

Emery USD Agenda

Created: December 14, 2012 at 03:10 PM

Special Meeting of the Board of Trustees

December 17, 2012

Monday, 06:00 PM

Emery Theater

4727 San Pablo Avenue, Emeryville

Guiding Principles

We Hold High Academic, Social, and Professional Expectations

We Create a Sense of Family

We Inspire and Support Innovation to End Racist and Classist Practices

- A. OPENING CEREMONY/ROLL CALL (approximately 6:00 p.m.)**
- B. PLEDGE OF ALLEGIANCE (approximately 6:05 p.m.)**
- C. APPROVAL OF AGENDA**
- D. PUBLIC COMMENT (approximately 6:10 p.m.)**
- E. REPORTS (approximately 6:20 p.m.)**
 - 1. 1. CSEA 2. ETA 3. Anna Yates PTO 4. Emery Secondary School 5. Student Representative's Report 6. Superintendent's Report 7. Board President's Report**
- F. CONSENT CALENDAR (approximately 6:30 p.m.)**
 - 1. ECCL Community Benefits Agreement (second reading) (D) (V)**
 - 2. Third Amendment to COC By-Laws: Change of Membership and Quorum Requirements (D) (V)**
- G. DISCUSSION/ACTION ITEMS (approximately 6:40 p.m.)**
 - 1. Special Education Department Report 2012-13 (D)**
see attachment: write up
 - 2. Audit Report (D) (V)**
 - 3. Objectives and Topics for Board Retreat (D) (V)**
 - 4. Memorandum of Understanding (MOU) Between Emery USD and Lifelong Medical (1st Reading) (D) (V)**
 - 5. Possible Change In City of Emeryville City Council Elections and consequence on Emery Unified School District Board member elections. (D)**
- H. ADJOURN TO CLOSED SESSION (8:30 p.m.)**
 - 1. Conference With Legal Counsel – Anticipated Litigation. Significant exposure to litigation pursuant Government Code section 54956.9(b) (one matter). (D) (V)**



Created : December 14, 2012 at 03:10 PM

Meeting: Special Meeting of the Board of Trustees : F. CONSENT
CALENDAR (approximately 6:30 p.m.)

1. ECCL Community Benefits Agreement (second reading)

(D) (V)

December 17, 2012

Status: Submit

[Discussion Item](#)

Staff Recommendation

Approve the "ECCL Community Benefits Agreement" as presented by A Squared Ventures.

Purpose

The purpose of this item is for the Board of Trustees to approve the "ECCL Community Benefits Agreement" as presented by A Squared Ventures.

Background

The Board of Trustees, in partnership with the City of Emeryville, has had long-standing direction to staff to optimize the opportunities for the ECCL project to improve local workforce, workforce development, and community benefits, especially given public investments such as Measure J. One significant step in accomplishing those goals has been in defining, drafting and approving policies that effectively and efficiently guide the ECCL work. For example, all of the project processes to date, including the RFP's and RFQ's issued for consultant selection for the project, have contained language highlighting contract requirements for community benefits and community and youth engagement. On December 6, 2012, the Board and the City Council reviewed and discussed the "ECCL Community Benefits Agreement" at the City Schools Committee meeting. At tonight's meeting, the Board will consider approval of the "ECCL Community Benefits Agreement".

Funding

Current ECCL project work is authorized and supported by MOU #2 which incorporates City and Measure J funds.

Associated File Attachments

 [Comparison of benefits agreements from various local agencies \(Files\)](#)

 [Final "ECCL Community Benefits Agreement" \(Files\)](#)

AGENCY COMPARISON MATRIX- KEY CONTRACTING DIVERSITY PROGRAM COMPONENTS FOR CONSTRUCTION PROJECTS

KEY PROGRAM COMPONENTS	PUBLIC AGENCIES							
	City of Oakland	Port of Oakland	Alameda Co. Public Works Agency	BART	OUSD	EBMUD	Oakland Housing Authority	City of Richmond
Formal Policies & Procedures	YES	YES	YES	YES	YES	YES	YES	YES
Business Utilization Goals								
SBE (Small Business Enterprise)	NO	Project specific goals covering	YES	NO	NO	50% Contracts Not Requiring	YES, Section 3 Businesses	10% Inclusion
LBE (Local Business Enterprise)	Min. 10% LBE + 10% SLBE (or 20% SLBE) +20% to Total Trucking Dollars, if applicable, > \$100K	LIABE(firms in Emeryville, Alameda, Oakland, San Leandro), LBABE (firms in Alameda & Contra Costa county,	YES	NO	Min. 10% LBE + 10% SLBE (or 20% SLBE) +20% to Total Trucking Dollars, if applicable, > \$100K	NO	NO (except for Section 3 businesses)	NO
SLBE (Small Local Business Enterprise)/SEED (Supplier Education and Economic Development)	Up to 20% Min. for Contract Awards > \$100K	SLBE/VSLBE (based on gross revenues avg over 3 yrs)	20% SLEB	NO	Up to 20% Min. for Contract Awards > \$100K	NO	NO	25% w/10% SLBE on 100K+
DBE (Disadvantaged Business Enterprise)	11.17% FY09/10	18.6% Federal Aviation Admin.	YES	25% Overall Project Specific	No	NO		Project Specific
M/EMBE (Minority/Ethnic Minority)	NO but tracks	NO	15% MBE	23% Subcontracting	NO	25%		NO

