



Office of the Mayor

REVISED AGENDA MATERIAL

Meeting Date: May 2, 2023

Item Number: #1

Item Description: Adding BMC Chapter 13.107, Helping Achieve Responsible Development with Healthcare and Apprenticeship Training Standards (HARD HATS) Ordinance

Supplemental/Revision Submitted By: Mayor Jesse Arreguín

“Good of the City” Analysis:

The analysis below must demonstrate how accepting this supplement/revision is for the “good of the City” and outweighs the lack of time for citizen review or evaluation by the Council.

The revised item includes:

- 1) Changes to the “Recommendation” section to clarify the item formally refers an analysis of these new requirements as part of the upcoming Development Feasibility Analysis and to examine fee and zoning adjustments, if necessary, based on the results of the feasibility analysis;
- 2) Revisions to # 3 in the “Recommendation” section to specify additional implementation steps to be included in the ordinance implementation plan;
- 3) Clarifying changes in the Ordinance as recommended by the City Attorney’s office.

The “good of the city” outweighs the lack of time for citizen review or evaluation by the Council.

Consideration of supplemental or revised agenda material is subject to approval by a two-thirds vote of the City Council. (BMC 2.06.070)

A minimum of **42 copies** must be submitted to the City Clerk for distribution at the Council meeting. This completed cover page must accompany every copy.

Copies of the supplemental/revised agenda material may be delivered to the City Clerk Department by 12:00 p.m. the day of the meeting. Copies that are ready after 12:00 p.m. must be delivered directly to the City Clerk at Council Chambers prior to the start of the meeting.

Supplements or Revisions submitted pursuant to BMC § 2.06.070 may only be revisions of the original report included in the Agenda Packet.



Office of the Mayor

ACTION CALENDAR
May 2, 2023

To: Honorable Members of the City Council
From: Mayor Jesse Arreguín
Subject: Adding BMC Chapter 13.107, Helping Achieve Responsible Development with Healthcare and Apprenticeship Training Standards (HARD HATS) Ordinance

RECOMMENDATION

- 1) Adopt a first reading of an Ordinance adding Chapter 13.107 to the Berkeley Municipal Code establishing healthcare and apprenticeship standards for private development.
- 2) Refer the City Manager and Planning Commission ~~if necessary~~ to:
 - a) Include an analysis ~~of the costs~~ of these new healthcare and apprenticeship requirements on private development as part of the Housing Feasibility Study currently underway and direct the City Manager expedite completion of this analysis;
 - b) Based on the findings of the feasibility study, recommend adjustments to impact fees if needed to offset the cost of these new requirements to maintain economic feasibility of projects;
 - c) Bring back to the City Council proposed changes to enabling legislation to enable fee reductions if needed;
 - d) ~~Consider upzoning the C-DMU Downtown Mixed-Use District zoning to allow for an increased number of taller exceptions (at or above 180 feet in height) and explore~~ Explore other zoning modifications to allow for additional density as a way to offset the cost of these new labor standards if needed.
- 3) Refer to the Fiscal Year 2024 Budget Process funding as determined necessary by the City Manager to fund the implementation of this new law, and direct the City Manager to develop an implementation plan and timeline for this new Ordinance, coordination with implementing departments, notice to applicants of the new requirements, required forms, informational materials, and notice on how optional hourly contributions to the California Apprenticeship Council are calculated to satisfy the requirements in Section 13.107.040(a).

CURRENT SITUATION AND ITS EFFECTS

On September 20, 2022, the City Council approved a referral to the City Attorney and City Manager to draft a HARD HATS Ordinance for adoption.¹ The purpose of the ordinance is to address the shortage of qualified local construction workers, rising labor costs, and set a new bar for labor standards in the local construction industry. This ordinance is intended to improve the recruitment, training, and retention of skilled construction workers, ensuring larger

¹ *The recommended action included the City Attorney and City Manager returning the Ordinance back to council for action on December 13, 2022. Additional time was needed to allow for Council to meet with city staff and developers to address questions raised, allow staff to review the legal terms and elements of the ordinance, and collaborate to ensure success for the community and for our city staff.*

projects within the City are awarded to contractors that participate in high quality, industry-proven apprenticeship programs, and that apprentices working under such contracts are competently trained. This ordinance also requires contractors to cover healthcare expenses. Together, these policies will increase the pool of labor available to complete current and future projects.

