



Office of the City Manager

CONSENT CALENDAR
January 16, 2024

To: Honorable Mayor and Members of the City Council
 From: Dee Williams-Ridley, City Manager
 Submitted by: Jordan Klein, Director, Planning and Development Department
 Subject: Prevailing Wage Requirements in the Southside Plan Area; Adding Berkeley Municipal Code Chapter 13.108

RECOMMENDATION

Adopt first reading of an Ordinance amending Berkeley Municipal Code Title 13 to add Chapter 13.108 --Prevailing Wage Requirements in the Southside Plan Area to establish prevailing wage requirements for projects exceeding 50 units or 50,000 square feet in the Southside Plan Area.

FISCAL IMPACTS OF RECOMMENDATION

The prevailing wage requirements included in the proposed ordinance would be enforced through project sponsor attestation and private right of action. Therefore, the proposed ordinance would not require additional staff resources to administer.

CURRENT SITUATION AND ITS EFFECTS

On November 21, 2023 the City Council adopted zoning changes to increase residential development within the Southside Plan Area.¹ The materials considered with the item included a letter from the Planning Commission encouraging the Council to consider the feasibility of prevailing wage requirements.

At its November 21, 2023 meeting, the City Council adopted a motion that included the following language regarding prevailing wage requirements in the Southside:

A development project having 50 or more units, or having 50,000 square feet or more of floor area, that is located in either the C-T District, R-S District, or R-SMU District, is subject to the following prevailing wage requirements:

1. Contractors shall pay all construction workers employed in the execution of the development at least the general prevailing rate of per diem wages as set forth in Section 1771 of the California Labor Code,

¹ [Staff Report regarding Southside Zoning Changes \(Council meeting of November 21, 2023\).](https://berkeleyca.gov/sites/default/files/documents/2023-11-21%20Item%2013%20Amendments%20to%20Berkeley%20Municipal.pdf)
<https://berkeleyca.gov/sites/default/files/documents/2023-11-21%20Item%2013%20Amendments%20to%20Berkeley%20Municipal.pdf>

except that apprentices registered in programs approved by the California Division of Apprenticeship Standards may be paid at least the applicable apprentice prevailing rate.

2. Contractors shall maintain and verify payroll records pursuant to Section 1776 of the Labor Code and make those records available for inspection and copying as provided in that section.

3. Subsections (1) and (2) above do not apply if all contractors are subject to a project labor agreement (or community workforce agreement or similar labor agreement) with the local Building and Construction Trades Council.

The motion included direction to staff to determine the most appropriate location in the Berkeley Municipal Code to include the language. The motion also stipulated that enforcement of the ordinance would be through project sponsor attestation and private right of action.

The proposed ordinance (**Attachment 1**) includes language to effectuate the direction in the City Council's motion.

BACKGROUND

The Berkeley Municipal Code (BMC) currently includes a single reference to prevailing wage for private development projects in the Downtown Mixed Use (C-DMU) District, including hotels, a building over 75 feet in height, or a building with more than 100 units of housing. Pursuant to BMC Chapter 23.408.060 (Green Pathway—Requirements for Large Buildings and Hotels), applicants that apply for the streamlining provisions of Chapter 23.408 must pay prevailing wage, among other requirements. However, no projects have ever been subject to these provisions. Additionally, the Green Pathways streamlining benefits have been superseded by changes to the BMC and State law that provide more streamlining benefits with fewer requirements.

ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

California Public Resource Code Section 21065 defines a "project" under CEQA as "an activity which may cause either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment." The proposed ordinance pertains to the terms of employment for workers on development projects, and would not result in any changes to the physical environment. The proposed ordinance does not consist of a discretionary action that would permit or cause any direct or indirect change in the environment. The proposed ordinance is therefore not a project under CEQA, and further environmental review is not required.

RATIONALE FOR RECOMMENDATION

The proposed ordinance reflects direction from the City Council at its November 21, 2023 meeting.