AGENCY COMPARISON **MATRIX**- KEY CONTRACTING DIVERSITY PROGRAM COMPONENTS FOR CONSTRUCTION PROJECTS

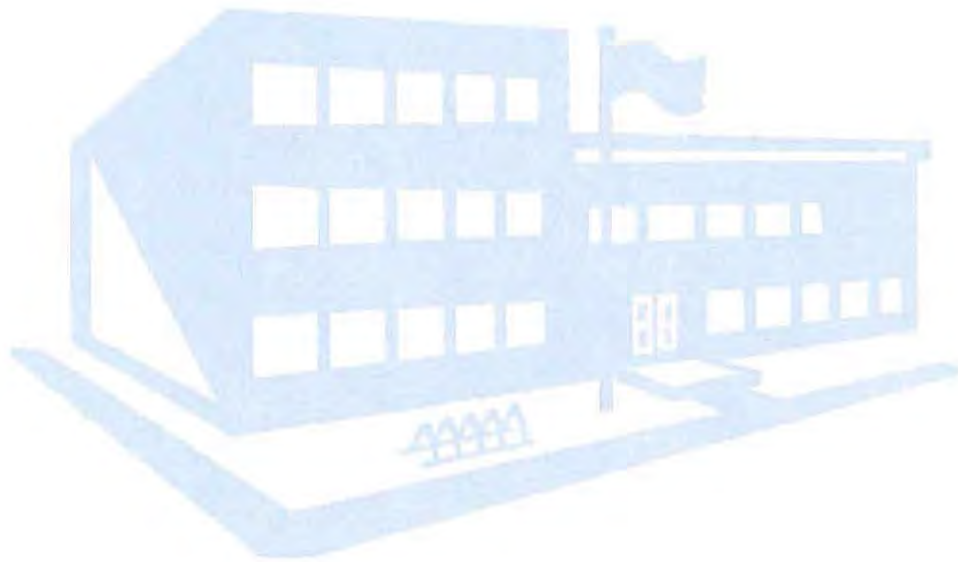
KEY PROGRAM COMPONENTS	PUBLIC AGENCIES							
	City of Oakland	Port of Oakland	Alameda Co. Public Works Agency	BART	OUSD	EBMUD	Oakland Housing Authority	City of Richmond
Workforce Utilization Program	YES 50% Oakland Resident workforce on a craft by craft basis; First new hire has to be Oakland Resident; 50% of new hires must be Oakland Resident; 15% Apprentice Work by Oakland resident	YES via Maritime Aviation PLA 50% work hours by Local Impact Area Residents; 20% Apprentice work hours by LIA; 2nd Priority to Local Business Area	YES - apprenticeship ratio: 1 apprentice hour for 5 hours of journey person; First Source Hiring Program	Selective Projects	NO	NO	NO, only for Section 3 Residents/ Businesses	First Source Agreements; 25% of total workforce hrs to local residents
Project Labor Agreement	NO	YES, SBE carveout, Local workforce & apprenticeship provisions, Social Justice Trust Fund	NO	Selective Projects PSA-DBE carveout, Local workforce & apprenticeship provisions, Social Justice Trust Fund	Yes, SBE carveout	NO	NO	Selective Projects

AGENCY COMPARISON MATRIX- KEY CONTRACTING DIVERSITY PROGRAM COMPONENTS FOR CONSTRUCTION PROJECTS

KEY PROGRAM COMPONENTS	PUBLIC AGENCIES							
	City of Oakland	Port of Oakland	Alameda Co. Public Works Agency	BART	OUSD	EBMUD	Oakland Housing Authority	City of Richmond
Wage Provisions	Living Wage And Equal Benefits Ordinance	Living Wage for Contracts over \$50K with 20 employees working at least 25% of their time on the Port-related work; Prevailing Wage	Prevailing Wages only	Prevailing Wages only	Prevailing Wages only	Prevailing Wages only	Prevailing Wages only	Prevailing Wages only

Emeryville Center for Community Life

Community Benefits Agreement



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I. OVERVIEW

The goal of the Community Benefits Agreement (CBA) for the Emeryville Center for Community Life Project (the Project) is to provide opportunities for broader community access to the project throughout the construction phase. Whether through opportunities for local businesses, providing local residents employment opportunities or ensuring Emeryville Unified School District youth have access to and are afforded an understanding of the careers within the construction trades; the ECCL Project provides a unique opportunity for economic and social benefits to the economy of Emeryville.

