



AGENDA REPORT


TO: Jestin D. Johnson
City Administrator

FROM: Emylene Aspilla
Director, Department of
Workplace and Employment
Standards (DWES)

SUBJECT: Potential Labor Standards Expansion
For New Construction Measure U
Affordable Housing Funding

DATE: May 30, 2024

City Administrator Approval


Jestin Johnson (May 30, 2024 23:18 PDT)

Date:

May 30, 2024

RECOMMENDATION

Receive A Report And Recommendation On Potential Labor Standards Expansion For New Construction Measure U Affordable Housing Funding As Follows: (A) Receive Presentation On The Stakeholder Engagement Related To A Potential Expanded Labor Standards Policy; (B) Provide Recommendation To Staff On Specific Components Of A Potential Expanded Labor Standards Policy By Conducting A Study Session

EXECUTIVE SUMMARY

On February 20, 2024, the City Council adopted [Resolution No. 90118 C.M.S.](#), which, among various allocation resolutions related to Measure U Housing Bond Funds, directed the City Administrator to convene stakeholders including city departments, construction labor unions, affordable housing developers, and minority contractors, including the local chapter of National Association of Minority Contractors, to develop a future policy on labor standards for Measure U Bond funding for new construction affordable housing projects with the goal of Council consideration prior to the next issuance of an Affordable Housing New Construction Notice of Funding Availability (NOFA), projected to be issued on September 23, 2024.

This informational report was prepared to inform the Community and Economic Development (CED) Committee about the input collected at the stakeholder convenings, as well as to solicit direction from the CED Committee on specific components and a strategy to include in a potential Expanded Labor Standards Policy for City Council's consideration and potential adoption. Please note that this report offers summaries of various policies and legislation for discussion and general Council directives, and is not designed to be exhaustive. Readers should not rely on this report for legal advice.

For a potential Expanded Labor Standards Policy to be included in the September 23 NOFA, it must be adopted by City Council by July 16, 2024, given both Council summer recess, and the time needed for the Department of Housing and Community Development (HCD) to fully incorporate a potential policy into the NOFA.

BACKGROUND / LEGISLATIVE HISTORY

Measure U: Affordable Housing and Infrastructure Bond

In 2022, Oakland voters approved Measure U: Affordable Housing and Infrastructure Bond. The measure authorized the City of Oakland (City) to issue \$350 million in general obligation bonds for affordable housing.

Notices of Funding Availability (“NOFAs”) are the City’s tool for administering funds for housing development. There are currently NOFAs for new construction, acquisition and conversion of housing on the market to affordable housing, rehabilitation of existing affordable housing, and the rapid creation of housing for people experiencing homelessness.

The City’s Department of Housing and Community Development (HCD) administers NOFAs. The City’s Department of Workplace and Employment Standards (DWES) enforces compliance with labor standards on housing projects.

Section 3(D) of Measure U provides that “Contractors and City departments shall comply with all applicable City laws when awarding contracts or performing work funded with the proceeds of Bonds authorized by this measure, including but not limited to compliance with the City’s Local and Small Local Business Enterprise (L/SLBE) Program Ordinance.”

Oakland Labor Standards

The City has a long history of labor standards. These standards are already applied to affordable housing projects, and without a new Expanded Labor Standards Policy, the following standards would continue to be applied to new construction projects with Measure U funding:

Standard	Summary of Requirement	Legislative History
<i>Prevailing Wage</i>	<ul style="list-style-type: none">• Applies to all Public Works contracts of \$1,000 or more.• Affordable housing projects that receive state or local funding are considered “public works” and subject to prevailing wage laws, unless an exception applies.	<ul style="list-style-type: none">• Adopted in 1978.• OMC 2.04.020.K and City Res. 57103

Standard	Summary of Requirement	Legislative History
<i>Living Wage</i>	<ul style="list-style-type: none"> Requires hourly health benefit payments in addition to wages and compensated time off 	<ul style="list-style-type: none"> Adopted in 1998 OMC Chapter 2.28
<i>Fifteen (15) Percent Apprenticeship</i>	<ul style="list-style-type: none"> Requires 15% participation by local apprentices, which counts towards Local Employment Program goals for hours and new hires. 	<ul style="list-style-type: none"> Authorized a pilot program in 1999, Resolution No. 74762 Implemented on projects in 2000 in OAWDPS guidelines and policies
<i>Equal Benefits Ordinance</i>	<ul style="list-style-type: none"> Requires benefits to be offered equally to employees with domestic partners and employees with spouses 	<ul style="list-style-type: none"> Adopted in 2001 OMC Chapter 2.32
<i>Local Employment Program</i>	<ul style="list-style-type: none"> Requires certain City construction projects and City funded projects, craft by craft to have: <ul style="list-style-type: none"> 50% of work hours performed by Oakland residents 50% of new hires are Oakland residents First new hire must be an Oakland resident 	<ul style="list-style-type: none"> Program Guidelines (2021), Part IV of the Local and Small Business Enterprise Program, Authorized Local Employment Program in 1993, Resolution No. 69687 C.M.S., as subsequently amended and codified in 2001 by Ordinance No. 12389 C.M.S., in 2011 by Ordinance No. 13101 C.M.S., and in 2021 by Ordinance 13640 C.M.S. and Ordinance 13647 C.M.S.)
<i>Apprenticeship Ratios</i>	<ul style="list-style-type: none"> Minimum ratios and exemptions determined by California Department of Industrial Relations for Public Works projects. 	

While not a Labor Standard, the participation of local and small local businesses headquartered in Oakland, as required by the City’s Local/Small Local Business Enterprise (L/SLBE) Program, would also apply to all new construction affordable housing projects with Measure U funding:

Standard	Summary of Requirement	Legislative History
<i>Local and Small Business Participation</i>	<ul style="list-style-type: none"> • 50% local business participation requirement <ul style="list-style-type: none"> • 25% for Local Business Enterprises (LBE)/Local Not for Profit Business Enterprise (L/NFPBE) • 25% for Small Local Business Enterprises (SLBE)/Small Local Not for Profit Business Enterprise (S/LNFPBE) 	<ul style="list-style-type: none"> • Authorized in 2001. • Program Guidelines (2021), Local and Small Business Enterprise Program • Authorized Local/Small Local Small Business Enterprise (L/SLBE) in 2001 by Ordinance No. 12389 C.M.S., in 2011 by Ordinance No. 13101 C.M.S., and in 2021 by Ordinance 13640 C.M.S. and Ordinance 13647 C.M.S.)

Community Workforce Agreement (CWA)

While the City Council adopted [Resolution No. 87293 C.M.S.](#) in 2018 to start the process of developing a CWA for large public works projects and to direct the City Administrator to undertake an Equity Impact Analysis, a CWA has not been developed to date. CWA negotiations between the City and the Building and Construction Trades Council of Alameda County (BTCA) were halted in late 2022.

