



# City of Emeryville

CALIFORNIA

## MEMORANDUM

**DATE:** June 20, 2017

**TO:** Carolyn Lehr, City Manager

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

**SUBJECT: Fair Workweek Ordinance: Regulations and Enforcement**

### RECOMMENDATION

Staff recommends that the City Council receive an update on the development of implementing regulations for the Fair Workweek Ordinance and provide staff with direction regarding public review of the regulations and enforcement activities.

### BACKGROUND

In early 2016 the City Council expressed interest in a City ordinance to regulate local business employee scheduling. On May 17, 2016, the Council held a study session to review what was then the only extant employee scheduling ordinance in the nation: The San Francisco Formula Retail Employee Rights Ordinance (FRERO). The Council then directed staff to draft a Fair Workweek Ordinance modeled after the employee scheduling requirements of the FRERO but modified for Emeryville's unique circumstances. After an additional study session on August 16, 2016, an ordinance was developed and introduced for first reading on October 16, 2016, with an effective date of July 1, 2017. The second reading of the ordinance was approved on November 1, 2016.

Between November 2016 and January 2017, staff initiated a procurement process to seek an experienced consultant to enhance its capacity for development, implementation, and enforcement of all labor standards, including the Fair Workweek Ordinance, the Minimum Wage and Paid Sick Leave Ordinance, and the Workplace Justice Standards at Large Hotels Ordinance ("Measure C").

On March 7, 2017 staff provided an update on the Fair Workweek implementation process to the City Council. The City Council requested that staff return with monthly updates on the contracting process. On April 18, 2017 staff presented another update to the City Council along with a recommendation to enter into a Professional Services Agreement (PSA) with Mills College Lorry I. Lokey School of Business and Public Policy ("Mills College") to conduct outreach and education services. At its April 27, 2017

Special Meeting, the City Council approved the contract with Mills College for outreach and education services for a total of \$182,218 (Resolution No. 17-56).

Another update was provided to the City Council on June 6, 2017, along with a recommendation to enter into a PSA with The Labor Compliance Managers (TLCM) for enforcement and administration. The City Council approved the PSA with TLCM (Resolution No. 17-78).

The Council also discussed public review of the draft implementing regulations for the Fair Workweek Ordinance and the implications for the implementation timeline of providing such a review period. The Council indicated its interest in releasing the regulations on August 1, 2017, after the effective date of the ordinance (July 1, 2017), to allow for a public comment period of one week.

The City Council also expressed interest in considering a “roll-out” period of the ordinance. Specifically, the City Council requested that staff return on June 20, 2017 with a proposed timeline that provides time for public review of the regulations and addresses the timeline for enforcement activities.

## **DISCUSSION**

In consultation with Mills College and TLCM, staff has developed the following timeline for public comment and release of the regulations. Staff is also proposing a roll-out enforcement period from July 1, 2017 (the effective date of the ordinance), to September 30, 2017, with regular enforcement beginning October 1, 2017. For the purposes of this discussion, “roll-out enforcement” means that complaints of violations under the ordinance will be accepted and investigated by the City beginning on the effective date. If a violation of the Fair Workweek Ordinance is found, the City will issue a corrective action letter detailing the violation and notifying the employer of the ordinance’s requirements. The purpose of the roll-out period is education and allowing employers the opportunity to change business practices in order to comply with the ordinance.

### *Regulation/Implementation Timeline*

June 20, 2017 – City Council meeting: Update to City Council on regulations and enforcement.

June 21, 2017 - Notices are emailed and mailed to stakeholders that draft regulations will be available for review and comment online and at City Hall beginning June 26, 2017 through July 7, 2017. Notices of public comment forums (see below)

June 26, 2017 – Draft regulations are published online, public comment period begins, follow-up notices are emailed to stakeholders informing them that regulations are available for review and comment. Stakeholders may submit comments in writing, by phone, email, or on website.

**July 1, 2017** – Ordinance becomes effective, roll-out enforcement begins

Week of July 3, 2017 – Two public comment forums are conducted, one focused on employees, one focused on employers

July 7, 2017 – Public comment period closes at 5 pm.

July 8-14, 2017 – Public comments are reviewed and draft regulations are revised as necessary, while Mills College prepares educational materials

**August 1, 2017** – Final regulations are published

August 7, 2017 – Mills College conducts educational workshops, distributes workplace posters, checklists and other educational collateral

Late August - September 2017 – Employers incorporate materials and test/adjust processes to ensure compliance

**October 1, 2017** – End of roll-out enforcement. City may begin imposing fines for violations of ordinance

Developing the implementing regulations in this way accomplishes several objectives. First, it provides the requested public review and comment period for the implementing regulations. Second, the revised enforcement timeline provides employers and employees with a “roll-out” period during the time regulations are draft and untested, which has also been requested. Lastly, the roll-out enforcement period allows for real world testing of the draft regulations as the ordinance becomes effective on July 1, 2017, but without the potential for the City to assess fines or penalties while the regulations are not yet final.

This approach has been adopted by the City of Seattle as well. A press release dated April 13, 2017, stated that they will conduct a “soft launch” from July 1 through December 31. During this initial six-month period, they will investigate all complaints and obtain full remedies for employees, but will not impose penalties or fines on employers for violations that occur in 2017 unless a violation is egregious.

### *CDP Proposal*

Center for Popular Democracy (CDP) proposes a modified schedule:

July 7, 2017 – Deadline for submitting written comments

July 10, 2017 – Posting of submitted comments

July 13-14, 2017 – Public comment forums

## **FISCAL IMPACT**

Adding the public review of the draft regulations and providing a roll-out enforcement period has no fiscal impact, as the contracts with Mills College and TLCM can accommodate these tasks.

## **LEGAL CONSIDERATIONS**

The City Attorney has reviewed this staff report.

**PREPARED BY:** April Shabazz, Management Analyst

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

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



---

Carolyn Lehr, City Manager

Attachment: Seattle press release