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2016 OCT 14 AM 10:52

AGENDA REPORT

TO: Sabrina B. Landreth
City Administrator

FROM: Deborah Barnes
Director, Contracts &
Compliance

SUBJECT: Supplemental Report to Enhance
Local Hire Policies

DATE: October 13, 2016

City Administrator Approval

Date:

10-13-16

RECOMMENDATION

Adopt A Resolution Amending: A) Resolution No. **69687 C.M.S.** Passed February 2, 1993, Authorizing the Local Employment Program, and B) Resolution No. **74762 C.M.S.**, Passed January 29, 1999, Authorizing a Pilot Apprenticeship Program, Both Of Which Require Contractors to Hire Oakland Residents To Implement Program Revisions.

REASON FOR SUPPLEMENTAL OR REPLACEMENT

At the Community and Economic Development Committee meeting of October 11, 2016, the committee directed staff to bifurcate the original 11 strategies enhancements to the City's Local Hire policies. After discussion, it was decided that some of the strategies could move forward immediately, while others would require additional analysis. Staff was also directed to formulate pros and cons of each of the strategies brought forward for immediate adoption. The strategies identified for immediate adoption include the following:

Strategy #1 - Mandating immediate placement of the City of Oakland's Local Employment Programs, Procedures and Policies in all Project Labor Agreements.

Pros	Cons
<ul style="list-style-type: none"> Ensures that Oakland resident hiring occurs for both skilled and entry level construction employment Specifies that Oakland residents will be hired to perform 50% of total project work hours on a craft-by-craft basis; and that 15% of total project work hours will be performed by Oakland apprentices 	<ul style="list-style-type: none"> Developers, contractors, and unions would not be able to negotiate local hiring goals that did not meet the respective 50% and 15% resident hiring goal Only Oakland apprentice work hours would be used to satisfy the apprentice utilization requirement. Most PLAs require 20% apprentice utilization, but the apprentices may come from any city Potentially limits a contractor's ability to utilize only existing workers

Item: _____
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Strategy #2 - Eliminating "Core Employee" exemption.

Pros	Cons
<ul style="list-style-type: none"> Removes ability of contractor(s) to reduce local hire obligations by utilizing existing or 'core' employees Codifies current practice and Local Employment Program procedures 	<ul style="list-style-type: none"> Contractor's would lose capacity to reduce the local hire requirements by deploying existing or 'core' employees

Strategy #3 - Immediately applying prioritized hiring goals based on Oakland zip codes.

Pros	Cons
<ul style="list-style-type: none"> Allows for designating areas of high unemployment, poverty, crime, etc. as prioritized hire zones Allows for changes to prioritized zip codes based on changing demographics Would benefit Community Based Organizations serving at-risk populations with job development and placement requirements 	<ul style="list-style-type: none"> Could increase difficulty in contractors achieving compliance with local hire requirements Could delay project timelines due to time needed to locate designated worker classification

Strategy #4 - Applying specific hiring goals first by zip code then city wide within the 50% Local Employment Program and/or the 15% Oakland Apprentice Program.

Pros	Cons
<ul style="list-style-type: none"> Utilizing zip codes allows the City to target contractor hiring of residents located in high unemployment, high crime, or other adversely impacted sectors 	<ul style="list-style-type: none"> Location of workforce development and referral resources could impact sector access

Strategy # 7 - Apply the application of the 50% Local Employment Program (LEP) and 15% Oakland Apprenticeship to include professional service occupations/industries.

Pros	Cons
<ul style="list-style-type: none">• Would leverage access of Oakland residents to the non-construction employment within Oakland.• Could potentially create additional worker training and placement opportunities for the city's workforce development resources	<ul style="list-style-type: none">• Would require coordination of hiring activities with Oakland based workforce development and referral resources• Creates potential hardship for local/small local businesses in meeting local hire requirements

The CED Committee requested that the remaining strategies mentioned below be held over in order to undergo further analysis for budgetary and policy ramifications as well as to garner input from stakeholders.

Strategy #5 - Assessing a 1% "Oakland Resident Empowerment Fee" on all development agreements

Strategy #6 - Awarding an additional 1% bid incentive or 1 additional preference point for contractors for satisfying the Local Employment goals.