Extensive stakeholder engagement, focusing on workforce development and labor standards, was conducted in preparation for the negotiations:

- In 2019, the Department of Race and Equity conducted community sessions and [Junious Williams Consulting completed a report](#) summarizing these sessions.
- In 2021, Council created a “task force” to address social and racial equity aspects of CWA.
- In 2022, the task force collected ideas to create a framework for the negotiations team to use in a CWA between the City of Oakland and the Alameda Building and Constructions Trades Council. The task force consisted of 53 people from community, educational, business, and labor organizations. Davillier-Sloan facilitated the meetings and produced a [June 2022 report](#) summarizing the ideas and recommendations.

ANALYSIS AND POLICY ALTERNATIVES

Based on the City Council's directive to explore potentially expanding labor standards for new construction Measure U funded projects, three approaches for the direction of future policy emerged from the stakeholder sessions and analysis of existing laws, legislative history, and regional developments. These approaches strive to balance fair and equitable opportunities for workers and businesses with housing investments, and also support the Citywide priority of housing, economic, and cultural security.

1. Apply current labor standards and fully implement and enforce the laws.
2. Expand current labor standards with an Ordinance based on regional labor standards modeled on state legislation.
3. Adopt a Resolution that requires developers to negotiate a Project Labor Agreement (PLA) with specified labor standards terms.

The City Council's direction on their intended objectives in expanding labor standards for new construction Measure U funding would help determine what tools and strategies would be the best fit for Council's policy objectives.

Option #1: Apply current labor standards and fully implement and enforce the laws.

The state of California and the City have enacted high standards for wages and benefits and job access and participation. As directed by Measure U, Council could require the NOFAs for Measure U funding apply Oakland current standards of labor and business inclusion standards and ensure full implementation and enforcement of the current laws.

Oakland has applied prevailing wage laws to affordable housing projects. The state sets prevailing wages by craft based on union contracts in a region. The wages account for hourly labor, health care costs, retirement contributions, and other common fringe benefits. The prevailing wage standard prevents a "race to the bottom." Bidders must factor in prevailing wage into their costs whether they intend to use a unionized contractor or not.

The City's labor standards have not reached their full potential in implementation and enforcement. Improvements to current standards, without expansion, could include:

- Provide City funding to local programs for pre-apprenticeships to become ready to enter the trades.
- Provide City funding for technical assistance and training to small businesses to learn how to navigate the complex government and union rules.
- Increase resources for City monitoring and enforcement of existing standards and technical assistance.
- Coordinate with other local governments to reduce the burden of meeting different requirements across jurisdictions.
- Improve the process and timeliness of paying City contractors.
- Reduce the number of Council waivers and administrative waivers for local hire.

DWES administers and enforces both labor standards and business inclusion requirements. The full implementation and enforcement of existing laws and reporting on the results would require adding capacity, and major changes in internal workflows and business processes:

- DWES uses manual processes and convoluted workflows that are prone to error and slow processing times.
- DWES has never published reports on labor standards enforcement or evaluations of the program.
- DWES collects certified payroll records for labor compliance and other files submitted for business inclusion but has no staff capacity to analyze the data collected. Staff training has not kept pace with the available technologies.
- DWES has only investigated a handful of labor standards cases and is not meeting the goals of the Measure Z Ballot Measure.

DWES will continue to face challenges in enforcing the City's requirements and in providing the transparency needed for public accountability unless staffing and systems changes are implemented. The department created or converted positions during Fiscal Year 2023-2024 and in proposals for the Mid-cycle 2024-2025 Budget in order to add capacity. Plans for these additional staff and resources include:

- Developing and reporting performance measures of equity and inclusion of BIPOC workers, local hires, apprentices, and prevailing wage.
- Developing benchmarks based on comparable cities and area workforce trends.
- Evaluating the implementation of local hire requirements and use of waivers.
- Evaluating the timeliness and quality of labor standards and business inclusion enforcement.

Analysis

Oakland already applies labor standards and business inclusion requirements to affordable housing projects, though monitoring and enforcement are minimal. Applying existing labor standards to Measure U affordable housing projects would maintain the current level of standards. Wage and benefit standards reflect union-negotiated levels of wages and fringe benefits including health care. In Oakland, workers need the high level of wages set in the Prevailing Wage laws to afford the area's high cost of living, but this level of cost is challenging for small contractors to pay when they are not paid timely or lack sufficient working capital.

Option #2: Expand with an Ordinance based on regional labor standards modeled on state legislation.

In addition to Option #1, Council could align with the Bay Area Housing Finance Authority (BAHFA) regional standards. In 2024, BAHFA recommended labor standards for projects funded with the 20% of regional housing revenue that BAHFA administered. The other 80% of bond revenues are administered by counties and cities. If state legislation changes BAHFA's

enabling statute, then its labor standards could be applied to 100% of the housing bond funds. [BAHFA Oversight Committee motion](#) approved 4/10/2024)

BAHFA's recent standard was based on state legislation, AB 2011 (2022, Wicks). AB 2011 allows for a fast-tracked approval process for projects that met several requirements, including labor standards.

BAHFA recommended these labor standards [in its Regional Expenditure Plan](#):

1. **Production Projects:**
 - a. **Prevailing wage for new construction with 10 or more units:** Pay the general prevailing wage for construction workers or for apprentices, pay the apprentice prevailing wage.
 - b. **Training and healthcare:** For new construction with 50 or more units, contractors must either (1) Be a signatory to a collective bargaining agreement that requires registered apprentices and healthcare expenditures for employees and dependents or (2) Participate in an approved apprenticeship program, or request the dispatch of apprentices under state law and spend at least the equivalent of a Covered California platinum plan for two adults and two children (age 0 to 14 years of age).
2. **Preservation projects:** The two provisions apply to only large Preservation projects with substantial rehabilitation scopes. Smaller projects will require prevailing wage only.
3. **Project Labor Agreements:** Developments with a PLA that require prevailing wages and enforcement may be exempt from the BAHFA standards.
4. **Records:** Contractors and subcontractors maintain and verify payroll records, including fringe benefits, in the manner prescribed by the state Labor Commissioner.
5. **Enforcement:** The Labor Commissioner may enforce the prevailing wage. Underpaid workers may also pursue civil actions or administrative complaints. BAHFA may enforce as appropriate.

Substantial compliance with BAHFA overlapping standards could be considered as compliance with Oakland's new labor standards. Generally, Oakland's prevailing wage and apprenticeship standards are higher, while BAHFA adds a health care expenditure requirement and private enforcement.

Aligning with BAHFA could include considering:

- **Continuing Oakland's prevailing wage for all projects of \$1,000 or more.** Practically all projects under Measure U and affordable housing development would be over \$1,000 and be required to pay prevailing wages.
- **Continuing Oakland's requirement of 15% local apprentices** and counting them towards local hire. Practically all projects under Measure U and affordable housing development would be over \$15,000 and required to use local apprentices.