The Prime Builder (Prime) is the entity that will have the greatest opportunity to implement the programs described within the CBA. Therefore, it is imperative that this CBA be incorporated into their contract and that the Prime agree to partner with the Emeryville Unified School District (the District) to implement the programmatic elements enumerated by the CBA. By incorporating the CBA into the Prime's contract and ensuring that the community benefits identified as part of the Prime's proposal are implemented, the District can ensure that the objectives of the CBA are met. Lastly, it is anticipated that the Prime will provide monthly reports to the District highlighting the efforts made toward accomplishing the objectives of the CBA as well as those within the Prime's proposal. The specific execution of these commitments and their associated objectives are detailed in the policies and programs listed below.

II. EXECUTIVE SUMMARY

Like most cities, the City of Emeryville has weathered a turbulent economic landscape of dwindling jobs and strained educational opportunities. The community benefits listed herein, while limited in duration, are meant to provide members of the community opportunities for employment (residents and businesses), education, and ongoing access to a one-of-a kind project partially funded by the residents of the city.

Based on the desire to provide resources to the community, the District engaged a small local consulting firm to survey the community stakeholders and assess their concept of the 'community benefits' that they felt could be achieved during the construction of the Project. The overarching categories identified below were derived from conversations held between A Squared Ventures, Inc., (A²V) and numerous Emeryville stakeholders including, but not limited to, representatives from the City of Emeryville, Emeryville Unified School District and Residents for a Livable Emeryville (RULE). A²V utilized the discussion with the stakeholders, their own expertise implementing similar programs and an understanding of best practices from other local agencies and private industries to develop a set of programs and policies that would support the desires expressed during the stakeholder meetings. Therefore, with the community's input in mind, the following programmatic elements are proposed as the basis for the Project's Community Benefits Agreement that we recommend being adopted by the Prime:

- **Business Opportunities** – The Prime and their subcontractors will commit to recruiting local and/or small local business enterprises to serve as subcontractors and subconsultants on the Project, thereby supporting and recycling dollars within the local economy and enhancing contractor capacity.
- **Workforce Development** - The Prime and their subcontractors will call upon and recruit a labor pool of local, capable, and skilled workers seeking employment and compensate them with a living wage (for non-construction workers) or appropriate prevailing wages (for construction workers). A primary objective of this component is for the Prime to hire a minimum of eight construction and/or administrative workers who reside "locally" within the impact area, and two construction or administrative workers who reside within the City of Emeryville for a total of ten workers. Any professional or additional administrative employment opportunities are expected to be sourced primarily from Emeryville and then the surrounding impact areas.
- **Youth Engagement** - The Prime and their subcontractors will use the Project as an avenue to expand upon educational opportunities for EUSD youth interested in the myriad of careers associated with the construction industry. Particular attention will be paid to incorporating science, technology, engineering and math and providing a paid or accredited internship opportunity to an EUSD student.

Moreover, the Prime, having worked on the pre-construction phase of the Project, will enter in to a contract with the District for the construction of the Project. In the Prime's Lease-Back Construction Services Proposal, they commit to implementing several programs that would benefit the local community and residents. These programs will serve as a good complement to the programs highlighted within this CBA.

While the Prime will remain under contract with the District, it will be the Emeryville City/School Committee, comprised of the City Council of Emeryville and the Board of Trustees of the Emery Unified School District,, that will oversee adherence to the agreements made herein. The Prime will in good faith comply with the approved components of the CBA and provide monthly reporting to the District evidencing their efforts to do so. It is therefore the goals of the District, as carried out through the implementation of the CBA, to utilize the Project to enhance the economic and educational performance of the city and its residents.

III. BUSINESS OPPORTUNITES

Objective

To ensure local and small local business enterprises receive economic opportunities to serve as subcontractors and subconsultants on the Project, thereby promoting the regional economy.

Local Business Utilization: Impact Area and The East Bay Green Corridor

The Prime will first seek out local subcontractors and subconsultants located within Emeryville or the surrounding area defined by impact zip code and then those within the East Bay Green Corridor. Those local businesses located within one of the nine impact zip codes (the Impact Area) listed below will receive priority consideration by the Prime in receiving subcontracting or subconsulting work. The Prime must obtain documentation from all local/small subcontractors and subconsultants that they have established and maintain a business location within the Impact Area, and have maintained the location for the past six months at the time of consideration. Various agencies' local and small local certifications for businesses within the Impact Area will suffice as proof as well. The Prime must make good faith efforts to exhaust all possible Impact Area business opportunities prior to seeking subcontractors/subconsultants in the East Bay Green Corridor as defined below. It is the Prime's responsibility to retain all evidence of such good faith efforts and include these efforts in their monthly communications to the District.