Strategy #8 - Establishing a Local Employment Program Advisory Group

Strategy #9 - Additional staffing resources for Contracts and Compliance

Strategy #10 - Clarify definition of "subsidies"

Strategy #11 - Funding a Workforce Disparity Study at a later date

FISCAL IMPACT

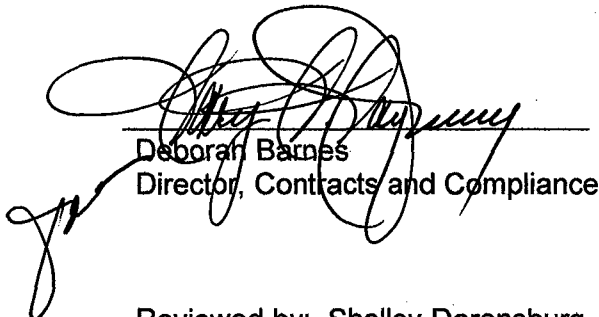
The strategies put forth for immediate implementation have no direct fiscal impact. Identifying the indirect costs will require further staff analysis.

ACTION REQUESTED OF THE CITY COUNCIL

Adopt A Resolution Amending: A) Resolution No. **69687 C.M.S.** Passed February 2, 1993, Authorizing the Local Employment Program, and B) Resolution No. **74762 C.M.S.**, Passed January 29, 1999, Authorizing a Pilot Apprenticeship Program, Both Of Which Require Contractors to Hire Oakland Residents To Implement Program Revisions

For questions regarding this report, please contact Jonothan Dumas, Employment Services Supervisor, (510) 238-7359.

Respectfully submitted,



Deborah Barnes
Director, Contracts and Compliance

Reviewed by: Shelley Darensburg
Senior Contract Compliance Officer

Prepared by:
Jonothan Dumas, Employment Services
Supervisor

Attachment: A Resolution Amending: A) Resolution No. 69687 C.M.S. Passed February 2, 1993, Authorizing the Local Employment Program, and B) Resolution No. 74762 C.M.S., Passed January 29, 1999, Authorizing a Pilot Apprenticeship Program, Both Of Which Require Contractors to Hire Oakland Residents To Implement Program Revisions

Approved as to Form and Legality

DRAFT

Oakland City Attorney's Office

OAKLAND CITY COUNCIL

Resolution No. _____ C.M.S.

RESOLUTION AMENDING: A) RESOLUTION NO. 69687 C.M.S., PASSED FEBRUARY 2, 1993, AUTHORIZING THE LOCAL EMPLOYMENT PROGRAM, AND B) RESOLUTION NO. 74762 C.M.S., PASSED JANUARY 29, 1999, AUTHORIZING A PILOT APPRENTICESHIP PROGRAM, BOTH OF WHICH REQUIRE CONTRACTORS TO HIRE OAKLAND RESIDENTS TO IMPLEMENT PROGRAM REVISIONS

WHEREAS, the City believes that it is its responsibility to facilitate a community where residents are able to live, work, and play; and

WHEREAS, the City believes that residents should derive maximum benefits from expenditures made by the City especially when their tax dollars fund those expenditures; and

WHEREAS, the City wishes to facilitate the participation of disenfranchised residents in the economic opportunities the City assists with generating, and is committed to maximizing access of Oakland residents to living wage jobs; and

WHEREAS, the City Council formally established the Local Employment (LEP) program in 1993 by Resolution No. 69687 C.M.S., passed February 2, 1993, which required businesses under contract with the City of Oakland to hire Oakland residents because residents were not sufficiently represented in the workforce used to build and rebuild the City; and

WHEREAS, in February of 1997, the Local Employment Program (LEP) was revised to establish new hiring goals (50% resident hiring goal and 50% of new hires), first new hire requirements (must be Oakland residents), and established the option for contractors to satisfy local employment non-compliance hiring deficits through either monetary penalties or by employing Oakland residents on non-City funded projects equal to the non-compliance shortfalls; and

WHEREAS, the City Council formally established the 15% Apprenticeship program in 1999 by Resolution No. 74762 C.M.S., passed January 26, 1999, which required licensed contractors under public works contract with the City of Oakland to hire Oakland residents to secure employment opportunities for residents in the construction industry as building and construction trade apprentices and the program achieved an average of 54% for the period FY 99-02; and

WHEREAS, in 2002 additional revisions were made to the Local Employment Program (LEP) and 15% Apprenticeship Program continuing the same resident hiring goals but establishing a program linkage to 'new hires'; and

WHEREAS, prior to the local employment programs contractors could perform work with their established labor pools (core employees) and there were very few opportunities for Oakland residents to work on City or City-funded projects; and