- **Adding a requirement on the level of health care expenditures** for projects with 50 or more units. Oakland relies on the state’s prevailing wage to set the amount for health care. An expanded standard could incorporate BAHFA’s regional standard.
 - The required spending would be the hourly equivalent of the Platinum plan for two adults (age 40) and two children (age 0 to 14) in the Covered California rating area for Oakland (“Platinum plan”).
 - The City would specify administrative procedures for calculating the hourly equivalent and other possible scenarios including:
 - If the health care component in prevailing wage is already higher than the hourly equivalent of the Platinum plan, then the contractor would continue to pay the higher amount in the prevailing wage.
 - If the health care component in prevailing wage is lower than the hourly equivalent of the Platinum plan, then the contractor would pay the higher amount by adding in the difference.
 - Contractors may continue to pay the health care component with wages as a dollar amount. If they directly spend it on the employee’s coverage, the expenditure counts towards the health care component of prevailing wage.
- **Adding private enforcement by individuals and third parties:** The City would continue existing enforcement through DWES.
- **Adding the option to meet apprenticeship and health care requirements** by being a signatory to a valid collective bargaining agreement with health care for employees and dependents and use of apprentices. The City would still enforce its 15% local apprenticeship requirements.

Analysis

Since Oakland already has high labor standards, incorporating the BAHFA standards may incrementally increase standards with the addition of health care expenditures.

Since health care is a component of prevailing wage, bidders do not compete on labor cost. BAHFA’s specification of an additional requirement to spend at the Platinum plan level may help to ensure non-union workers receive wages that allow them to buy very high levels of coverage for a family of four. The health care component in prevailing wages is based on rates in union contracts in a region and by craft. The BAHFA level is based on rates in the private market for coverage that individuals purchase from insurers in the Covered California state marketplace.

In Oakland, under reasonable assumptions about household income, insurer preference, and work hours, the hourly equivalent appears to be at a similar level of expenditure as the health care component of the prevailing wage. The City would specify in administrative procedures the assumptions to be used in the calculation.

When buying insurance from Covered California, the price of insurance and amount of premium assistance is based on household size, household income, ages of the household members,

area, and the cost of plans available in the area. For example, a worker earning a prevailing wage of \$94.20 per hour who works 2,080 hours per year earns \$196,000 per year. The household of four (two adults both age 40 and two dependents age 0 to14) would find that in Oakland, the lowest cost Kaiser plan for the household of four costs \$22,358/year in the Covered California marketplace. When divided by 2,080 hours/year, the hourly equivalent is \$10.75. A higher income household (e.g. \$270,000 per year) would be ineligible for premium assistance and would pay \$27,979 per year, an hourly equivalent of \$13.45.¹

In Oakland, examples of prevailing wages and the health component include:

- Laborers: Total wage of \$65.76 with \$10.10 for health and welfare
- Metal roofing systems installer: Total wage of \$75.42 with \$11.80 for health and welfare.
- Carpenters: Total wage of \$94.20 with \$12.49 for health and welfare.²

Option #3: Adopt a Resolution that requires developers to negotiate a Project Labor Agreement (PLA) with specified labor standards terms.

Council could direct HCD to include in the NOFA a requirement to negotiate a Project Labor Agreement (PLA). As one option, the PLA could incorporate similar provisions adopted for **Alameda County Measure A1**.

In 2016, Alameda County voters approved the [Measure A1](#) General Obligation Bond to raise \$580 million for affordable housing in the county. The labor and business inclusion provisions include:³

- Labor standards:
 - Prevailing Wage is required. All projects must pay prevailing wage.
 - Local and targeted Hire is required. County residents must work 30% of all hours funded by Measure A1. Targeted Disadvantaged Workers must work 5% of hours.
 - Project Labor Agreement (PLA) is required for new construction with 80 or more units.
- Business Inclusion:
 - Local participation is required. Twenty-five percent (25%) of the Measure A1 contract must be paid to county-based businesses,

¹ Covered California, Shop and Compare Tool (<https://apply.coveredca.com/lw-shopandcompare/>) with inputs of two adults aged 40, one 12 year old, and one 13 year old in 94612 and testing incomes of \$196,000, \$270,000, and \$300,000 to find the unsubsidized premium rate.

² California Department of Industrial Relations (DIR):
<https://www.dir.ca.gov/OPRL/DPreWageDetermination.htm>

³ Please note the A1 labor standards set forth terms for PLAs and expected the applicable parties to negotiate a compliance PLA template within 90 days of Board adoption. Developers receiving the Measure A1 funds could elect to use the pre-approved template PLA or negotiate an alternative compliance PLA.

- Small business participation is required. Twenty percent (20%) of Measure A1 contract must be paid certified small county-based businesses.
- Reporting: The projects shall track minority-owned businesses (MBE) and woman-owned businesses (WBE).
- PLA terms
 - Including, but not limited to, No strike out/No lockout, participation by non-union contractors, ability to use core workers, one new apprentice hired for each \$5 million, exemption for off-site work, dispute resolution procedures and other required provisions.

Alternatively, the PLA could incorporate the BAHFA standards in Option #2 and/or additional requirements for developers, contractors, and unions dictated by Council. PLAs are “pre-hire collective bargaining agreements negotiated between one or more construction unions and one or more construction employers (contractors/project owners) that establish the terms and conditions of employment for a specific construction project.” Typical provisions include: no-strike/no-lockout, wages and benefits, hiring through a union hiring hall and other working conditions.⁴

A PLA can enact many of the same terms in Options #1 and #2 and add additional terms to achieve other objectives. Provisions that can be in a PLA or an Ordinance are prevailing wage and benefits, local hire, and local apprentices. Provisions that can only be enacted in PLA are no-strike clauses and reporting requirements for unions and employers outside of projects. Below are some typical objectives for PLAs and suggestions stakeholders provided potential uses for PLAs and possible methods of implementing.

Objectives	City Ordinance	PLA
No strike, No lockout	No	Yes
Wages and benefits	Yes	Yes
Local hire and apprentices	Yes	Yes
Project compliance and equity reporting	Yes	Yes
Reporting union and employer equity for entire membership or workforce	No	Yes
Allow non-union firms to bid to improve competitiveness	Yes	Yes

Stakeholders were divided on the need for and impact of PLAs:

- In the Labor meeting, participants advocated for PLAs for the pipeline of union jobs it could create, impact on retention of apprentices through placement in a union job, and the equity and local hire accountability that could be imposed upon unions. PLAs supersede existing union contracts and hiring hall practices.
- In the minority contractors and small business meeting, participants questioned the need for expanding labor standards, including implementing a PLA, without data and analysis of current standards and a disparity study of unions and contractors. They shared

⁴ U.S. Department of Labor, “Project Labor Agreement Resource Guide,” downloaded 5/28/2024, <https://www.dol.gov/general/good-jobs/project-labor-agreement-resource-guide> .

experiences of workers facing obstacles in obtaining training from far away locations and access to job referrals, and small Black-owned businesses being picketed and difficulty obtaining technical assistance from unions.