Figure 1 "Local/Impact Area defined by zip codes located within or surrounding the City of Emeryville

Impact Area Zip Codes by City		
City of Emeryville	City of Berkeley	City of Oakland
94608	94702	94607
	94703	94608
	94710	94609
		94612

If no subcontractors/subconsultants are available within the Impact Area, the Prime will expand their recruitment efforts to include subcontractors/ subconsultants located within the East Bay Green Corridor. Cities located within the East Bay Green Corridor include Alameda, Albany, El Cerrito, Hayward, Richmond and San Leandro. The Prime must obtain documentation from all local/small subcontractors and subconsultants that they have established and maintain a business location within the East Bay Green Corridor, and have maintained the location for the past six months at the time of consideration. Various agencies' local and small local certifications for businesses within the East Bay Green

Corridor will suffice as proof as well. The Prime must make good faith efforts to exhaust all possible East Bay Green Corridor business opportunities prior to seeking subcontractors/subconsultants outside of the impact area and the East Bay Green Corridor. It is the Prime's responsibility to retain all evidence of such good faith efforts and include these efforts in their monthly communications to the District.

Small Local Business Utilization

The Prime will make all possible attempts to engage in small local firm utilization as defined by the City of Oakland's Size Standards for Small Businesses. To be considered small, businesses must earn no more than thirty percent (30%) of the most recently published United States Small Business Administration's (SBA) Small Business Size Standards in the form of gross revenue (source: [http://www.sba.gov/sites/default/files/files/Size_Standards_Table\(1\).pdf](http://www.sba.gov/sites/default/files/files/Size_Standards_Table(1).pdf)). More specifically, size is based on the maximum average gross revenues for the three most recent years of operation or by a given maximum number of employees. For example, the SBA's size standard for "special trade construction contractors" is \$14 million dollars; meaning small firms must make less than \$4.2 million dollars in order to be considered small. Various agencies' small business certifications that maintain size standards at or below the City of Oakland's small business size standards will suffice. The firm must also meet the local requirements designated above for Impact Area or East Bay Green Corridor. It is the Prime's responsibility to retain all evidence of such good faith efforts and include these efforts in their monthly communications to the District.

Figure 2 Example of Small Business Size Standard

Small Business Size Standard for Special Trade Construction Contractors	
US SBA Size Standard	City of Oakland Size Standard (30% of SBA Size Standard)
\$14 Million	\$4.2 Million

Bonding Assistance Workshop

The Prime will host a bonding assistance workshop for interested small subcontractors bidding for work on the Project. The bonding assistance workshop will be held in advance of the project and in an accessible location and time of day. Representatives from the Prime, the SBA and local bonding and insurance firms will be present to share general and Project specific bonding related information, available resources and to answer questions. The workshop will specifically cover the following areas; 1) the definition of surety bonds and the various types of surety bonds required by the Prime; 2) how to begin the process of obtaining surety bonds; 3) the role of the agent/producer and the underwriter; 4) the prequalification process; 5) the 3 "C's", capital, capacity and character; 6) the costs of bonding; and 7) how to develop a surety bond relationship. Additional information regarding relevant state bond guarantee and loan programs and any local bonding or financial support programs that might be available for small businesses will also be presented. Lastly, representatives from the Prime will present specific bonding requirement information.

IV. WORKFORCE DEVELOPMENT

Objective

To call upon and recruit a local labor pool of capable and skilled workers seeking employment, while compensating them at a rate sufficient to live in dignity and to achieve economic self-sufficiency. The goal is to hire eight construction workers or administrative workers who reside "locally" within the impact area (as defined in Section III) and two additional construction workers or administrative workers who reside within the City of Emeryville for a total of ten local construction workers or administrative workers on the project. As required by the project in general, the construction workers must be paid the appropriate prevailing wages and the administrative staff must be paid at or above living wage as detailed below.

First Source - Local Hire

The Prime and its subcontractors will utilize name call procedures with the representative union hiring halls in recruiting available journeymen residing in the Impact Area. The Prime and its subcontractors will similarly recruit from the Impact Area for all administrative positions associated with the Project. The Prime shall notify the City/School Committee by documented means (i.e., U.S. Mail or e-mail) if a hiring hall cannot dispatch a Impact Area journeyman or apprentice to the Project upon request by the Prime or their subcontractor(s). It is the Prime's responsibility to retain all evidence of such good faith efforts and include these efforts in their monthly communications to the District.