WHEREAS, local employment programs were applied only to the new hires for the project(s) with the percentage of work performed by 'core employees' used as the basis to determine what the local hiring goals would be for a project; and

WHEREAS, in June of 2005 the programs were revised again to: 1) cap core employee utilization at 50% of a projects total work hours, which effectively established a minimum of 50% of the project's work hours to serve as the basis for establishing the local hire goal(s), and 2) allow contractors to split their local hire goal(s) between City funded projects, and non-City funded projects; and, in spite of these program limitations, the City was able to secure an average of 34% of the total hours worked on City monitored projects being performed by Oakland residents; and

WHEREAS, the program revisions recommended at this time are designed to focus on employment of Oakland residents with special consideration of "vulnerable population sectors" such as ex-offenders, youth and females living below the poverty level and graduates of pre-apprenticeship programs; and

WHEREAS, the changes in policy further support the concepts of workforce development and job training; now, therefore, be it

RESOLVED: That Resolution No. 69687 C.M.S., passed February 2, 1993, which authorizes the Local Employment Program, and Resolution No. 74762 C.M.S., passed January 29, 1999, which authorized a pilot Apprenticeship Program are hereby amended as follows:

The resolution aim to with full intent, increase employment opportunities for Oakland residents by enhancing existing City-wide Jobs policies by the following 5 strategies:

1. Mandating immediate placement of the City of Oakland's Local Employment Programs, procedures and policies in all Project Labor Agreements

1

2. Eliminating "Core Employee" exemption
3. Immediately applying prioritized hiring goals based on Oakland zip codes.
4. Applying specific hiring goals first by zip code then city wide within the 50% Local Employment Program and/or the 15% Oakland Apprentice Program .
5. Apply the application of the 50% Local Employment Program (LEP) and 15% Oakland Apprenticeship to include professional service occupations/Industries.

FURTHER RESOLVED: That the City Administrator shall revise the City's written LEP and Apprenticeship programs in accordance with the above; and be it

FURTHER RESOLVED: That all provisions of the current LEP and Apprenticeship programs that are not amended herein, shall remain in full force and effect.

IN COUNCIL, OAKLAND, CALIFORNIA, _____, 20_____

PASSED BY THE FOLLOWING VOTE:

AYES- BROOKS, CAMPBELL, WASHINGTON, GALLO, GUILLEN, KALB,
KAPLAN, REID AND PRESIDENT GIBSON MCELHANEY

NOES-
ABSENT-
ABSTENTION-

ATTEST: _____
LATONDA SIMMONS
City Clerk And Clerk Of The Council
Of The City Of Oakland

CITY OF OAKLAND



ONE FRANK H. OGAWA PLAZA • 6TH FLOOR • OAKLAND, CALIFORNIA 94612

Office of the City Attorney
Barbara J. Parker
City Attorney

(510) 238-3601
FAX: (510) 238-6500
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October 18, 2016

HONORABLE CITY COUNCIL
Oakland, California

**Re: Proposed Resolution Directing Amendment of City's Local
Employment Program**

President Gibson McElhaney and Members of the City Council:

This memorandum provides legal background regarding the City's Local Employment Program, relevant to the proposed Council resolution approved by the Community & Economic Development Committee on October 11, and agendized for the City Council meeting on October 18.

Please note that due to the short timeframe in which this resolution is presented, the OCA's review and analysis is necessarily limited. The OCA has not verified factual statements in the resolution's preamble, and has not had time to engage in complete legal review of proposed resolutions. However, as this resolution would need to be implemented through language to be developed by the City Administrator, additional legal review and assistance can be provided at that stage.

We have suggested several edits to the resolution, aimed at clarifying the legal effect of the resolution and the policy changes it would require. Suggested edits are attached as Attachment A to this memorandum, with changes tracked against the agendized version from the Community & Economic Development Committee.

Legal Background

In 2001, the City Council enacted Ordinance no. 12389, combining into one program four preexisting City programs, relating to small and local businesses, local employment, prevailing wages, and apprentice utilization requirements. The ordinance also authorized the City Manager (as the position was then called) to "amend or modify" these programs. Through administrative action, the City subsequently released the

combined version of these programs as the Local and Small Local Business Enterprise Program ("L/SLBE Program").

In December of 2011, the City Council enacted Ordinance no. 13101, directing additional changes to the L/SLBE Program. In response, in February of 2012, the City Administrator released the current version of the program. In addition to small and local business utilization requirements, this current version of the L/SLBE Program contains the Local Employment Program, which includes a 15% apprentice utilization requirement.