- In the affordable housing developers meeting, several participants said the current level of standards was sufficient. They shared experience with racism in unions including in training and placement, and White members picketing Black-owned business. Expansion of labor standards, including through a PLA, would be too challenging for the competitive funding environment affordable housing operates in.
- In the workforce training meeting, participants had both positive and negative experiences with unions and PLAs. They described racism in the unions and unnecessary union rules in Oakland, such as having a car, or having a high school diploma or GED before starting training as pre-apprentice. They also described collaborations in PLA monthly meetings and partnerships amongst unions, contractors, and local pre-apprenticeship programs.

Analysis

The comments repeated many of the issues raised in CWA negotiations and provided a glimpse into the challenges that may arise if a PLA requirement were proposed for Measure U funding. Despite over five years of effort, the CWA negotiations stalled and ended. Negotiating a PLA, even specific terms for a project-based PLA, would likely impact the timeline needed for distributing Measure U funding.

FISCAL IMPACT

The fiscal impacts of the various Options above have not yet been determined. It is likely that all Options will require financial investments and dedicated resources. In this section, we detail some fiscal impact concerns that have been raised by the stakeholders.

Several concerns were raised about the impact new labor standards might have on the overall number of units that can be produced through Measure U funding. Concerns were also raised about the impact on the overall price-per-housing unit cost, potentially making City of Oakland projects far less competitive for State funding, jeopardizing the viability of some projects.

Specific concerns about PLAs and overall increased costs were shared by various stakeholders, and research on the fiscal impacts of PLAs shows different results. A [2021 Rand Study](#) that looked at how PLAs were implemented on some large affordable housing projects in Los Angeles concluded that a PLA increased costs by an average of \$43,000 per unit and resulted in a missed opportunity to create 800 additional units of affordable housing due to 1) the larger per unit cost and 2) developers forgoing potential units in order to remain under the 65-unit PLA trigger. A [recent Study by UC Berkeley's Labor Center](#), however, found no statistically significant relationship between the use of PLAs and the actual development costs, suggesting that PLAs did not lead to per-unit cost increases.

Further research is needed on the BAHFA standard for adding a health care expenditure and the impact on costs for Oakland.

PUBLIC OUTREACH / INTEREST

Community stakeholders were invited to provide comments via email or an online form, and in four in-person meetings held in May 2024. The four groups included construction labor unions, local, small local, and minority businesses and industry partners, including the local chapter of the National Association of Minority Contractors, affordable housing developers and prime contractors, and workforce training and education organizations. (See Appendix for list or organizations represented at the meetings and written comments submitted.)

The sessions were facilitated by the City Administrator and staffed by DWES. Stakeholders were asked to provide input on three questions:

1. What is working with the City’s existing Labor Standards requirements?
2. What is not working with the City’s existing Labor Standards requirements?
3. How might the City expand its labor standards requirements for Measure U New Construction Affordable Housing funding?

Some stakeholder groups also offered comments on topics other than labor standards. Although stakeholders were informed that the scope of Council’s directive excluded continuing CWA/PLA negotiations, eliminating Local Hire or any existing labor standards, and changing the business inclusion provisions of the Local/Small Local Business program, stakeholders offered comments on these topics and they are included as “Comments other than labor standards.”

Common themes across all the stakeholders include:

Theme	Comments/Recommendations
Advancing Racial Equity	<ul style="list-style-type: none"> • Participants expressed commitment to addressing equity in housing and opportunities for workers and small businesses and acknowledged the history and present-day disparities in unions and city contracting. • Developing and retaining Oakland residents as trained workers and contractors should be prioritized.
Training Local Residents and Small Businesses	<ul style="list-style-type: none"> • Participants generally support continuing and improving upon pre-apprenticeship and apprenticeship programs for local residents and identified the need to improve retention. • Small businesses also need training and technical assistance from the city and non-profit organizations. • Suggestions for improvement included: <ul style="list-style-type: none"> ○ Address the retention of BIPOC and women apprentices. The state has ERiCA grants for this purpose. (California DIR, Equal Representation in Construction Apprenticeship (ERiCA) Grant) ○ Provide city funding to apprenticeship programs. ○ Address retention of workers as residents in Oakland: After completing training, Oakland workers may earn enough to live on their own and move out of Oakland to

	<p>do so. They would no longer count as local Oakland hires.</p> <ul style="list-style-type: none"> ○ Establish training programs in the schools, OUSD and community colleges to strengthen the connection between education and work. ○ Provide small businesses with training and technical assistance.
Improving Monitoring and Enforcement of Labor Standards	<ul style="list-style-type: none"> ● The City does not have enough staff to enforce the laws. ● It is difficult to catch savvy employers who deliberately intend to evade standards from the records they submit – best practice would be to talk to workers. ● Council is granting too many waivers. ● More fines and penalties are needed. Wage theft pays off for violators when they are not caught or settle the cases for lower amounts.
Collecting Data and Reporting Regularly	<ul style="list-style-type: none"> ● Without data and reporting, the scale and scope of the problem is unknown. ● The City lacks transparency in the reporting of diversity, labor standards, and business inclusion. ● DWES lacks staff capacity to provide reports though the data exists in its informational systems and files – participants provided suggestions for data sources and reporting.
Continuing stakeholder Outreach and Participation	<ul style="list-style-type: none"> ● Participants expressed appreciation at being included these sessions and the outreach efforts. ● They would like ongoing opportunities to participate.

Summary of Meetings

1. Construction Labor Organizations

What's working in labor standards	<ul style="list-style-type: none"> ● Recruitment and training of apprentices is working but retention of women and BIPOC worker needs improvement. Some unions have high representation while others do not. ● PLAs have improved representation and have met or exceeded goals for local hire and business inclusion. Examples include: Alameda County's Measure A1 and Oakland Army Base. ● DWES outreach and communications have improved.
What's not working in labor standards	<ul style="list-style-type: none"> ● Non-union work: <ul style="list-style-type: none"> ○ "Equity" goals should include addressing the exploitation of BIPOC workers in non-union worksites. ○ Non-union worksites seem to have more workers from outside Oakland.

	<ul style="list-style-type: none"> ○ Apprentices need union jobs for retention and sustainable careers. ● Vertical” building construction work. Local hire works well for “horizontal” streets and sidewalks construction work because the base of contractors exists in Oakland but not for vertical work.
Potential expansions of labor standards for Measure U funding	<ul style="list-style-type: none"> ● Use AB 2011/BAHFA as a model: It has prevailing wage, apprentices, and health care. ● Use the PLA from Alameda County’s Measure A1 as a model. PLAs can include provisions to: <ul style="list-style-type: none"> ○ Include goals for competitiveness and business inclusion, e.g. allowing non-union bidders in the pool, small business participation, and cost caps. ○ Supersede union contracts’ referral order and prioritize Oakland residents in hiring. ○ Implement accountability and reporting requirements on unions to monitor diversity and local hire goals. ○ Require union workers.
Comments on topics other than labor standards	None

2. Local, Small Local, and Minority Businesses and Industry Partners Organizations

What’s working in labor standards	<ul style="list-style-type: none"> ● Stakeholder engagement: The City is listening at these meetings. ● Prevailing wage: It is required in all projects, and everyone understands it. ● Apprenticeships provide opportunities but there are too many waivers.
What’s not working in labor standards	<ul style="list-style-type: none"> ● Data and reporting: More information and analysis of equity outcomes and union disparities are needed. ● DWES is not fully enforcing or monitoring requirements. ● The City grants too many waivers of local hire. Contractors figure out how to obtain exemptions. ● Union obstacles include: <ul style="list-style-type: none"> ○ Racial disparities: Unions do not want to release data because they know it will look bad. ○ Some unions make it difficult for workers and contractors. ○ Unions do not have small business outreach or technical assistance programs. ○ Unions have picketed Black-owned businesses. ○ Apprentices cannot get on the out-of-work board after a project. ○ Training is far away in Sacramento and other areas outside of Oakland.