Local Apprentice and Pre-Apprenticeships

The Prime will coordinate a meeting with Cypress Mandela Training Program (Cypress) on behalf of the Project. The objective of the meeting will be to outreach to local Cypress graduates to discuss apprentice opportunities on the project and to provide potential local pre-apprentices with information about attending Cypress' 16 week program. In order to maximize the impact on local residents, the Prime must outreach to EUSD students and their parents through various specific and targeted means (e.g. PTA meetings, letters sent home through students, etc.) and to encourage the parents and their children to attend recruitment events held both at the school site and at Cypress. To further promote awareness of the benefits of a career path in construction, the Prime will collaborate with the District's Secondary School Counselors in augmenting the "Post-Secondary Plan" for students. For those unable to attend recruitment events, the Prime will also create a packet of materials that outline the information shared during the session to be distributed to EUSD students. These outreach events must occur within the 1st Quarter after the start of construction on the Project. The Prime must work with Cypress to track EUSD students or graduates who enter the 16 week pre-apprentice training program, identifying those who graduate from the program as well as those who are placed on the Project. The Prime shall also track any pre-existing EUSD students, EUSD graduates, and Impact Area Cypress graduates who are brought on the job as apprentices and journey level construction workers to evidence the impact of the collaboration with Cypress.

Local Apprentice Worker Rotation

The Prime will work with the construction trade unions to identify and implement local apprentice worker rotation opportunities on the project within the first quarter and going forward thereafter on at least a quarterly basis. Through this effort, the Prime and its subcontractors will commit to keeping as many local apprentices assigned to the Project for as long as feasibly possible by way of worker rotation as agreed to by the union. The rotation process should apply when a Impact Area apprentice completes their assignment under a given subcontractor. Then the Prime should seek to have that apprentice reassigned to a new task (potentially with another subcontractor) on the Project. This would be in an effort to provide consistent work for the apprentice to assist them in attaining the hours of work experience needed to advance in their apprenticeship stages. This would be implemented as long as the apprentice maintains good standing in their apprenticeship program per their governing union. It is the Prime's responsibility to retain all evidence of such good faith efforts, document these efforts and provide the associated documentation in their communications to the District on a quarterly basis.

Living Wage Compliance

The Prime will adhere to the City of Emeryville's Living Wage Ordinance (Chapter 31 of Title 5 of the Emeryville Municipal Code – attached herein) for the non-construction workers who are performing work on the Project. The current living wage for 2011-2012 is defined as compensating a worker with no less than twelve dollars per hour including health benefits and is indexed annually. If employer contributions are not paid on an hourly basis, the Prime will demonstrate to the City of Emeryville the hourly value of such benefits in order to receive credit for such payments to covered employees. It is the Prime's responsibility to retain all evidence of such good faith efforts and include these efforts in their monthly report to the District.

Prevailing Wage Compliance

The Prime will be required to ensure that all construction workers employed on the Project are paid the appropriate prevailing wages as required by the California Department of Labor Relations Industrial Code Section 1773. The Prime will be required to submit documentation of wages paid to all construction workers on the project employed by the Prime and all of the Prime's subcontractors on a monthly basis to the District.

V. YOUTH ENGAGEMENT

Objective

To use the Project as an avenue to expand upon educational opportunities for EUSD youth interested in the myriad of careers associated with the construction of the Project.

Internship

The Prime *and/or the District* will sponsor a minimum of three internship positions to be placed under the direction and guidance of the District Architect (Roy Miller) throughout the duration of the construction project. The interns will be EUSD students beginning their 11th year at time of selection. The interns will gain exposure and understanding of the design and building process typical to most construction projects. The Prime will sponsor the interns and any designated internship facilitators with a stipend for work performed related to the

Project. The interns will work together and be responsible for assisting in creating ways to further include student involvement in the Project. The interns will work closely with the District Architect and teachers in developing lesson plans that incorporate the construction of the Project.

Learning Lab

The community at large will have access to information related to the Project by way of a Learning Lab. The Learning Lab will consist of an exhibit within a trailer located at the construction site comprised of easy-to-understand mockups of the planned construction and information regarding the Prime's approach to environmental sustainability related to the Project. The Prime will periodically hold publicized guided tours open to the public and EUSD school groups of the construction site. The District and the Prime will utilize the Project to host quarterly meeting with District students to incorporate educational opportunities for learning and exploration, ranging from basic recycling principles for students in lower grades to more complex and sophisticated lessons in science, technology, engineering and math. The Prime will commit to making their engineers available to organized school groups wishing to learn more about real world applications of science, technology, engineering and math. When applicable, integration of a virtual learning component (i.e., exposure and application to relevant planning software) will be incorporated into the Learning Lab for students.

VI. COMMUNICATION

Objective

To reflect the City/School Committee's encouragement of open communication and facilitation of community building across diverse interests. Moreover, to ensure that the Prime adheres to the agreements made here within, while communicating effectively with all stakeholders for continual monitoring processes.

Reporting Requirements

The Prime will be required to submit reports to the District on the first business day of the ensuing month covering the prior periods' activities, results and good faith efforts as stipulated in each section. Each report will be preceded by an Executive Summary that includes a chart indicating the following levels: local and small local business utilization; local, EUSD student and EUSD graduate employment (journey and apprentice level construction workers and administrative workers); update on status of the internship; the status of the establishment and utilization of the Learning Lab and updates on any other community related activities that the Prime participates in on behalf of its work on the Project. The Prime will also present their progress on a quarterly or semi-annual schedule to the City/School Committee as requested.