Effect of Proposed Resolution

The resolution, as passed out of committee on October 11, references prior City Council resolutions from 1993 and 1999 relating to local employment and apprenticeship utilization. These two resolutions have been subsumed by later City ordinances and administrative action, as described above. Governing documents at this time are (i) Ordinance no. 12389, which authorizes the City Administrator to amend and modify the programs in question; and (ii) the current L/SLBE Program, as released in 2012 by the City Administrator per Council authorization.

We therefore interpret this proposed resolution as providing policy guidance to the City Administrator, requesting revision of the current L/SLBE Program as indicated. During that revision process, the City Administrator would develop language to implement Council instruction, and the Office of the City Attorney will provide assistance and legal counsel as appropriate.


Please note that drafting of program revisions will present many policy issues, and may present new legal issues for the L/SLBE Program. The Office of the City Attorney will review proposed implementing language. In addition, if the program is being revised, the Office of the City Attorney may propose additional revisions (i) to put the program on the strongest possible legal footing, (ii) to ensure City enforcement capacity across the range of public and private projects to which the program may be applied, and (iii) to increase clarity and precision in program drafting, promoting transparency and ease of implementation.

Suggested Revisions to Proposed Resolution

The Office of the City Attorney suggests the revisions to the proposed resolution as indicated on Attachment A to this memorandum. The rationale for each suggested revision is described below.

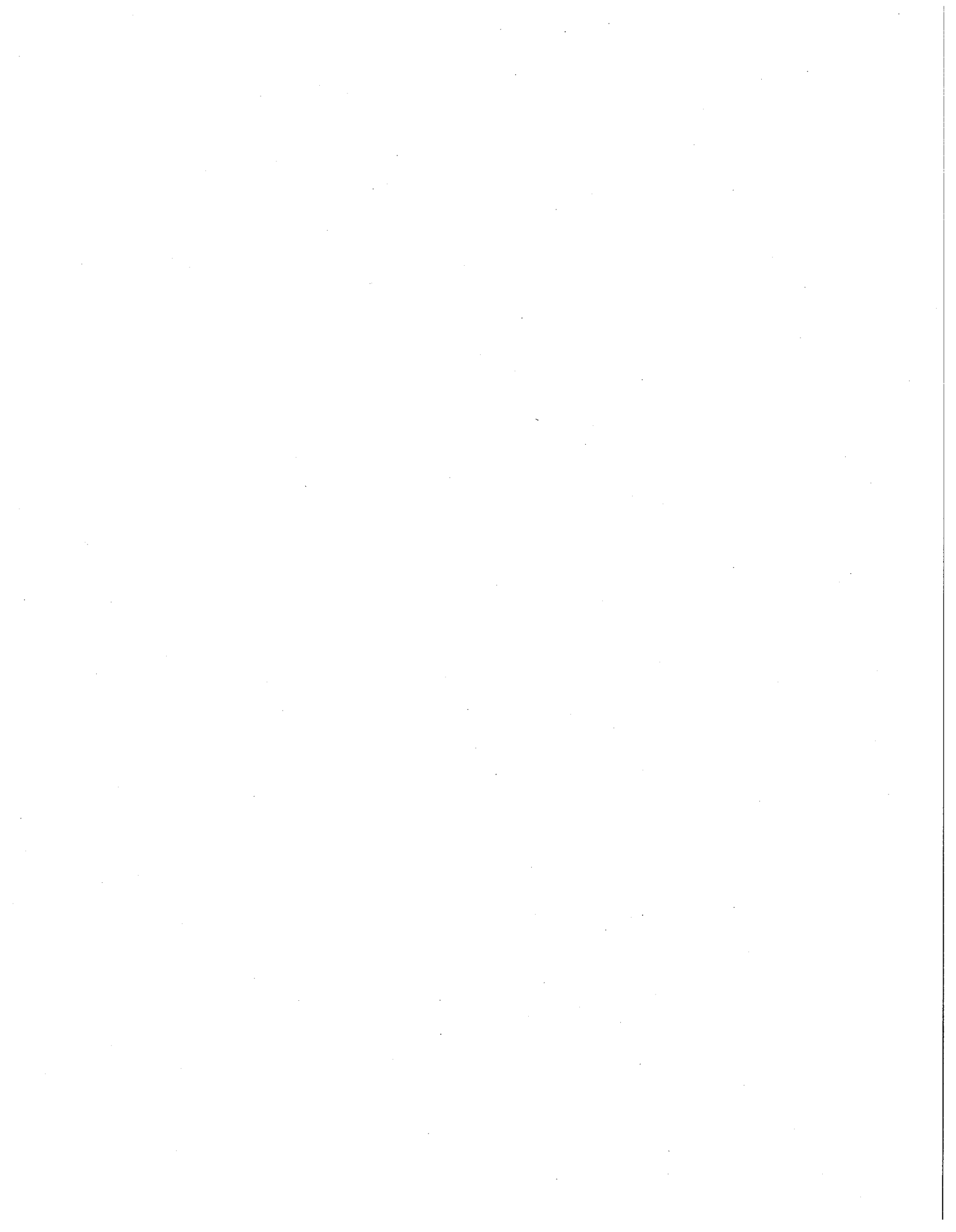
1. **Revision to Title.** Suggested revision clarifies legal effect of the resolution.
2. **Revisions to Preamble ("Whereas" clauses).** Suggested revisions clarify legal history of Local and Small Local Business Enterprise Program, and policy goals of resolution.
3. **Revision to First Sentence of "Resolution" Clause.** Suggested revision clarifies legal effect of the resolution.
4. **Revision to Proposed Program Amendments no. 1-5.** Suggested revisions clarify the intent of the proposed amendments, so as to provide defined guidance to City Administrator in developing implementing language. Our understanding of the intent of the resolution language coming out of the Community & Economic Development Committee is based on conversation with City staff involved in initial development of the resolution language, and attendance at the committee hearing.
5. **Revisions to "Further Resolved" Clauses.** Suggested revisions clarify legal effect of the resolution.