<p>Potential expansions of labor standards for Measure U funding</p>	<ul style="list-style-type: none"> • Participants questioned the need for expansion and Council starting with the premise of expansion. • Consider a third-party independent review. <ul style="list-style-type: none"> ○ No new labor standards should be added until the third-party validates that the current standards are implemented effectively. ○ Any new labor standards policy should be informed by the information from a third-party study and the disparity study. ○ An independent third-party should oversee the City’s labor standards. • The City should lead conversations with unions. If unions want a labor standards agreement, the city should put requirements on the union.
<p>Comments on topics other than labor standards</p>	<ul style="list-style-type: none"> • What’s working: Certification programs – when the City and Construction Resource Center (CRC) provide assistance, small businesses are able to participate. • What’s not working: <ul style="list-style-type: none"> • Disparity in business inclusion: The Mason-Tillman Disparity Study showed 1% Black contractors. The City should adopt the study’s recommendations on business inclusion. • Council grants too many waivers of local/small local business participation and was responsible for changes in policy that reduced monitoring. • Monitoring of local business participation – participants (Black contractors) have experienced gaps in enforcement and assistance to local businesses. • Penalties for not complying with business inclusion should be higher. Amounts collected could be used to fund training. • Qualifications required for housing funding sources (e.g. Home Key, Low Income Housing programs) make it difficult to use Black-owned contractors.

3. Affordable Housing Developers and Prime Contractors

<p>What’s working in labor standards</p>	<ul style="list-style-type: none"> • The standards as-is are sufficient.
<p>What’s not working in labor standards</p>	<ul style="list-style-type: none"> • Racism in the city and unions: <ul style="list-style-type: none"> ○ Union training efforts have been ineffective – thousands have gone through programs, but most did not get into a union job. ○ The union does not provide documentation of their diversity – union job sites seem to have very few Black workers. ○ The union picketed a Black business for being non-union. ○ Local requirements are not producing Black contractors or workers.

	<ul style="list-style-type: none"> ○ Developers have achieved high levels of diversity when they drive the process/put the effort in. ● Local Hire is not working in the context of the displacement of Black-owned businesses and residents out of Oakland. The change in definition from substantial presence to being headquartered in Oakland has disqualified some businesses. ● PLAs: <ul style="list-style-type: none"> ○ Alameda County M1 PLA: The market and developers are signaling that it costs more when they build under the 80-unit threshold. They are not interested in supplying at that cost. Many developers build 79 units and under. ○ Building trades do not have the capacity to staff the PLAs they are asking for.
<p>Potential expansions of labor standards for Measure U funding</p>	<ul style="list-style-type: none"> ● No expansion or increases are needed. <ul style="list-style-type: none"> ○ Enforce compliance with existing laws and the new law on reporting contracting diversity in affordable housing (AB 2873). ○ Staff the city services to respond to calls and provide technical assistance. ○ PLAs are not needed. Many projects are overwhelmingly union without a PLA or projects enter into a PLA without being required. ● Release and adopt the disparity study (on contracting) before expanding. ● Create set-asides for Black employment. ● Further expansions may be difficult for small businesses, owners, and affordable housing developers. <ul style="list-style-type: none"> ○ Projects compete for other funding where cost per unit is a factor – there should be no expansions that increase costs as this can put Oakland projects at risk. ○ Timing is important – do not delay the NOFA because it may cost Oakland other opportunities for funding. ○ Multiple bidders are needed to obtain competitive prices, but the local requirements create barriers to entry and reduce the number of bidders or diversity in bidders. Local owners may not be able to meet higher standards.
<p>Comments on topics other than labor standards</p>	<ul style="list-style-type: none"> ● Many businesses lost their certification as “local” for the L/SLBE program after the 2022 change in definition from “substantial presence” to “headquartered” in Oakland. <ul style="list-style-type: none"> ○ The previous standard “substantial presence” was a better measure of doing business in Oakland. ○ Legislation was proposed to correct the 2022 changes, but it has been halted by Council. ● Preferences for legacy Black businesses can be put into a Lease Disposition and Development Agreement (LDDA) but not into City standards.

	<ul style="list-style-type: none"> • Enforcing and collecting fines could be used to help small businesses. • Carving out and breaking out contracts could help smaller contractors participate. • The City should be more transparent when meeting all parties and not undermine the standards. • The financial instruments are complicated and hurt subcontractors. The city should help subcontractors to receive timely payments. • Questioned why the City separated stakeholder groups – would like to hear directly from Labor about why they want expanded labor standards/a PLA.
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4. Workforce Education and Training Organizations

What's working in labor standards	<ul style="list-style-type: none"> • Very little is working. • Prevailing wage and local hire are good standards to start with.
What's not working in labor standards	<ul style="list-style-type: none"> • There are various union restrictions and obstacles: <ul style="list-style-type: none"> ○ Unions control who can have the MC3 (Multi Core Craft Curriculum) and do not take in people trained in non-MC3 programs. ○ Apprenticeship programs have moved outside of Oakland. ○ Oakland unions are more restrictive and difficult to work with than San Francisco unions. ○ Unions require a high school diploma or GED in hand, and national best practice is to obtain it while training. ○ Rates of acceptance into the union are low. Wait times are high. It takes several months to get into the union. ○ Racism and nepotism in the unions: You need a relative to get in. High test scores are not enough. ○ Oakland unions have a car requirement that can disqualify you even if you have alternate transportation. ○ Gender disparity: Some unions are under court-order to hire women. ○ Work hours in the construction industry are a barrier for parents – securing childcare before/during/after construction work hours is particularly difficult. • Funding is from different sources and cannot be integrated in Oakland while San Francisco is a combined City and County
Potential expansions of labor standards for	<ul style="list-style-type: none"> • The city could fund safety net stipends to help trained workers waiting for work from the union. If these workers take other work, they will get into trouble with the union, and the wait can be months. • Participants' views of PLAs varied:

<p>Measure U funding</p>	<ul style="list-style-type: none"> ○ Use a PLA to create more union jobs as the next union job = the safety net. ○ Evaluate whether PLAs have worked in Oakland. Many examples can be analyzed. ○ Social Justice Trust Fund at the Port of Oakland: In a PLA, the developer was required in the contract to contribute to the fund. ● The framework should be good jobs and high standards, not necessarily union jobs – union jobs are a gold standard. ● Improve contractor accountability through requirements in the bid documents and contracts. ● Improve city staffing and monitoring of compliance and report on the outcomes of the funding.
<p>Comments on topics other than labor standard</p>	<ul style="list-style-type: none"> ● Create incentives in the NOFA for contractors to compete on equity and community, e.g. set-asides or incorporate into the scoring. ● Consider Best Value instead of lowest bid for the NOFA.