ALTERNATIVE ACTIONS CONSIDERED

Staff considered including the proposed language in Title 23 (Zoning), as the motion accompanied the Southside zoning provisions that are found in that title. However, staff determined that the proposed ordinance, which pertains to working conditions, was more appropriately located in Title 13 (Public Peace, Morals and Welfare), where similar employment-related regulations are included, such as the Wage Theft Prevention Ordinance and the Helping Achieve Responsible Development with Healthcare and Apprenticeship Training Standards (“HARD HATS”) Ordinance.

CONTACT PERSON

Justin Horner, Associate Planner, Land Use and Development, 510-981-7476

Attachments:

1: Ordinance

ORDINANCE NO. -N.S.

ADOPTING CHAPTER 13.108 OF THE BERKELEY MUNICIPAL CODE
PREVAILING WAGE REQUIREMENTS

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

Section 1. Chapter 13.108 is hereby added to the Berkeley Municipal Code to read as follows:

Chapter 13.108

PREVAILING WAGE REQUIREMENTS IN SOUTHSIDE PLAN AREA

- 13.108.010 Title and Purpose**
- 13.108.020 Definitions**
- 13.108.030 Prevailing Wage Requirements**
- 13.108.040 Enforceability**
- 13.108.050 Severability**

13.108.010 Title and Purpose.

- A. This Chapter shall be referred to as the Prevailing Wage Requirements Ordinance.
- B. The purpose of this Chapter is to ensure that developers or contractors involved in the construction of large projects in the Southside Plan area pay workers at least the general prevailing rate set forth in the California Labor Code.

13.108.020 Definitions.

- A. "Contractor" shall mean a contractor or subcontractor of any tier that has contracted to perform work on the Covered Project.
- B. "Covered Project" shall mean a private development project located in the C-T, R-S, or R-SMU zoning districts that consists of construction or alteration of at least 50 units or 50,000 square feet or more of floor area and which has not received its final approvals (whether in the form of permits, variances, or other entitlements) by the effective date of this Ordinance.
- C. "Covered Construction Worker" shall mean any construction worker employed by a Contractor at any time over the duration of the Covered Project.
- D. "Registered Apprenticeship Program" shall mean an apprenticeship program jointly managed and administered by both a union and contractor or contractor association, and (i) approved by the State of California's Division of Apprenticeship

Standards; (ii) registered with the U.S. Department of Labor; or (iii) registered with a state apprenticeship agency granted authority by the U.S. Department of Labor to register apprenticeship programs for federal purposes, pursuant to 29 CFR Part 29.

13.108.030 Prevailing Wage Requirements.

A. A Covered Project is subject to the following requirements:

1. Each Contractor shall pay all Covered Construction Workers at least the general prevailing rate of per diem wages as set forth in Section 1771 of the California Labor Code, except that apprentices participating in a Registered Apprenticeship Program may be paid at least the applicable apprentice prevailing rate.

2. Each Contractor shall maintain and verify payroll records pursuant to Section 1776 of the Labor Code and make those records available for inspection and copying as provided in that section.

B. Subsections A(1) and A(2) above do not apply if all Contractors are subject to a project labor agreement (or community workforce agreement or similar agreement) with the local Building and Construction Trades Council.

13.108.040 Enforcement

A. Each Contractor must sign a declaration attesting to compliance with this Chapter under penalty of perjury at the time of permit issuance for the Covered Project.

B. *Private Right of Action.* A Covered Construction Worker, or a joint labor-management committee established pursuant to the federal Labor Management Cooperation Act of 1978 (29 U.S.C. sec. 175a) on a Covered Construction Worker's behalf, may bring a civil action in a court of competent jurisdiction against any Contractor that violates this Chapter and, upon prevailing, shall be awarded reasonable attorneys' fees and costs and shall be entitled to such legal or equitable relief as may be appropriate to remedy the violation. Nothing in this Chapter creates a private right of action or otherwise authorizes legal action against the City, its officers, agents, or employees.

13.108.050 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 provision to other persons or circumstances, shall not be affected by such a holding and shall continue in full force and effect. To this end, the provisions of this Chapter are severable.

Section 2. Copies of this Ordinance shall be posted for two days prior to adoption in the display case located near the walkway in front of the Maudelle Shirek Building, 2134 Martin Luther King Jr. Way. Within 15 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.