The following compares elements included in the September 2022 referral with those in the new Ordinance:

1. Scope:
 - a. The City shall require contractor prequalification for covered General Plan Area projects (“Covered Projects”), which are projects consisting of construction, alteration, demolition, installation, remediation, repair, or remodel of 50,000 square feet or more of floor area.
 - b. All contractors or subcontractors of any tier (“Contractors”) entering into a contract on a Covered Project valued in excess of ½ of one percent of the value of the prime contract for the Covered Project must be prequalified.

Included in Ordinance:

a. Prequalification requirements are laid out in Section 13.107.050(a), which requires Contractors to submit a statement and prequalification documents showing that they meet the requirements of the Ordinance.

b. In conversations with stakeholders, this will not be included.

2. Apprenticeship:
 - a. For purposes of the “Covered Project”, each Contractor shall do at least one of the following (and shall sign a statement certifying that on the Covered Project it will do at least one of the following):
 - i. participate in a joint labor-management apprenticeship program;
 - ii. participate in an apprenticeship program approved by the State of California Division of Apprenticeship Standards that has a graduation rate of 50% or higher and has graduated an average of at least thirty (30) apprentices annually for the five (5) years immediately preceding the Covered Project. The Contractor will also maintain at least the ratio of apprentices required by California Labor Code section 1777.5 for the duration of the Covered Project. Any change in program participation must be immediately provided to the City; or
 - iii. make and require its subcontractors to make hourly contributions to the CAC for every apprenticeable craft hour worked on the Covered Project of at least the apprenticeship contribution rate for the classification of “plumber, pipefitter, steamfitter” in Alameda County.²

² See hourly contribution rate for the “plumber, pipefitter, steamfitter” via <https://www.dir.ca.gov/OPRL/pwappwage/wage/21201583.html?VarWageld=21201583>. The form for making contributions is found here: <https://www.dir.ca.gov/DAS/tf/cac2.asp>.

- b. Contributions to an apprenticeship program or the CAC³ shall not be credited towards compliance with BMC Chapter 13.99 (Minimum Wage).
- c. Upon review of the ordinance after 2 years, the City Council will consider whether to supplement the ordinance with a 180 consecutive day apprenticeship prequalification requirement.

Included in Ordinance:

a) As stipulated in 13.107.040 Apprenticeship Requirements, the City outlines the appropriate language to describe compliance in line with this element. For element a.iii, contractors will be given an option to make hourly contributions on a monthly basis, and, in the case Contractors do not have Covered Construction Worker employees, require them to show a contractual obligation with subcontractors that matches this standard. Furthermore, any Applicant/Permittee will be required to ensure this Apprenticeship requirement will be included during a contract's performance of the Covered Project.

b) Section 13.107.050(d) states that health care expenditures shall not be credited towards minimum wage compliance.

c) Upon review and discussion with staff and stakeholders, this apprenticeship prequalification requirement was removed for administrative simplicity and replaced with an apprenticeship hiring or fee requirement.

3. Health Care Security:

- a. In order to be prequalified, each Contractor will sign a statement stipulating to and providing documented proof that the Contractor, in addition to the regular hourly wages paid to its construction worker employees ("Covered Construction Workers"), has made Required Health Care Expenditures to or on behalf of each Covered Construction Worker for 180 consecutive days prior to the submission of the prequalification documents, during periods of employment.
 - i. The Required Health Care Expenditure is calculated by multiplying the number of hours worked by the hourly Health Care Expenditure Rate.
 - ii. The Health Care Expenditure Rate shall be determined annually from the "average contribution" based on the City and County of San Francisco Health Service System's annual 10-County Survey amount for Alameda County for the applicable fiscal year. Such "average contribution" shall be prorated on an hourly basis by dividing the monthly average contribution for Alameda County by one hundred and fifty (150), the typical number of hours worked in a month by a construction worker.
 - iii. In the case of a Contractor that has employed no Covered Construction Workers for 180 consecutive days prior to the submission of the prequalification documents, said Contractor must have had an ongoing contractual obligation to hire subcontractors during that period that provide Required Health Care Expenditures.