COORDINATION

Preparation of this informational report was done in coordination between the Department of Workplace & Employment Standards, the Department of Housing & Community Development, the City Administrator’s Office, and the Office of the City Attorney.

SUSTAINABLE OPPORTUNITIES

Economic: Measure U housing projects will generate construction, professional services, and ongoing property management jobs in Oakland. Providing families with affordable housing helps provide financial stability for low and very low-income households which could free some household income to be spent on other goods and services in Oakland. Applying labor standards and business inclusion requirements also promotes economic development and opportunities in Oakland by keeping the City’s contracting dollars in the City.

Environmental: There are no direct environmental impacts that result from potentially expanding labor standards.

Race & Equity: Per HCD’s 2023-2027 Strategic Action Plan (SAP), created using the City’s Racial Equity Impact Analysis (REIA) process in close partnership with the Department of Race and Equity, Oakland HCD currently prioritizes the development of permanent supportive housing (PSH) to the maximum extent possible in order to increase the number of homeless exits available.

Equity is the main driver of all of the City’s existing labor standards. These labor standards strive to provide opportunities for Oakland businesses and residents, including black, indigenous, and people of color who own and operate small local businesses. Historical and

present inequities have led to exclusion of these groups and inequitable representation in City-funded projects. Any expanded labor standards should remove barriers, improve access to City-funded contracts, and increase participation opportunities for historically excluded workers and business-owners.

ACTION REQUESTED OF THE CITY COUNCIL

Staff Recommends That The City Council Receive A Report And Recommendation On Potential Labor Standards Expansion For New Construction Measure U Affordable Housing Funding As Follows: (A) Receive Presentation On The Stakeholder Engagement Related To A Potential Expanded Labor Standards Policy; (B) Provide Recommendation To Staff On Specific Components Of A Potential Expanded Labor Standards Policy By Conducting A Study Session.

For questions regarding this report, please contact Emylene Aspilla, Director, Department of Workplace & Employment Standards, at easpilla@oaklandca.gov.

Respectfully submitted,



EMYLENE ASPILLA
Director, Department of Workplace and
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Attachments (2):

- A. List of Organizations Attending Stakeholder Meetings
- B. Written Comments Received by Online Form or Email

Attachment A
List of Organizations Attending Stakeholder Meetings

May 16th, 2024 - 10:00am – 12:00pm

Alameda Labor Council
Building and Construction Trades Council of Alameda County
International Brotherhood of Electrical Workers Local Union 595
Nor Cal Carpenters Union
SMW Local 104

May 16th, 2024 - 2:00pm – 4:00pm

Construction Resource Center
Cooper Construction and Engineering
GECMS, Inc
NAMC-NorCal
Northern California Minority Contractor Association
Oakland Builders Alliance
Oakland Vietnamese Chamber of Commerce
RFC
Strive Real Estate
Tonma

May 23rd, 2024 - 10:00am – 12:00pm

Alameda County
Baines Group, Inc
BBI Construction
Branagh Inc.
Cahill Contractors
Community Arts Stabilization Trust (CAST)
EAH
East Bay Housing Organizations
EBHO
Eden Housing, Inc
Focon Inc
Guzman Construction Group
James E. Roberts-Obayashi Corp.
Keystone Development Group
Law Office of Julian Gross
McCormack Baron Salazar
Mercy Housing California
MidPen Housing
Mosaic Urban Development
MPI Homes
Nibbi Brothers
Non-Profit Housing Association of Northern California
O.A.W.
Related California
Resources for Community Development
RF Contractor
Richmond Neighborhood Housing Services, Inc. (RNHS)
Strive Real Estate
The Unity Council

May 23rd, 2024 - 2:00pm – 4:00pm

Bernida Reagan Consulting

Construction Trades Workforce Initiative (CTWI)

Cypress Mandela

EBASE

OUSD Adult and Career Education

Rising Sun Center for Opportunity

The Youth Employment Partnership, Inc

Tradeswomen Inc.

UC Berkeley Labor Center

Attachment B
Written Comments Received from Online Form or Email

5/24/24 (online form) National Association of Minority Contractors

1. Release the disparity study asap.
2. Adopt findings of disparity study to begin implementation of remedies for Oakland residents affected by the impact of long-standing racism.
3. No PLA - It would be detrimental to nonunion minority firms that are already on life support.
4. Require the Building Trades to establish and fund a small business plan that is designed to help firms interface with a smoother transition from nonunion to union.
5. Require the Building Trades to establish a strategic outreach plan that captures minorities that are underutilized in Oakland. Retention is key.

5/24/24 (online form) Eden Housing

Thank you for holding the convening for affordable housing developers and prime contractors. I was in attendance but I wanted to share written comments as well.

A little about our pipeline –

- 119 units at Liberation Park in partnership with BCZ (has applied for Measure U previously)
- 67 units in East Oakland in partnership with Williams Chapel Baptist Church (has applied for Measure U)
- 90 units at 77th and Bancroft in partnership with BCZ
- 174 units at an existing property, The Altenheim, which could be eligible for rehab/preservation

Nearly every developer working on affordable housing in Oakland is either a community development organization that knows better than anyone else what the needs of their particular corner of Oakland are, or is a large regional developer working in partnership with the community organization to navigate this incredible maze of housing finance, contract compliance, etc. so that we can meet our partner's goals. The Measure U NOFA already prioritizes this.

In Eden's case, we are partnering with the Black Cultural Zone on The Residences at Liberation Park. BCZ has built an incredible movement in deep East Oakland to retain legacy Oakland residents and provide jobs and housing opportunities to former Oakland residents who have already been displaced.

At Liberation Park, we have specifically hired a BIPOC-owned general contractor who has committed to meet both Oakland's local hire requirements AND our own BIPOC-led subcontractor owner goals. The pool of BIPOC-owned contractors with proven expertise to work within Oakland's existing contract and labor requirements was literally TWO contractors. I can't speak for them, but I would guess that additional labor requirements might remove these two BIPOC-owned contractors from working in Oakland entirely and severely limit the additional pool of BIPOC-led subcontractors that we are requesting they work with. At the very least, new requirements would certainly raise costs on projects that are already incredibly expensive and likely hinder our ability to meet BCZ's hiring goals.

At the very least, the existing Measure U labor standards should remain the same because they preserve a pathway for owner-held goals, such as BIPOC or Oakland legacy hiring. Other

developers have owner-held goals such as union hiring. A PLA would eliminate the ability for projects to pursue owner-held goals and force our hand in one direction.