VII. BIBLIOGRAPHY

Unknown. Port of Oakland, (2002). *Non-Discrimination and Small Local Business Utilization Policy for Alternative Project Delivery Approaches* (DOCUMENT 39577)

Unknown. Oakland Unified School District, (2009). *Local, Small Local and Small Local Resident Business Enterprise Program (L/SL/SLRBE)*

Unknown. City of Oakland , Office of the City Administrator, Contracts and Compliance. (2012). *Local and Small Local Business Enterprise Program*

Unknown. Alameda County Transportation Authority and Alameda County Transportation Improvement Authority, (2008). *Local business Contract Equity Program*

Unknown. City and County of San Francisco, Office of Economic and Workforce Development. (2010). *Administrative code chapter 6, Public Works Contracting Policies and Procedures, Subsection 6.22(g)*.

VIII. ATTACHMENT: CITY OF EMERYVILLE LIVING WAGE ORDINANCE

Chapter 31: Emeryville Living Wage Ordinance*

Sections:

- 5-31.01 Title and Purpose
- 5-31.02 Findings
- 5-31.03 Definitions
- 5-31.04 Persons and Entities Subject to the Requirements of this Chapter
- 5-31.05 Living Wage Rate
- 5-31.06 Waivers
- 5-31.07 Required Contract Provisions
- 5-31.08 Exemptions
- 5-31.09 Retaliation and Discrimination Prohibited.
- 5-31.10 Employee Complaints to the City
- 5-31.11 Enforcement
- 5-31.12 Effective Date

5-31.01 Title and Purpose.

The purpose of this chapter is to assure that City employees, employees of City service contractors, subcontractors, and employees and contractors of City financial assistance earn an hourly wage that is sufficient to live with dignity and to achieve economic self-sufficiency. The City contracts with many businesses and organizations to provide services to the public, and provides financial assistance to developers and businesses for the purpose of promoting economic development and job growth. Such public expenditures should also be spent to set a community economic standard that permits workers to live out of poverty. The City Council finds that the use of City funds to provide living wage jobs will decrease poverty, increase consumer income, invigorate neighborhood businesses and reduce the need for taxpayer funded social service programs.

This chapter shall be known and may be cited as the "Living Wage Ordinance." The purpose of this chapter is to protect the public health, safety and welfare. It does this by requiring that public funds be expended in such a manner as to facilitate individual self-reliance by employees of City contractors, lessees, recipients of City financial aid and their respective subcontractors.

(Sec. 2 (part), Ord. 06-019, eff. July. 1, 2007)

5-31.02 Findings.

- (a) The City of Emeryville awards contracts to private firms and other businesses to provide services to the public and to City government; and
- (b) The City of Emeryville has a limited amount of taxpayer resources to expend; and
- (c) The use of taxpayer dollars to promote sustenance and creation of living wage jobs will increase consumer income, decrease levels of poverty and reduce the need for taxpayer-funded social programs in other areas; and

(d) When City funds are used to contract for services, such contracts should demonstrate an effort to promote an employment environment that enhances the general quality of life within the community and maximizes the productive effect of the City's limited resources; and

(e) The City's use of contractors that do not provide health insurance to their employees can result in imposing the costs of their medical care on the county, state and federal governments; and

(f) That employees are far likelier to be healthy if their employer provides reasonable health insurance to them and their dependents; and

(g) The payment of a minimum level of compensation as required by this chapter benefits these interests.

(Sec. 2 (part), Ord. 06-019, eff. July. 1, 2007)

5-31.03 Definitions.

The following words and phrases whenever used in this chapter shall be construed as defined in this section:

a. "City" means the City of Emeryville, Management of Emeryville Services Authority ("MESA"), and all City departments and agencies, including but not limited to the Emeryville Redevelopment Agency and the City of Emeryville Public Finance Authority.

b. "City financial aid recipients" means all persons or entities that receive from the City direct assistance in the form of grants, loans, or loan guarantees, in-kind services, waivers of City fees, real property or other valuable consideration in the amount of more than one hundred thousand dollars (\$100,000.00) within the City's fiscal year (July 1st through June 30th). This term shall not include those who enjoy an economic benefit as an incidental effect of City policies, regulations or ordinances.

c. "Contractor" means any person or entity that enters into a service contract as hereafter defined with the City in an amount equal to or greater than twenty-five thousand dollars (\$25,000.00) within the City's fiscal year. (Contractor includes subcontractors whose employees are engaged in City funded services.)

d. "Employee" means any individual employed by an employer who performs at least twenty-five percent (25%) of the work arising from a service contract, City financial aid, or City lease. No work may be reassigned in order to evade coverage under this chapter.