Very truly yours,


BARBARA J. PARKER
City Attorney

Attorney Assigned:
Celso Ortiz

1999885v1



Approved as to Form and Legality

Oakland City Attorney's Office

OAKLAND CITY COUNCIL

Resolution No. _____ C.M.S.

~~RESOLUTION AMENDING: A) RESOLUTION NO. 69687 C.M.S.,
PASSED FEBRUARY 2, 1993, AUTHORIZING THE LOCAL
EMPLOYMENT PROGRAM, AND B) RESOLUTION NO. 74762 C.M.S.,
PASSED JANUARY 29, 1999, AUTHORIZING A PILOT
APPRENTICESHIP PROGRAM, DIRECTING REVISIONS TO LOCAL
EMPLOYMENT AND APPRENTICE UTILIZATION REQUIREMENTS
CONTAINED WITHIN THE CITY'S LOCAL AND SMALL BUSINESS
ENTERPRISE PROGRAM BOTH OF WHICH REQUIRE
CONTRACTORS TO HIRE OAKLAND RESIDENTS TO IMPLEMENT
PROGRAM REVISIONS~~

WHEREAS, the City believes that it is its responsibility to facilitate a community where residents are able to live, work, and play; and

WHEREAS, the City believes that residents should derive maximum benefits from expenditures made by the City especially when their tax dollars fund those expenditures; and

WHEREAS, the City wishes to facilitate the participation of disenfranchised residents in the economic opportunities the City assists with generating, and is committed to maximizing access of Oakland residents to living wage jobs; and

WHEREAS, the City Council formally established the Local Employment (LEP) program in 1993 by Resolution No. 69687 C.M.S., passed February 2, 1993, which required businesses under contract with the City of Oakland to hire Oakland residents because residents were not sufficiently represented in the workforce used to build and rebuild the City; and

WHEREAS, in February of 1997, the Local Employment Program (LEP) was revised to establish new hiring goals (50% resident hiring goal and 50% of new hires), first new hire requirements (must be Oakland residents), and established the option for contractors to satisfy local employment non-compliance hiring deficits through either monetary

penalties or by employing Oakland residents on non-City funded projects equal to the non-compliance shortfalls; and

WHEREAS, the City Council formally established the 15% Apprenticeship program in 1999 by Resolution No. 74762 C.M.S., passed January 26, 1999, which required licensed contractors under public works contract with the City of Oakland to hire Oakland residents to secure employment opportunities for residents in the construction industry as building and construction trade apprentices and the program achieved an average of 54% for the period FY 99-02; and

WHEREAS, in 2001, the City Council by Ordinance no. 12389 combined into one program the City's small/local business program, prevailing wage program, local employment program, and apprenticeship requirements, and authorized the City to amend or modify such combined program through administrative action;