³ California Apprenticeship Council

- b. For purposes of the Covered Project, each Contractor shall make Required Health Care Expenditures to or on behalf of each Covered Construction Worker in addition to their regular hourly wages during periods of employment (and sign a statement certifying that it will do so on the Covered Project). In the case of a Contractor that will employ no Covered Construction Workers on the Covered Project, said Contractor shall make Required Health Care Expenditures on behalf of the Covered Construction Workers employed by its subcontractor(s) in the event said subcontractor(s) fail(s) to make Required Health Care Expenditures in accordance with this ordinance.
- c. Required Health Care Expenditures may be made to a health plan in which the Covered Construction Worker is enrolled, to a Covered Construction Worker's health savings account, and/or to a Covered Construction Worker in the form of cash at double the rate of the Required Health Care Expenditures.
- d. Contractors shall maintain accurate records of the Required Health Care Expenditures, and proof of same, and allow the City reasonable access to such records.
- e. Required Health Care Expenditures shall not be credited towards compliance with BMC Chapter 13.99 (Minimum Wage).

Included in Ordinance:

- a) As stipulated in 13.107.050 Health Care Expenditures, the City outlines the appropriate language to describe compliance in line with this element, including requiring Contractors to sign and submit an attestation of compliance, as well as documenting proof of themselves and subcontractors making Health Care Expenditures. To eliminate the unfair application of this provision for contractors who do not have regularly permanent Covered Construction Workers, the City stipulates they will need to show a contractual obligation with its subcontractors matches this standard.
 - b & c) In section c) of 13.107.050, Contractors are provided flexibility in paying towards Required Health Care Expenditures. The City stipulates payments may be provided in one of many ways, including health plans, health savings accounts (HSAs), and/or cash at one and a half the rate of the Health Expenditure Rate. Any Applicant/Permittee will be required to ensure this Health Care requirement will be included during the performance of the Covered Project.
 - d) The City added requirements in section 13.107.060 Required Applicant/Permittee and Contractor Statements and 13.107.090 Retention of Records that will facilitate the documentation, submission, and retention of statements certifying compliance with the City, as well as access to relevant records for authorized City representatives for the purpose of monitoring compliance.
 - e) Section e) of 13.107.050 complies with this element.
4. Contractor Commitment Statement:
- a. Each Contractor will sign a statement stipulating that on the Covered Project it will continue to make contributions to an apprenticeship program or the CAC and Required Health Care Expenditures as set forth above for the duration of the Covered Project.

Included in Ordinance:

a) As stipulated in 13.107.060 Required Applicant/Permittee and Contractor Statements, the City outlines the appropriate language in line with this element. The ordinance stipulates any Applicant/Permittee must sign and submit to the City a declaration describing compliance with the Apprenticeship and Health Care expenditures requirements within seven (7) days of receipt of permit issuance for the Covered Project. In addition, the Applicant/Permittee shall sign and submit to the City a declaration that it will comply with the Apprenticeship and Health Care Expenditures in this ordinance during the duration of the Covered Project (“Contractor Prequalification Questionnaire”) no later than seven (7) calendar days before their first day of work on the Covered Project. Furthermore, each Contractor must sign and submit to the permittee a statement certifying they complied with the requirements of this ordinance within 30 calendar days of completing their work on the Project. Prior to the issuance of a certificate of occupancy for the Covered Project, the permittee shall sign and submit to the City a certification that All Contractors on the Covered Project are in compliance.

5. Community Benefits Agreement Exception:

a. If an otherwise Covered Project is covered by a Project Labor Agreement (or Community Benefits Agreement or similar labor agreement) with the Building and Construction Trades Council of Alameda County, Contractors will be deemed in compliance with the Apprenticeship and Health Care Security provisions of the ordinance as such agreements already require health care coverage and apprenticeship fund contributions. Such agreements also deter unscrupulous contracting practices by bidders and contractors, promote stable construction careers for trade workers, and increase the capacity of local apprenticeship and training programs.

Included in Ordinance:

a) As stipulated in 13.107.111 Implementation and Enforcement, section b. *Community Benefits Agreement Exception*, the City outlines the appropriate language in line with this element.

6. The final ordinance shall contain severability language.

Included in Ordinance:

a) As stipulated in 13.107.114 Severability, the City outlines the appropriate language in line with this element.

IMPLEMENTATION, ADMINISTRATION, ENFORCEMENT, OUTCOMES AND EVALUATION

The ordinance has been revised to require declarations which must be submitted to a designated City department. Council will discuss and determine what department(s) that may be the implementing departments (i.e. Planning, HHCS Labor Standards Enforcement).

