

ORDINANCE NO. 20070621-152

**AN ORDINANCE ADOPTING A POLICY TO PROCURE AND MAINTAIN
CONTRACTS THAT SUPPORT HUMANE AND LEGAL LABOR PRACTICES.**

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF AUSTIN:

PART 1. The City of Austin adopts the Procurement Code for Humane Workplace Conditions (Workplace Conditions Code) set forth in this ordinance to encourage responsible contracting and to eliminate inadvertent support of those vendors using illegal sweatshop labor. This ordinance shall not be interpreted to attempt to preclude the City or its vendors from doing business with companies that have operations in a foreign country.

PART 2. Definitions.

- (1) *Apparel* means all garments or items of clothing any part of which is a textile produced by weaving, knitting or felting; and all shoes and other footwear as well as corresponding accessories.
- (2) *Contract* means an agreement to procure equipment, goods, materials or supplies for an amount exceeding \$5,000 to be purchased or provided at the expense of the City.
- (3) *Debarment* means removal from the City's list of eligible vendors any contractor or subcontractor who has been cited as a violator of the ordinance for a period to be determined by the City Manager.
- (4) *Vendor* means a person, partnership, corporation, or other entity that has a current procurement relationship, that is entering a contract with the City for the performance of all or some of the work included in the scope of services for the City, or is bidding to provide products or services to the City. The term vendor includes a bidder, contractor, subcontractor, or supplier.
- (5) *Worker* means:
 - (A) any employee of a vendor who contributes to the provisions of goods to the City under a contract, including but not limited to any manufacturing or assembling of goods;

- (B) any individual who may be required or directed by any employers, in consideration of direct or indirect gain or profit, to engage in any employment, or to go to work or be at any time in any place of employment; and
- (C) includes individuals whose work is permanent or temporary, on a full-time or part-time basis, as a contractor or payroll employee.

PART 3. The policy defined by this ordinance applies to the procurement and laundering of apparel in City contracts exceeding \$5,000. Procurement includes contract, purchase, rental, lease, or allowance and voucher programs.

PART 4. Findings.

- (A) As a major purchaser of goods, the City recognizes its important role to maintain a clear public policy to procure goods and services from vendors that provide humane working conditions for the workers producing their products.
- (B) Better working conditions consistently promote better quality goods for the City by assuring fewer workplace injuries, reduced absences due to illness or fatigue, fewer disruptions in the workplace, lower turnover of workers and a greater incentive to perform efficiently.
- (C) Garment purchases represent a substantial annual expense for the City, totaling at least \$1.7 million in Fiscal Year 2005 alone.
- (D) The prudent expenditure of public dollars requires that the City select responsible vendors who operate production facilities in a humane manner and in compliance with all federal, state, and local laws.
- (E) Vendors engaging in illegal or abusive sweatshop practices that violate the most basic human labor rights such as the use of child, indentured, or prison labor; unhealthy and unsafe work environments, below-subsistence wages, excessively long working hours, and harassment, abuse, or disregard for fundamental human rights, place responsible, law-abiding vendors at a competitive disadvantage because they are able to underbid responsible vendors who pay fair and legal wages and maintain safe work environments required by law.
- (F) These vendors influence the entire supply chain, including workers in subcontractor and subsidiary factories, and the apparel industry is an area where the City can have direct impact on the rights and well being of working people at home and abroad.

- (G) The City recognizes the rights of citizens to know how their tax dollars are spent and seeks to assure that the taxpayers' dollars are not paid to vendors who engage in illegal or abusive sweatshop practices that violate the most basic human labor rights such as: the use of child, indentured, or prison labor; unhealthy and unsafe work environments; below-subsistence wages; excessively long working hours; and harassment, abuse, or disregard for fundamental human rights.

PART 5. Prohibition of Sweatshop Conditions.

A vendor who engages in or bids for City contracts shall comply with the requirements in each subsection and may not supply goods or services to fulfill a City contract except as provided below. These requirements shall be known as the Workplace Conditions Code.

- (A) Compliance With All Laws. A vendor shall comply with all federal, state, and local laws and workplace regulations, including those regarding wages and benefits, workplace health and environmental safety, freedom of association, and the fundamental conventions of the International Labor Organization, including those regarding forced and child labor and freedom of association.
- (B) Harassment and Abuse. A vendor shall not engage in behavior that harasses or abuses a worker in a sexual, psychological, or verbal manner. Nor shall a vendor use corporal punishment in its employment practices.
- (C) Discrimination. A vendor shall not engage in discriminatory employment practices, as defined in Title 5 of the City Code, on the basis of gender, race, religion, age, disability, sexual orientation, nationality, political opinion, or social or ethnic origin in hiring, salary, benefits, advancement, disciplinary action, termination, or retirement. A vendor shall not require pregnancy tests as a condition of employment nor demand pregnancy tests of employees. Women workers shall receive equal treatment and remuneration, including pay, benefits, and the opportunity to fill a position that is open to a male worker.
- (D) Exposure to Toxins. A vendor shall not expose a worker to toxic chemicals that may endanger a worker's health. A vendor shall take appropriate measures to safeguard workers when any aspect of work requires exposure to any toxic chemical. If a federal, state, or local occupational safety or health law or regulation applies to the workplace condition, compliance with such a law or regulation is not a violation of this subsection.

