder input. As a result, the feedback from businesses outlining the complexities and burdens of which to comply with this type of policy and the Worker Study data dictating high percentages of employee satisfaction within Emeryville, has come back to Council and been outright ignored. Not only has the business community been disregarded, but the Cities own Economic Development Advisory Committee who voted five to one in recommending that the City Council not proceed with any of the policy options for this topic while also expressing lack of data and uncertainty surrounding economic impacts was also overlooked.

It is troubling that the Council voted in favor of amendments submitted an hour before the October 18<sup>th</sup> Council Hearing from the supporters and giving no opportunity for the local

business community, or City Staff for that matter, to digest or respond to the changes. The passage of the amendments only showed the complete disregard for an equal stakeholder process.

These amendments not only further penalty pay and make the ordinance the most punitive penalty pay structure within the County, the amendments also do not take into consideration that some within the restaurant community prefer to work clopening shifts as they choose to work these hours for personal reasons. Requiring that an employer pay overtime for simply complying with an employee's request for flexible working conditions will only go against the whole purpose of this proposed ordinance. These changes add further restrictions on employee and employer flexibility and will result in some employment shifts simply not being offered to employees, even when the employee wants them. The additional costs and risk are just too much for an employer to consider. The vast majority of shift changes are employee-initiated and, as a result, should not result in the City imposing punitive measures on the very people providing employment and a substantial sales tax base.

The absence of exemptions to this ordinance for basic employer control will eventually render this policy to be unworkable for the employees it seeks to benefit. Allowing for shift swaps without a manager's approval will have the unintended consequences of new employees performing tasks that the employee lacks training in, which can create health and safety risks in the restaurant setting. Shift trading must be done between people with similar skill sets and duties and be approved by someone who has knowledge of how many hours the individuals have already worked that week. That is necessary to stay compliant with state labor laws. Shift trading is important and is a cornerstone of the restaurant community, but to create a free-for-all system that compromises good operating procedures and creates a breeding ground of resentment between employees of differing skill/training levels will decrease overall workplace moral.

Furthermore, the strikeout within the amendments that requires employers to offer additional hours to existing employees only of same or similar work classification, is completely unreasonable for the restaurant industry. Not all employees have been cross-trained to complete the tasks of their fellow coworkers. Requiring that employers offer any hours to those whom they willing know lack the training to perform the tasks that will be asked of them will, in some cases, put the employee in harm's way. This can result in danger not only to the employee should they become injured but also to the establishment should there be a fire and most importantly to the customer should the meal not be prepared safely.

The CRA has submitted two position letters to the City on this topic – one outlining the complexities of this type of policy for the local restaurant community and the second outlining the vagueness of the language within the first draft, which needed further clarity. With the



exception of a definition for the term, "Good Faith," none of the code sections outlined within the second position letter had light shed upon them even after the City was given time to review the letter. Without clarifying the many terms that lack any definition at all, the City is putting itself and the employer community at great risk of future litigation.

We believe that moving forward with such a poorly crafted ordinance and not partnering with the restaurant community to truly understand (from the restaurant community) the real impacts is incredibly misguided policy and displays an indifference towards the job creators and sales tax generators within the City.

Lastly, this proposal proposes a one-size-fits-all approach to local retail and restaurants, without taking into account that the local restaurant industry is drastically different from that of the general retail industry. Restaurants operate at the whim of constant and uncontrollable external factors which frequently require adjustment, especially in staffing needs, due to an influx or decline in consumer demands - most of which cannot be foreseen by the employer. Without providing relief to employers from predictability pay for all schedule changes made at request of the employee, this restrictive scheduling mandate is not only unworkable in the restaurant space, it will also directly interfere with employees' ability to balance important priorities in their lives, such as going to school, working another job, or raising a family. With this policy coming at a time when the City is aggressively forcing new costs onto the local restaurant community who are the hardest hit by regulating service charges and imposing unprecedented wage hikes; it is without question that a negative impact to the city will occur.

It is for these reasons and others that have been defined in earlier position letters, we remain **OPPOSED** to the restrictive and excessively punitive scheduling ordinance.

Sincerely,



Jessica Lynam

Director, Local Government Affairs Bay Area Region  
Government Affairs + Public Policy

Cc: All City Council Members  
Chadrick Smalley, Economic and Housing Development Manger