This ordinance with the exception of receiving submitted declarations and verifying receipt by deadlines, would largely be self-enforcing through complaints or private right of action, with some exceptions. Exceptions include:

- Prior to issuance of a certificate of occupancy for the Covered Project, the permittee shall sign and submit to the City a certification that all Contractors on the Covered Project satisfied the Apprenticeship and Health Care Expenditures requirements of this ordinance (“Permittee Certification of Compliance”); and

- The City shall issue permits for the Covered Project only where Applicant meets the requirements of this Ordinance and submits the Applicant Commitment Statement.

The City may revoke or modify the applicable permits for the Covered Project pursuant to Section 23.404.080 where Applicant or any Contractor is out of compliance with the conditions of the permit and this Ordinance.

Developers will be made aware of this ordinance during the entitlement process. The City shall publish and make available to Contractors a notice in English, Spanish, and any other primary languages as determined by City staff, for posting by Contractors in the workplace informing workers of their rights under this ordinance.

A Contractor shall give written notification to each current Covered Construction Worker and to each new Covered Construction Worker at time of hire of their rights under this ordinance. The notification shall be in English and Spanish, and any other primary languages as determined by City staff, and must be posted prominently in areas at the work site where it will be seen by all Covered Construction Workers. Failure to post such notice shall render the Contractor subject to administrative citation, pursuant to the provisions of this ordinance. The City is authorized to prepare sample notices and a Contractor's use of such notices shall constitute compliance with this subsection.

The City may take appropriate enforcement action to ensure compliance with this ordinance, including issuing an administrative citation pursuant to Chapter 1.28 of the Berkeley Municipal Code. The City may issue a citation with respect to any Contractor or Applicant/Permittee that submitted a false or misleading prequalification questionnaire; has not, in fact, complied with the Apprenticeship and/or Health Care Expenditures requirements of this ordinance; and/or has not submitted a Contractor Prequalification Questionnaire.

In the event that any person identifies a Contractor or permittee on a Covered Project not complying with this ordinance as required, the person may file a complaint with the City. Complaints shall be made on a form prepared by the City and made available through the City's website. Upon receipt of such a complaint, the City shall investigate the complaint and, if a violation is found, issue a citation to the Owner and/or the Contractor. The citation will give the Contractor ten (10) days to correct the violation.

If a Contractor subject to a citation does not correct the violation within ten (10) days, the City shall issue a penalty of \$1,000 per calendar day for the first calendar week, doubling for each successive week and capping out at \$5,000 per calendar day.

If the Contractor has received a citation under this Ordinance, or has otherwise been penalized under this Ordinance, within the prior twelve (12) months, the penalty shall be \$2,000 per calendar day for the first calendar week, doubling for each successive week and capping out at \$8,000 per calendar day. In this event, the prime contractor shall be jointly and severally liable for the penalty.

The City shall review the complaints filed under this Ordinance on a monthly basis to determine if any person or entity has been associated with three or more violations of the Ordinance within the last 24 months. Any such person or entity shall be placed on a public list available on the

City of Berkeley's website and shall be prohibited from working on Covered Projects for a period of 24 months from their most recent violation.

If the Repeat Offender again violates the Ordinance as determined by the City or the Superior Court, then the Applicant/Permittee or Contractor who contracted with the Repeat Offender shall be jointly and severally liable for any and all penalties, damages, or other financial obligations incurred by the Repeat Offender.

FISCAL IMPACTS OF RECOMMENDATION

In creating a new system of receiving and reviewing documents to ensure compliance and oversight, the City will need a budget for creating and ultimately conducting an implementation plan. The referral made to the City Manager to create a process for estimating this budget shall include an allocation of funds for staffing and operational needs. Following approval of the relevant recommendation the City Manager will incorporate this budget into an implementation plan for this ordinance.

ENVIRONMENTAL SUSTAINABILITY

No negative impact. The use of a skilled and trained workforce is a green building practice which improves the quality and environmental performance of construction.

CONTACT PERSON

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Anthony Rodriguez, Senior Legislative Assistant	(510) 981-7102

Attachments:

1. Proposed Ordinance
2. September 11, 2022 HARD HATS Referral

Internal

ORDINANCE NO.