- (E) Wages and Benefits. A vendor shall pay wages that comply with federal and state law requirements as well as the requirements set forth in the City's standard contract terms and conditions.
- (F) Wage and Hour Records. Vendors shall maintain verifiable wage and hour records for each production worker, employee or independent contractor.
- (G) Working Hours. A vendor shall not require hourly and quota-based employees to work more than 48 hours per week or the limits on regular hours allowed by the law of the country of manufacture, whichever is lower. In addition, vendors shall provide a worker with days off, as provided by applicable labor law.
- (H) Overtime Compensation. A vendor shall not require a worker to work overtime hours unless the worker is paid at a rate of at least one-and-one-half their regular hourly compensation rate as provided by the federal Fair Labor Standards Act.
- (I) Termination. A vendor shall provide for a mediation or grievance process to resolve workplace disputes if required by federal law.
- (J) Closure to Avoid Compliance. A vendor may not close or reduce orders for a production facility:
 - (1) as a punitive measure against workers for exercising their right to freedom of association; or
 - (2) to avoid its responsibility to take corrective action after there has been a determination that a violation of the Workplace Conditions Code.

PART 6. Vendor Recordkeeping Requirements.

- (A) Each City contract shall include the contractor's agreement to comply with the requirements of this ordinance and shall incorporate this ordinance by reference.
- (B) For every bid or contract for production of goods or provision of services covered by this policy, each bidder or contractor shall submit to the City the following:
 - (1) An affidavit setting forth the following information:

- (a) The country of production and names, physical addresses and phone numbers of each facility involved in the production of goods or provision of services covered by this policy, which shall be updated to show any changes in subcontractors or facilities during the term of the contract;
 - (b) An initial copy of each facility's standard payroll records, including the minimum base hourly wage of non-supervisory production employees, percent of wage level paid as health benefit, other benefits, regular deductions from paychecks, normal working hours per day and week, actual working hours per day and week, and overtime policy if any.
- (2) An agreement in which the vendor commits to the following:
- (a) That the vendor and each proposed supplier or subcontractor will adhere to the Workplace Conditions Code as defined in Part 5;
 - (b) That a copy of this code has been furnished to each of the vendor's suppliers or subcontractors; and
 - (c) That the vendor has required each supplier to post a copy of this code, including a procedure for filing complaints, in a location that is visible, obvious, and accessible in the workplace and translated into the each worker's first language.
- (3) A description of any claims or legal actions related to discrimination or worker wages, hours, or working conditions filed against the vendor in any local, state, or federal administrative agency or court in the preceding five years.
- (4) Any other information deemed necessary by the City for the administration and enforcement of this policy.
- (C) Each vendor shall retain the documents described in Subsection (B) for a period of three years after the date that the City contract is terminated.
- (D) Each vendor shall maintain regular payroll records and make such records available to the City or its agents upon the City's request. If the City makes a request under this subsection for the vendor's payroll records, the vendor shall also produce the payroll records of its subcontractors or suppliers to the City or its agents. The City may make such a request directly to a subcontractor who shall be required to submit such records directly to the City or its agents on

request. If requested by the City or its agents, all payroll records shall be accompanied by a statement signed by the vendor, stating that the records are complete and accurate.

- (E) During each year of the term of a contract, the City or its agents may request a written assurance from the contractor and each of its subcontractors that the vendor and its subcontractors and suppliers are in compliance with this ordinance. The vendor shall provide the written assurance within the time period specified by the City or its agents, which shall not be less than 14 days from the receipt of the request. A written assurance containing false or inaccurate information constitutes a breach of contract.
- (F) All records required to be maintained by this ordinance shall at all times be open to inspection and examination of the duly authorized officers and agents of the City.

PART 7. Compliance; Verification.

- (A) Each vendor shall cooperate fully with an investigation by the City or its agents. An investigation may include random site inspections of any worksite on which all or a portion of the contract is performed, access to workers to discuss compliance with this code, and access to any record required to be maintained by this ordinance.
- (B) The City may enter into an agreement with a nonprofit independent agency to assist in monitoring vendor compliance with this code. Under such an agreement, the independent monitor would receive complaints and provide monitoring, inspection, investigation, and remediation services at facilities producing goods or providing services to the City. The City's annual expenditure to monitor compliance with this code shall be in an amount not to exceed one percent of the City's annual apparel purchases. Refusal of a vendor to permit independent monitoring shall result in disqualification for bidding. An independent monitor must meet the following minimum requirements:
 - (1) It may have no relationship with any vendor subject to monitoring beyond the monitoring relationship.
 - (2) It must have knowledge of local non-governmental organizations and human rights groups to assist the City with worker interviews.