WHEREAS, in 2002 the City made additional revisions ~~were made~~ to the Local Employment Program (LEP) and 15% Apprenticeship Program continuing ~~the same~~ resident hiring goals but establishing a program linkage to 'new hires'; and

WHEREAS, prior to the local employment programs contractors could perform work with their established labor pools (core employees) and there were very few opportunities for Oakland residents to work on City or City-funded projects; and

WHEREAS, ~~local employment programs were applied only to the new hires for the project(s) with the percentage of work performed by 'core employees' used as the basis to determine what the local hiring goals would be for a project; and~~

WHEREAS, in June of 2005 the City again revised such programs ~~were revised again~~ to: 1) cap core employee utilization at 50% of a projects total work hours, which effectively established a minimum of 50% of the project's work hours to serve as the basis for establishing the local hire goal(s), and 2) allow contractors to split their local hire goal(s) between City funded projects, and non-City funded projects; and, in spite of these program limitations, the City was able to secure an average of 34% of the total hours worked on City monitored projects being performed by Oakland residents; and

WHEREAS, in 2011, the City Council adopted Ordinance no. 13101, requiring additional revisions to the City's small/local business programs; and

WHEREAS, in February of 2012, the City through administrative action released the City's current Local and Small Local Business Enterprise Program, which contains the City's small/local business requirements, the Local Employment Program, and the 15% Apprenticeship requirement; and

WHEREAS, the program revisions recommended at this time are designed to focus on employment of disadvantaged Oakland residents, providing with special consideration of "vulnerable population sectors" such as ex-offenders, youth and females living below the poverty level, and graduates of pre-apprenticeship programs, and residents of targeted zip codes within Oakland; and

WHEREAS, the changes in policy further support the concepts of workforce development and job training; now, therefore, be it

RESOLVED: The Local Employment Program and 15% Apprentice Utilization requirements contained in the City's Local and Small Local Business Enterprise Program at Resolution No. 69687 C.M.S., passed February 2, 1993, which authorizes the Local Employment Program, and Resolution No. 74762 C.M.S., passed January 29, 1999, which authorized a pilot Apprenticeship Program are hereby shall be revised amended as follows:

The resolution and ordinance aim to with full intent, increase employment opportunities for Oakland residents by enhancing existing City wide Jobs policies by the following 11 strategies:

- 1 Mandating to require that project labor agreements on projects to which the Local Employment Program applies (i) facilitate contractor compliance with Local Employment Program requirements, and (ii) do not interfere with City enforcement of such requirements; immediate placement of the City of Oakland's Local Employment Programs, procedures and policies in all Project Labor Agreements.
- 2 to clarify that contractors wishing to utilize a "core workforce" are not exempt from requirements of the Local Employment Program; Eliminating "Core Employee" exemption by way of Ordinance.
- 3 to require initial prioritization of employment of disadvantaged workers residing in targeted Oakland zip codes; Immediately applying prioritized hiring goals based on Oakland zip codes.
- 4 to require secondary prioritization of employment of workers residing within targeted Oakland zip codes; Applying specific hiring goals first by zip code then city wide within the 50% Local Employment Program and/or the 15% Oakland Apprentice Program - and
- 5 to require application of the Local Employment Program in professional services contracts. Apply the application of the 50% Local Employment Program (LEP) and

~~15% Oakland Apprenticeship to include professional service occupations/Industries.~~

FURTHER RESOLVED: That the City Administrator shall revise the Local Employment Program and apprenticeship utilization requirements within the current Local and Small Local Business Enterprise Program ~~City's written LEP and Apprenticeship programs~~ in accordance with the above; and be it

FURTHER RESOLVED: That all provisions of the current Local and Small Local Business Enterprise Program ~~LEP and Apprenticeship programs~~ that are not amended herein, shall remain in full force and effect unless otherwise amended; ~~and be it.~~

IN COUNCIL, OAKLAND, CALIFORNIA, _____, 20_____

PASSED BY THE FOLLOWING VOTE:

AYES- BROOKS, CAMPBELL-WASHINGTON, GALLO, GUILLEN, KALB,
KAPLAN, REID AND PRESIDENT GIBSON MCELHANEY

NOES-
ABSENT-
ABSTENTION-

ATTEST: _____
LATONDA SIMMONS
City Clerk And Clerk Of The Council
Of The City Of Oakland