e. "Health Benefits" means an employer's monetary contribution toward the cost of health and medical care insurance for covered employees and their dependents. Health benefits may include the following types of insurance: medical health, including mental health, dental and vision care. The hourly cost of providing health benefits shall be credited as compensation along with wages under this chapter. Retirement benefits, accidental death and dismemberment insurance, life insurance, disability insurance and other benefits that do not provide medical or health-related coverage shall not be credited as compensation.

f. "Nonprofit" shall mean a nonprofit organization described in Section 501(c) of the Internal Revenue Code of 1954 which is exempt from taxation under Section 501(c) of that code, or any nonprofit educational organization qualified under Section 23701(d) of the Revenue and Taxation Code.

g. "Person" means any individual, proprietorship, partnership, joint venture, corporation, limited liability company, trust, association, or other entity that may employ individuals or enter into contracts.

h. "Service contract" means a contract given a contractor by the City for twenty-five thousand dollars (\$25,000.00) or more for the furnishing of services to or for the City, except those contracts where services are incidental to the delivery of products, equipment or commodities. Service contracts include but are not limited to security guard services, janitorial services, waste management, landscaping, parking attendant services, and towing. "Service contract" does not include: (1) a contract between the City and another governmental entity or public utility; (2) a contract wherein prevailing wage as defined by Division 2, Part 7, of the California Labor Code applies so long as prevailing wage is greater than the living wage requirement; and (3) a contract subject to federal or state laws or regulations that would preclude application of the living wage requirement otherwise applicable pursuant to this chapter.

(Sec. 2 (part), Ord. 06-019, eff. July. 1, 2007)

5-31.04 Persons and Entities Subject to the Requirements of this Chapter.

The persons and entities described below shall comply with the minimum compensation standards established by this chapter if they employ more than ten employees:

- a. The City of Emeryville, including all its agencies, departments and offices.
- b. For-profit service contractors which receive contract(s) from the City for twenty-five thousand dollars (\$25,000.00) or more within the City's fiscal year. Compliance shall be required during the term of the contract for all employees who perform at least twenty-five percent (25%) of the work arising from the service contract.
- c. Nonprofit service contractors which receive contracts from the City of one hundred thousand dollars (\$100,000.00) or more within the City's fiscal year. Compliance shall be required during the term of the contract for all employees who perform at least twenty-five percent (25%) of the work arising from the service contract.
- d. Lessees of public property, licensees, concessionaires and franchisees which employ twenty-five (25) or more employees and have three hundred fifty thousand dollars (\$350,000.00) or more in annual gross receipts. Compliance shall be required during the lease term for any employees who spend twenty-five percent (25%) or more of their compensated time on the leased property or engage in work directly related to the license, concession or franchise.
- e. City financial aid recipients which receive more than one hundred thousand dollars (\$100,000.00) in loans or other cash and/or noncash assistance within the City's fiscal year. Compliance shall be required for a duration of one year for each one hundred thousand dollars (\$100,000.00) of assistance, up to a maximum duration of five (5) years, following receipt of the aid for all employees who spend twenty-five percent (25) or more of their compensated time engaged in work directly related to the purposes for which the City provided the aid.
- f. Subcontractors and sublessees of any of the entities or persons described in subparagraphs (a) through (d) above:

(Sec. 2 (part), Ord. 06-019, eff. July. 1, 2007)

5-31.05 Living Wage Rate.

All persons and entities subject to this chapter shall pay covered employees a wage of no less than the living wage set forth in this chapter:

- a. "Living wage" means no less than twelve dollars (\$12.00) per hour including wages and health benefits. If employer contributions for health benefits are not paid on an hourly basis,

the employer must demonstrate to the City the hourly value of such benefits in order to receive credit for such payments to covered employees.

b. Additional Compensation Permissible. Nothing in this chapter shall be construed to limit an employer's discretion to provide greater wages to its employees.

c. The initial rates set forth in subsection (a) of this section shall increase annually on July 1st, to reflect the twelve month average in the Consumer Price Index for all urban consumers in the San Francisco-Oakland-San Jose Metropolitan Statistical Areas for the preceding year from May through April, not to exceed three percent (3%) in any one year. (Sec. 2 (part), Ord. 06-019, eff. July. 1, 2007)

5-31.06 Waivers.

Following a review and recommendation by the City Manager, the City Council may approve waivers with or without conditions to any of the requirements and regulations set forth in this ordinance, or in any implementing policies, upon the following findings:

a. The services to be provided are available from a single source and that source has significant barriers to meeting the requirements of the ordinance; or

b. A waiver is necessary to provide emergency services essential to mitigate or prevent possible threats to public safety or public health for a limited period of time; or

c. All bidders for the service to be provided have significant barriers to meeting the requirements of the ordinance; or

d. Any other circumstances that the City Council finds to be in the public interest.

e. All of the provisions of this chapter, or any part hereof, may be waived by a bona fide collective bargaining agreement, but only if the waiver is explicitly set forth in such agreement in clear and unambiguous terms.