If the policy changes, it should preserve an option for demonstrated BIPOC hiring as an alternative to a PLA (e.g. choose one).

5/28/2024 (email) James E. Roberts-Obayashi Corp.

Thank you for hosting this event. I was impressed with the way your team handled being shouted at and quite honestly, disrespected by some attending parties. Please know that I 100% hear the concerns of the individuals who wanted to make this meeting and discussion about race, but that was not the intent/topic of the meeting. Therefore, I did not get out of it what I was hoping when I attended and felt that the discussion of the expansion of the current standards was a bit lacking. As such, I thought I would send a brief email with a few points of my own opinions and experience.

I do not have much feedback relating to Business Inclusion, but I can speak to the Labor Standards relating to Job Access and Participation. I have been in my position for 15 years, overseeing compliance for a general contractor and have worked with the City of Oakland on many many projects with the current LEP. 50% hours worked by Oakland residents on a project is a tough requirement to meet. *What IS working however*, is the City offering waivers and exemptions to the requirement, when there is not a local hire to be made. I really have always appreciated that if a subcontractor follows the process of notifying the city and the union of the need to hire, and there are no local residents available, that the city will offer a waiver for a limited number of hours to the subcontractor. This enables the subcontractor to remain penalty free, while also giving the City the opportunity to refer a local resident. I strongly recommend this option remain a part of the program.

What is NOT working however, is the number of steps one must take to get said waivers, and the lack of response and communication of the city. I would guess that the team handling this is extremely understaffed. My subcontractors sometimes go weeks without responses to referrals, waivers, apprentice approvals, etc. It is not fair for a city to make such strong requirements and hold subs to monetary penalties, if they cannot keep up their end of the process. Changes must be made here so that the process can flow smoothly for all parties. It needs to be streamlined so that getting a waiver for example is not a back and forth string of 3-4 emails, that go unanswered for days.

Regarding the expansion of the current program, I do not think that adding and expanding the current requirements is needed. The business and workforce goals are hard enough to meet as is. If the target is getting small local businesses to be awarded contracts, then the contract needs to look enticing to them. Already we have small subs whom will not take on projects with the LEP because they do not have the staffing to handle prevailing wage requirements, all of the compliance paperwork, the hiring and waiver process, etc. Its just too much as it is, and to expand it would only hurt the goals the city is trying to achieve.

To circle back to the topic of race and underrepresented groups...the current LEP is about Oakland residents. It is not about race. Which races make up the construction pool within the city of Oakland certainly is something for the city to look at and tackle separately, and before, any consideration to place specific race requirements on contractors by expanding the program in that manner.

Thank you again for your time.

5/21/2024 (email) Nor Cal Carpenters Union

It was great to meet you in person last week. Here are the labor standards for AB 2011. While I know it seems very simple, that is the point. Please call or email if you have any questions.

AB 2011	
100% Affordable Housing Development in Commercial Zones & Mixed-Income Housing Along Commercial Corridors	
Labor Requirements	<ul style="list-style-type: none"> • Prevailing wage required (all projects). If the project is not a public work under Labor Code 1720 or subject to a PLA contractors must verify payroll records in compliance with Labor Code Section 1776. • A project with more than 50 units (rental or for sale) must also require contractors who employ construction craft employees or let subcontracts for at least 1,000 hours to participate in an apprenticeship program or commit to seeking dispatches for apprentices. <ul style="list-style-type: none"> ○ Contractors without construction craft employees must show a contractual obligation to so comply. • On 50+ unit projects, contractors must also make specified health care contributions. <ul style="list-style-type: none"> ○ Equivalent to least the hourly pro-rata cost of a Covered California Platinum level plan for two 40-year-old adults and two dependents 0 to 14 years of age for the Covered California rating area in which the development is located. • Contractors signatory to a valid collective bargaining agreement requiring registered apprentices and expenditures on health care deemed in compliance. • Includes right of enforcement by a joint labor-management cooperation committee.

5/22/2024 (email) Satellite Affordable Housing Associates

Thank you for the invitation to participate in the Developer & General Contractor convening scheduled for 5/23 at 10:00. Unfortunately I have a conflicting commitment and won't be able to join the meeting. I do appreciate the option to provide the following comments via email:

SAHA is a non-profit housing provider that has developed, owns and/or manages 27 affordable apartment communities in the City of Oakland, encompassing over 1500 units. We have two projects currently in construction which will add 150 units for families and people with special needs as well as two projects in predevelopment (3135 San Pabo Ave in partnership with Saint Mary's Center as well as the East 12th Street Parcel 2 remainder parcel). Our housing serves extremely low income and very low income families, seniors, and people with special needs including people who have experienced homelessness.

The majority of housing that SAHA has constructed in Oakland over the past 15 years has been funded in part with financial assistance from the City. All of these projects have paid State prevailing wage rates and have successfully complied with the City's S/LBE contracting program. Our recent developments are also characterized by high union penetration rates of 90% or higher and we have set voluntary Owner goals to increase the number of local black-owned businesses that are hired on to our jobs. Our projects also typically implement federal Section 3 goals to hire local disadvantaged workers onto our job sites.

The current funding environment for affordable housing in California is very competitive and unfortunately projects located in the City of Oakland are frequently at a disadvantage when competing for State funds. The reasons for this are a complex combination of State prioritization for housing located in "high resource" census tracts (as defined by the State) and

the State's priority to fund the lowest cost projects. Very few developable areas in Oakland are classified as high resource. In addition, project costs in total and on a per unit basis tend to be much higher in Oakland as compared to projects in suburban and exurban locations. This is due to the high density infill nature of Oakland projects including costs of complying with Alameda County Environmental Health regulations and the rapidly increasing course-of-construction insurance costs that we are seeing to be double or triple for projects located in Oakland as compared to other nearby municipalities. Given the complexity and cost of developing affordable housing in Oakland as well as the existing robust contracting programs already in place, we feel that additional labor standards would be a detriment to the City's housing pipeline as it could further limit the available subcontractor pool, impede our ability to comply with the S/LBE contracting program, and prohibit the inclusion of voluntary owner goals specifically aimed at addressing racial disparities. We are fortunate to have Measure U resources to deploy for the voter-approved purpose of creating more affordable housing; as an Oakland resident myself of nearly 20 years, I hope we will be able to achieve swift and impactful progress toward addressing our community's housing needs.

Thank you again for the opportunity to provide feedback and for all the work that you do!

5/29/2024 (emailed letter) Mercy Housing California

Thank you for listening to the concerns of affordable housing organizations and local business enterprises regarding the potential addition of new labor standards for Measure U funded projects. Mercy Housing owns two affordable housing properties in Oakland, the 93-unit Hamilton Apartments (510 – 21st St) and Santana Apartments (2220 – 10th Ave) and is seeking Measure U funds to break ground on a new 97-unit affordable senior housing development at 2125 Telegraph Ave in 2025.