ADDING CHAPTER 13.107 TO THE BERKELEY MUNICIPAL CODE ESTABLISHING HEALTHCARE AND APPRENTICESHIP STANDARDS FOR PRIVATE DEVELOPMENT

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

Section 1. That Chapter 13.107 is hereby added to the Berkeley Municipal Code as follows:

ESTABLISHING HEALTHCARE AND APPRENTICESHIP STANDARDS FOR PRIVATE DEVELOPMENT

13.107.010 Title

13.107.020 Purpose

13.107.030 Definitions

13.107.040 Apprenticeship Requirements

13.107.050 Required Health Care Expenditures

13.107.060 Required Applicant and Contractor Statements

13.107.070 Notice and Publishing

13.107.080 Retaliation Prohibited

13.107.090 Retention of Records

13.107.110 City Access

13.107.111 Implementation and Enforcement

13.107.112 City Undertaking Limited Promotion of General Welfare

13.107.113 No Preemption of Higher Standards

13.107.114 City Manager Regulations

13.107.~~114~~-115 Severability

13.107.010 Title.

This Ordinance shall be known as the Helping Achieve Responsible Development with Healthcare and Apprenticeship Training Standards ("HARD HATS") Ordinance.

13.107.020 Purpose.

The purpose of this Chapter is to address the shortage of qualified construction workers, rising labor costs, and to refine labor standards in the local construction industry. These measures are intended to improve the recruitment, training, and retention of skilled construction workers.

The requirements of this Chapter ensure that larger projects within the City are awarded to contractors that participate in high quality, industry-proven apprenticeship programs, and that apprentices working under such contracts are competently trained.

The requirements of this Chapter also enhance the good health of construction workers working in the City, thereby increasing the pool of labor available to complete current and future projects, including City public works projects for which the City contracts on a regular basis.

Together, the requirements of this Chapter will help promote the retention and growth of a skilled labor pool in the construction industry that can live as well as work in the City.

13.107.030 Definitions.

"Applicant" shall mean any individual, person, firm, partnership, association, joint venture, corporation, entity, combination of entities or authorized representative thereof, who undertakes, proposes and/or applies to the City for, a Covered Project.

"Apprenticeable Craft or Trade" is defined in California Labor Code section 1777.5.

"Contractor" shall mean contractors or subcontractors of any tier that have contracted to perform work on the Covered Project in excess of ½ of one percent of the total Cost of the Covered Project.

"Cost of the Covered Project" shall mean the amount determined by the Chief Building Official for purposes of setting the building permit fee in accordance with the most recent building valuation date specified in the building permit fees section of the resolution establishing fees and charges as adopted by the City Council.

"Covered Project" shall mean a private development project within City limits consisting of construction, alteration, or demolition of 50,000 square feet or more of floor area which has not received its final permits, variances, approvals and/or other entitlements by the effective date of this [Ordinance](#).

"Covered Construction Worker" shall mean any construction workers employed by the Contractor at any time over ~~for~~ the duration of the Covered Project.

"City" shall mean the City of Berkeley and any implementing department or official.

"Health Care Expenditures" shall mean the amount calculated by multiplying the number of hours worked by a Covered Construction Worker on the Covered Project by the hourly Health Care Expenditure Rate.

"Health Care Expenditure Rate" shall mean the rate determined annually from the City of Berkeley Health and Dental Plan Monthly Premium Rates ~~in~~ for the Kaiser HSA-Qualified Deductible HMO Plan, or a successor plan, for the applicable fiscal year. The Health Care Expenditure Rate shall be prorated on an hourly basis, and arrived at by dividing the total monthly premium for the Kaiser HSA-Qualified Deductible HMO Plan, or a successor plan, by one hundred and fifty (150), the typical number of hours worked in a month by a construction worker.

"Joint Labor-Management Apprenticeship Program" shall mean an apprenticeship program jointly managed and administered by both a union and contractor or contractor association, and

Internal

(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.

"Project Labor Agreement" shall mean a pre-hire collective bargaining agreement with one or more labor organizations that establishes the terms and conditions of employment for a specific construction project.

"Repeat Offender" shall mean an Applicant, Contractor, or entity that has received three or more violations of this Chapter within the last 24 months.