- (3) It must have knowledge of local business and financial auditing practices, health and safety standards, international labor conventions, and local laws and regulations.
 - (4) It must be able to conduct unannounced visits to a production facility and create a streamlined process for interviewing workers at the production facility without a supervisor present.
 - (5) It must be able to conduct off-site worker interviews.
 - (6) It must recognize a worker's right to decline to be interviewed without threat of a negative consequence.
 - (7) It must have knowledge of local language, vernacular, and culture relevant to conducting thorough worker interviews in their local language.
- (C) The City may expand the charge of its Human Rights Commission to serve as an advisory body on issues related to the implementation and enforcement of this ordinance, including:
- (1) the effectiveness of performance monitoring;
 - (2) assessing non-compliance reports from workers, labor unions, governments, businesses, non-government organizations and human rights advocates;
 - (3) collaborating with other public agencies to provide workers with relevant workplace information;
 - (4) providing feedback on effectiveness of penalties for violation of this ordinance;
 - (5) exploring other specific goods or services purchased by the City which may be suitable for application of this ordinance to in consideration of:
 - (a) the amount that the City has spent or is projected to spend for the good or service;
 - (b) evidence of sweatshop labor or other conditions prohibited by this ordinance in the manufacturing, assemblage or distribution of such goods or services; and

- (c) the financial impact that enforcement of this ordinance regarding those goods or services will have on the City;
- (6) exploring mechanisms employed by other governmental entities to promote compliance with their workplace procurement policies as well incentive measures they may employ to further those policies.
- (7) establishing working relationships with other public agencies that have enacted codes of conduct or ethical procurement policies; and
- (8) establishing working relationships with advocacy groups, labor organizations and other appropriate entities to share information regarding manufacturers, vendors, and suppliers.

PART 8. Enforcement; Penalties.

- (A) Complaints. Any person may complain of a violation of this ordinance. The City, including its agent designated for this purpose, shall receive and investigate complaints.
- (B) Requests for Information. Upon receiving a complaint alleging noncompliance with this ordinance, the City shall contact the vendor in a timely manner, by certified letter, that the contractor or its subcontractor is the subject of the complaint. The City shall describe the alleged violation and the requirements for responding to the notice. The contractor must respond in a timely manner with evidence that the violation did not occur, or if it did, a detailed plan for corrective action.
- (C) Access to Production and Distribution Facilities. For administration and enforcement purposes, a City vendor shall provide the City with immediate access to a facility or operation that is the subject of a complaint in order to inspect the facility or its operations and records, or to interview workers.
- (D) Independent Audit. If the City is unable to verify compliance, it may require an independent audit at the expense of the vendor, followed by a public report verifying either that the violation did not occur, or in the event that a violation did occur, that corrective action has or has not been effective.
- (E) Remediation. On a finding that a violation of this ordinance has occurred at a vendor's production facility, the City and the vendor shall meet to consult to

develop to a remediation plan, of which the City shall have right of approval as set forth in the City's standard contract terms and conditions. Corrective action shall include all steps necessary to correct the violations, including:

- (1) providing prompt notice to workers in the first language of each worker the remediation plan and the prescribed corrective actions;
 - (2) paying back wages to workers who worked to manufacture products or services supplied to the City; or
 - (3) reinstating a worker who has been dismissed in violation of the law.
- (F) Training On Workplace Conditions. At a facility or operation of a vendor determined to be in violation of this ordinance, the vendor shall provide workplace rights training for workers and best practices training for supervisory and management staff. The vendor shall bear the expense of the training. Upon the City's request, the vendor shall submit its training materials to the City for its review and approval before distribution to supervisors, managers, and employees.
- (G) The City may require that a vendor provide a written summary of the steps taken to remedy noncompliance with this ordinance. The summary may include any difficulties encountered in attempting to correct noncompliance. The vendor shall provide the written summary within the time period specified by the City.
- (H) The City may impose sanctions if a vendor knowingly provides misinformation or falsified information to the City or if a vendor refuses to remedy a violation of this ordinance in a timely manner. Sanctions may include termination of the contract for cause due to breach of contract, termination of a contract without notice, financial penalties, debarment from eligibility to bid on City contracts, or suspending the vendor's ability to bid on City contracts for a period to be determined by the City Manager.
- (I) In the event that a vendor is debarred, the City Purchasing Officer will remove the vendor from Approved Vendor List. In the event of suspension, the Purchasing Officer will remove the vendor from the list for the period specified in the non-compliance sanction.
- (J) A vendor may protest findings, sanctions, penalties or debarment under this ordinance as prescribed in the City's standard contract terms and conditions.

PART 9. Nothing in this ordinance shall be interpreted or applied to create any power or duty in conflict with federal law, state law, or local law.

PART 10. If a term or provision of this ordinance is determined to be void or unenforceable by a court of competent jurisdiction, the remainder of this agreement remains effective.

PART 11. This ordinance takes effect on July 2, 2007.

PASSED AND APPROVED

_____ June 21 _____, 2007

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Will Wynn
Mayor

APPROVED: _____
David Allan Smith
City Attorney

ATTEST: _____
Shirley A. Gentry
City Clerk