(Sec. 2 (part), Ord. 06-019, eff. July. 1, 2007)

5-31.07 Required Contract Provisions.

Every City contract, lease, license, concession agreement, franchise agreement or agreement for financial aid with an employer shall require compliance with the requirements of this chapter. Such contract provisions shall address the employer's duty to promptly provide to the City documents and information verifying compliance with the requirements of this chapter, and sanctions for noncompliance. Such contract provisions shall also require the employer to notify each of its affected employees with regards to wages that are required to be paid pursuant to this chapter.

(Sec. 2 (part), Ord. 06-019, eff. July. 1, 2007)

5-31.08 Exemptions.

The requirements of this chapter shall not be applicable to the following employees:

a. Employees of another government agency, including without limitation, cities, counties, state agencies, and public utilities.

b. An employee participating in a temporary job training program approved by the City in which a significant component of the employee's training consists of acquiring specialized knowledge, abilities, skills or job readiness (e.g., the importance of proper work attire, punctuality and workplace demeanor).

c. An employee who is in an internship or other job training program for which the employee is also receiving academic credit.

- d. An employee who is under eighteen (18) years of age.
- e. A temporary employee of the City of Emeryville who is employed for a limited term to a regular or non-regular position including casual, seasonal and emergency appointments with no guarantee of continued employment beyond the initial hire season.
- f. Volunteers.
- g. Owners of a business who are also employees of the business and their immediate family members (spouse, domestic partner, parent, siblings and children).
- h. Employees who are standing by or on-call according to the criteria established by the Fair Labor Standards Act, 29 U.S.C. section 201. This exemption shall apply only during the time when the employee is actually standing by or on-call.
- i. Employees of contractors and subcontractors subject to the requirements of Division 2, Part 7, of the California Labor Code, for payment of prevailing wage when prevailing wage requires compensation greater than that required by this chapter.
- j. An employee for whom application of the requirements of this chapter is prohibited by state or federal law.
- k. An employee subject to a bona fide collective bargaining agreement where the waiver of the provisions of this chapter are set forth in clear and unambiguous terms in such an agreement.

(Sec. 2 (part), Ord. 06-019, eff. July. 1, 2007)

5-31.09 Retaliation and Discrimination Prohibited.

It shall be unlawful to retaliate or discriminate against any person on account of having claimed a violation of this chapter.

(Sec. 2 (part), Ord. 06-019, eff. July. 1, 2007)

5-31.10. Employee Complaints to the City.

a. An employee who alleges violation of any provision of the requirements of this chapter may report such acts to the City. The City Manager may establish a procedure for receiving and investigating such complaints and take appropriate enforcement action.

b. Any complaints received shall be treated as confidential matters to the extent permitted by law. Any complaints received and all investigation documents related thereto shall be deemed exempt from disclosure pursuant to California Government Code Sections 6254 and 6255.

(Sec. 2 (part), Ord. 06-019, eff. July. 1, 2007)

5-31.11. Enforcement.

a. A person claiming violation of this chapter may bring an action in the Superior Court of the State of California against an employer and obtain the following remedies:

1. Back pay for each day during which the employer failed to pay the compensation required by this chapter.
2. Reinstatement and compensatory damages.
3. For a willful violation of this chapter, a court may award as a penalty up to treble the amount of moneys to be paid as damages.
4. Reasonable attorney's fees and costs.

- b. Notwithstanding any provision of this chapter or any other ordinances to the contrary, no criminal penalties shall attach for any violation of this chapter.
 - c. No remedy set forth in this chapter is intended to be exclusive or a prerequisite for asserting a claim for relief to enforce any rights hereunder in a court of law.
 - d. **No Liability of City.** Claims or lawsuits against the City arising under this chapter are not authorized, nor shall the remedies provided in subsection (a) be awarded against the City. The City shall not be liable to any person or entity because of the City's failure to notify an employer of the applicability of this chapter, the City's failure to investigate or enforce violations of this chapter, or based upon another employer's failure to comply with this chapter.
 - e. The City may terminate a service contract, financial assistance, or lease or facility agreement and pursue any other legal remedies available to the City, including debarment, for non-compliance with this chapter.
- (Sec. 2 (part), Ord. 06-019, eff. July. 1, 2007)

5-31.12 Effective Date.

This chapter shall apply to every City contract, lease, license, concession agreement, franchise agreement or agreement for financial aid with an employer entered into or amended on or after July 1, 2007.

(Sec. 2 (part), Ord. 06-019, eff. July. 1, 2007)

*This page of the Emeryville Municipal Code is current through Ordinance 12-007, passed February 7, 2012. **Disclaimer:** The City Clerk's Office has the official version of the Emeryville Municipal Code. Users should contact the City Clerk's Office for ordinances passed subsequent to the ordinance cited above.