13.107.040 Apprenticeship Requirements

a. During the duration of the Covered Project, each Contractor shall do at least one of the following:

i. participate in a Joint Labor-Management Apprenticeship Program;

ii. participate in an apprenticeship program approved by the State of California Division of Apprenticeship Standards that has a graduation rate of 50% or higher and has graduated an average of at least thirty (30) apprentices annually for the five (5) years immediately preceding the start of construction date on the Covered Project. The Contractor will also maintain at least the ratio of apprentices required by California Labor Code section 1777.5 for the duration of the Covered Project. Any change in program participation must be immediately provided to the City; or

iii. make hourly contributions on a monthly basis to the California Apprenticeship Council for every hour worked by any Covered Construction Worker in any Apprenticeable Craft or Trade on the Covered Project of at least the apprenticeship contribution rate for the classification of "plumber, pipefitter, steamfitter" in Alameda County.

b. A Contractor without Covered Construction Worker employees shall comply with this Section by showing a contractual obligation that its subcontractors comply with this [subdivisionSection](#).

c. Contributions to an apprenticeship program or the California Apprenticeship Council shall not be credited towards compliance with BMC Chapter 13.99 (Minimum Wage).

d. Applicant shall ensure that the Apprenticeship requirement in this Section is included in all [construction](#) contracts for the performance of the Covered Project.

13.107.050 Health Care Expenditures

a. *Prequalification:* In order to be prequalified, each Contractor will sign and submit to the City a statement stipulating to and providing documented proof that the Contractor and its subcontractors, ~~must~~ have provided Health Care Expenditures to or on behalf of each Covered Construction Worker for the 180 consecutive day period prior to the submission of the prequalification documents ("[Contractor Prequalification Questionnaire](#)"). This requirement is in addition to the regular hourly wages paid to its employees.

In the case of a Contractor that has employed no Covered Construction Workers for the 180 consecutive day period prior to the submission of the prequalification documents, said

Internal

Contractor shall show a contractual obligation that its subcontractors ~~will provide Health Care Expenditures to or on behalf of each Covered Construction Worker for the duration of the covered project.~~ provide Health Care Expenditures to or on behalf of each Covered Construction Worker employee for the 180 consecutive day period.

b. *Covered Project Duration:* For purposes of the Covered Project, each Contractor shall make Health Care Expenditures to or on behalf of each Covered Construction Worker, in addition to their regular hourly wages, during periods of employment on the Covered Project (and sign a statement certifying that it will do so as part of the Contractor Prequalification Questionnaire).

In the case of a Contractor that will employ no Covered Construction Workers on the Covered Project, said Contractor shall show a contractual obligation that its subcontractors will provide Health Care Expenditures on behalf of each Covered Construction Worker for the duration of the Covered Project.

A Contractor shall make Health Care Expenditures on behalf of the Covered Construction Workers employed by its subcontractors in the event said subcontractors fail to make required Health Care Expenditures.

c. Health Care Expenditures may be made to: (1) a health plan in which the Covered Construction Worker is enrolled at the Health Care Expenditure Rate; (2) a Covered Construction Worker's health savings account at the Health Care Expenditure Rate; and/or (3) a Covered Construction Worker in the form of cash at one and a half (1.5) times the rate of the Health Care Expenditure Rate.

d. Health Care Expenditures shall not be credited towards compliance with BMC Chapter 13.99 (Minimum Wage).

e. The Applicant shall ensure that the Health Care Expenditures requirements in this Section are included in all construction contracts for the performance of the Covered Project.

13.107.060 Required Applicant and Contractor Statements

A declaration must be signed by the Applicant at the time of permit issuance for the Covered Project, attesting to compliance with this Chapter under penalty of perjury ("Applicant Declaration"). By signing the Applicant Declaration, the Applicant commits to ensuring that all Contractors on the Covered Project have and will comply with the Apprenticeship and Health Care Expenditures requirements of this Ordinance, including by ensuring that all contracts for the performance of the Covered Project so require, requiring all Contractors complete the statements established by this Section, and submitting all Contractor statements to the City within seven (7) days of receipt.

Prior to executing their contract for the Covered Project, but no later than seven (7) calendar days before their first day of work on the Covered Project, each Contractor will sign and submit to the Applicant a statement stipulating that on the Covered Project it will comply with the Apprenticeship and Health Care Expenditures as set forth in this Chapter during the duration of the Covered Project, and that it has met the Health Care Expenditures prequalification requirements ("Contractor Prequalification Questionnaire").

Internal

Within 30 calendar days of completing their work on the Project each Contractor must sign and submit to the Applicant a statement certifying that it complied with the Apprenticeship and Health Care Expenditures requirements of this Chapter ("Contractor Satisfaction Statement").

Prior to issuance of a certificate of occupancy for the Covered Project, the Applicant shall sign and submit to the City a certification that all Contractors on the Covered Project satisfied the Apprenticeship and Health Care Expenditures requirements of this [Ordinance](#) ("Applicant Certification of Compliance").

13.107.070 Notice and Posting

a. The City shall publish and make available to Contractors a notice in English, Spanish, and any other primary languages as determined by City staff, for posting by Contractors in the workplace informing Covered Construction Workers of their rights under this [Chapter](#) ("Sample Notice").

b. A Contractor shall give written notification to each current Covered Construction Worker and to each new Covered Construction Worker at time of hire of their rights under this [Chapter](#). The notification shall be in English and Spanish, [and any other primary languages as determined by City staff](#), and shall also be posted prominently in areas at the work site where it will be seen by all Covered Construction Workers. Failure to post such notice shall render the Contractor subject to administrative citation, pursuant to the provisions of this Chapter. A Contractor's use of the City's Sample Notices shall constitute compliance with this [Subsection](#).

13.107.080 Retaliation Prohibited

A Contractor shall not discharge, reduce the compensation of, discriminate against, or take any adverse employment action against a worker, including discipline, suspension, transfer or assignment to a lesser position in terms of job classification, job security, or other condition of employment, reduction of hours or denial of additional hours, informing another employer that the person has engaged in activities protected by this [Chapter](#), or reporting or threatening to report the actual or suspected citizenship or immigration status of an employee, former worker or family member to a federal, state or local agency, for making a complaint to the City, participating in any of the City's proceedings, using any civil remedies to enforce their rights, or otherwise asserting their rights under this [Chapter](#). Within one hundred twenty (120) days of a Contractor being notified of such activity, it shall be unlawful for the Contractor to discharge any workers who engaged in such activity unless the Contractor has clear and convincing evidence of just cause for such discharge.

13.107.090 Retention of Records

Applicants and Contractors shall maintain the following records for the Covered Project at least three (3) years after receiving approved final inspection:

- 1) Applicant Declaration;
- 2) Contractor Prequalification Questionnaires;
- 3) Contractor Satisfaction Statements [certifying compliance with the Health Care Expenditures and Apprenticeship requirements \(Sections 13.107.040 and .050\)](#) of this Chapter;
- 4) Records reflecting Contractors' compliance with the Health Care Expenditures and Apprenticeship requirements (Sections 13.107.040 and .050) of this Chapter, including

Internal

records of names of all Covered Construction Workers, dates those workers worked for the Contractor, and Health Care Expenditures the Contractor made to or on behalf of those workers; and

- 5) Applicant Certification of Compliance.

13.107.110 City Access

Applicant and Contractors shall permit access to Covered Project work sites and relevant records for authorized City representatives for the purpose of monitoring compliance with this Chapter and investigating worker complaints of noncompliance. Access to records will be provided within a reasonable amount of time of the City's request, but no longer than 30 days. Failure to provide access to records may be subject to City enforcement as permitted in Section 13.107.111.

13.107.111 Implementation and Enforcement

a. Issuance and Revocation of Permits

The City shall issue permits for the Covered Project only where an Applicant meets the requirements of this Ordinance and submits the Applicant Declaration. The City shall include conditions of approval requiring compliance with this Chapter for all permits issued for Covered Projects. The City may revoke or modify the applicable permits for the Covered Project pursuant to Section 23.404.080 where an Applicant or any Contractor is out of compliance with this Ordinance.

b. Community Benefits Agreement Exception

If ~~an otherwise~~ Covered Project is covered by a Project Labor Agreement (or community workforce agreement or similar labor agreement) with the local Building and Construction Trades Council ~~that already requires health care expenditures and apprenticeship fund contributions~~, Contractors will be deemed in compliance with this Chapter.

c. Collective Bargaining Agreement Exception

A Contractor that is signatory to a valid collective bargaining agreement ~~with a labor union~~ with a labor union that requires participation in a ~~joint labor-management~~ state-approved apprenticeship program and the provision of health care expenditures to all construction craft employees shall be deemed in compliance with this Chapter.

d. City Enforcement.

The City may take appropriate enforcement action to ensure compliance with this Chapter, including issuing an administrative citation pursuant to Chapter 1.28 of the Berkeley Municipal Code. The City may issue a citation to any Contractor ~~or~~ Applicant ~~or entity~~ that has not complied with the requirements of this Chapter, including but not limited to, the following violations:

- (1) failing to post the required notice (Section 13.107.070);
- (2) refusing to or not providing timely access to records or work sites (Section 13.107.110);

Internal

(3) failing to submit or submitting a false or misleading Applicant Declarations, Contractor Prequalification Questionnaires, Contractor Satisfaction Statements, and/or Applicant Certificates of Compliance ([Section 13.107.060](#)); and/or

(4) failing to comply with the Apprenticeship and/or Health Care Expenditures requirements of this Chapter ([Sections 13.107.040 and 13.107.050](#)).

The fine shall vary based on the provisions of this Chapter violated, but may be up to a maximum of \$5,000/month per Covered Construction Worker during the period of the violation.

In the event that any person identifies a Contractor or Applicant on a Covered Project not complying with this Ordinance as required, the person may file a complaint with the City. Complaints shall be made on a form prepared by the City and made available through the City's website. Upon receipt of such a complaint, the City shall investigate the complaint and, if a violation is found, issue a citation to the Applicant and/or the Contractor. The citation will give the Applicant and/or Contractor ten (10) days to correct the violation.

If a Contractor or Applicant subject to a citation does not correct the violation within ten (10) days, the City shall issue a penalty of \$1,000 per calendar day for the first calendar week, increasing to \$2,500 per calendar day for successive calendar weeks.

If the Contractor or Applicant has received a citation or has otherwise been penalized under this Ordinance, within the prior twelve (12) months, the penalty shall be \$2,000 per calendar day for the first calendar week, increasing to \$3,500 per calendar day for successive calendar weeks. If a subcontractor receives a citation under this Ordinance, the prime contractor shall be jointly and severally liable for the penalty.

d. 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 the Contractor (and in the case of a Repeat Offender, the Applicant or Contractor who contracted with the Repeat Offender) violating 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 including, without limitation, the payment of Health Care Expenditures that may have been unlawfully withheld and/or injunctive relief. Nothing in this Chapter creates a private right of action or otherwise authorizes legal action against the City, its officers, agents, or employees, for failure to enforce these provisions.

e. Repeat Offender List.

The City shall review the complaints filed under this Ordinance on a monthly basis to determine if any person or entity has received three or more violations of the Ordinance within the last 24 months. Any such person or entity shall be designated a Repeat Offender and be placed on a public list available on the City of Berkeley's website and shall be prohibited from working on future Covered Projects for a period of 24 months from their most recent violation. The City shall provide a notice of Repeat Offender designation through personal service, or by registered mail, postage prepaid, addressed to the person or entity's address on file with the City.

Internal

If, after being designated a Repeat Offender, the Repeat Offender again violates the Ordinance as determined by the City or the Superior Court, then the Applicant or Contractor who contracted with the Repeat Offender shall be jointly and severally liable for any and all penalties, damages, or other financial obligations incurred by the Repeat Offender.

Any person or entity shall be entitled to appeal the City's decision to place it on the Repeat Offender List by filing a written notice of appeal with the City Manager within ten days from the date the notice of Repeat Offender designation is mailed. The appeal shall clearly and concisely set forth the grounds upon which it is based. If the permittee files a timely request for appeal, a hearing shall be held before the City Manager or their designee. The decision of the City Manager or their designee shall be final.

13.107.112 City Undertaking Limited Promotion of General Welfare

In undertaking the adoption and enforcement of this Chapter, the City is undertaking only to promote the general welfare. The City is not assuming, nor is it imposing on its officers and workers, an obligation for breach of which it is liable in money damages to any person who claims that such breach proximately caused injury. This Chapter does not create a legally enforceable right by any member of the public against the City.

13.107.113 No Preemption of Higher Standards

The purpose of this Chapter is to ensure minimum labor standards. This Chapter does not preempt or prevent the establishment of superior employment standards or the expansion of coverage by ordinance, resolution, contract, or any other action of the City.

13.107.114 City Manager Regulations

The City Manager may promulgate regulations for the administration and enforcement of this Chapter.

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13.107.114-115 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. Effective Date

The effective date of this Ordinance shall be January 1, 2024.

Section 3. 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.