Mercy is currently entering a contract for over \$3 million of renovations at the Hamilton Apartments with funding from Oakland HCD. The contractor estimates that the job will be nearly 100% union and will meet 50% SLEB goals. The same contractor is also slated for the construction of our new property at 2125 Telegraph. For the new construction, although no subcontractor awards have been made yet, the contractor estimates that they will meet the SLEB requirements and achieve about 90% union participation under the current HCD workforce requirements. These achievements will correspond to this contractor's prior experience in Oakland with other non-profit developers, like SAHA.

Our contractor estimates that the imposition of a PLA to our contract would increase hard costs by approximately 2%-3%. This would translate to about \$1 – 2 million in increased hard costs for this development. These additional costs would lower the project's competitiveness to leverage state funds and would decrease the total units of affordable housing financed by limited Measure U funds.

Mercy is concerned that additional requirements, especially a potential project labor agreement, would significantly increase construction costs for a very incremental increase in union participation and make it increasingly difficult to meet other community goals, such as contracting with local black-owned businesses or hiring a local, black workforce.

5/29/2024 (emailed letter) Resources for Community Development

I am writing on behalf of Resources for Community Development (RCD) to provide our feedback regarding the possible expansion of labor standards applicable to Oakland's Measure U affordable housing funds. RCD is a nonprofit organization dedicated to creating and preserving affordable homes for people with the fewest options. Within Oakland, we currently provide around 700 homes affordable to low-income families, with another 77-unit development scheduled to open in 2026.

I attended the labor standards stakeholder convening on Thursday, May 23, and would like to provide additional feedback in writing. RCD shares the city's goals of promoting equitable contracting and creating high-quality construction jobs for local residents. Our Oakland projects routinely have both a high percentage of local hires and high union saturation. At our most recent Oakland development, Coliseum Place, around half of all construction hours were worked by Alameda County residents and 85% of all workers on the project were union members.

We are concerned that the adoption of additional labor standards, if not carefully designed, could result in rising costs and growing inefficiencies. We urge the city to consider the following three principles in the creation of additional standards:

1. Any additional labor standards must maintain Oakland's competitiveness for state affordable housing resources. Competitive state funding sources place great significance on total development cost per unit. The city's current labor standards strike a delicate balance of promoting local equity priorities while maintaining sufficient bid competition to contain overall per-unit costs. For example, the Coliseum Place development referenced above successfully leveraged each City dollar for \$15 of other funds from County, state, and federal sources. Adding additional labor standards risks driving up costs by decreasing competition for bids, which in turn risks Oakland developments being out-competed due to cost. If Oakland affordable housing projects cannot win state funding, then all stakeholders lose because no developments will be constructed.
2. Any additional labor standards must align with Oakland's existing equity goals and associated requirements. We strongly support the City's equity goals. RCD believes that uplifting diversity and equity in our supplier procurement processes can help us more fully achieve our mission of building stronger communities and enriching lives. We strive to actualize these values regardless of whether a development is in a jurisdiction with strong equity standards, like Oakland, or in one of the numerous Bay Area jurisdictions that don't have such requirements. To that end, we have undertaken internal initiatives to improve tracking the demographics of our vendors and increase our networking with diverse professional services firms to help us meet our own robust goals for diverse business participation. Any consideration of additional labor standards must not make it more difficult to comply with existing Oakland programs such as S/LBE and local hire, or our own internal initiatives to increase participation from diverse business enterprises.
3. Any additional labor standards must align with existing state and regional regulations. Measure U is one of many funding sources and programs, each with its own requirements, that affordable housing developers use to fund or facilitate development. The city must consider that other labor standards in addition to the city's standards will be imposed on many affordable housing developments via these other programs. Most importantly, SB 35/SB 423 streamlining requires the payment of prevailing wages, healthcare costs, and hiring of union apprentices. RCD has used this streamlining legislation on 70% of new construction developments we have entitled since its passage,

making alignment with SB 35/SB 423 standards a critical necessity for any future Oakland program. The city must also consider the labor and contracting standards currently proposed at BAHFA and CTCAC to reduce the potential for future conflicts between these requirements and Oakland's requirements.

Thank you for considering our input. I appreciate the opportunity to participate in this stakeholder process, and I look forward to continuing to be involved in these conversations as the proposed policies move onward to City Council later this summer.

5/30/2024 (email) Nibbi

Thanks for inviting us to the input session last week, I was able to speak briefly at the open session about some of this information, but below are some additional details about my experience having worked on several affordable housing projects with City of Oakland. Feel free to ask for any clarification or other info if needed. Thanks!

What is Working?

There are exemptions for companies working less than 140 hours on the project, and for sporadic work. We have a handful of companies that utilize these exemptions, so we don't want to see them eliminated since there is not a lot of opportunity for hiring if contractors have such a small scope of work, or they only come out for a few days at a time.

The waiver process, while burdensome, is the only way for some companies to avoid financial penalties, so while the process could be improved we would not want to eliminate this off-ramp for subs who can't meet the goals due to not being able to find a qualified Oakland resident to hire.

Prevailing wage requirements are fine, LCP Tracker (the online payroll reporting system the City of Oakland uses) is useful and helpful in streamlining the payroll collection process.

What is not working with existing Labor Standards

Getting to 50% Oakland hours per contractor per trade is difficult. 50% overall would be easier, there are always going to be smaller or specialty work that is not feasible to get to 50%. The process if a contractor doesn't currently have enough Oakland residents is already cumbersome. Right now the process is that the contractor reaches out to their union first, asking for an Oakland resident, wait for a response and if the union isn't able to refer an Oakland resident the contractor reaches out to Oakland Housing Authority, waits 72 hours for a response, OHA is supposed to use their list of referrals and reach out to Community Based Organizations for any candidates to place. Then if no referrals are provided, the contractor then emails City of Oakland who provides a candidate or if no one is available the contractor completes the Form C, and then the company is issued waivers which need to be kept on file to provide proof at the end of a project that efforts were made in hiring and to avoid a penalty for not meeting the 50% requirement. This process rarely results in an Oakland resident being referred, the position requires experience or classifications that are not available.

The 15% apprenticeship requirement is easier to meet, but the feedback from subcontractors is that the process is confusing and takes a lot of administrative time.

How might the City expand the Labor Standards

The city should use data from the past and current programs to find what percentages of local residents are attainable.

Look into flexible goals to capture more Laborer and Carpenter hours where there may be more referrals available, and create exemptions or off-ramps for more specialized trades/scopes (i.e. crane operators, pile drivers, etc)

Streamlined goals or a reduction of paperwork for priority subcontractors (small businesses, legacy Oakland businesses)

Other funding sources (examples: Skilled and Trained Workforce, Section 3 from Federal funding, AB 2873, County of Alameda Measure A1 funding, PLAs, etc) require additional tracking and paperwork, so when Oakland projects have those funding sources, there should be consideration for streamlining the goals so as not to create disparate tracking requirements and duplicate paperwork. For example, in San Francisco, if Federal funding triggers Section 3 tracking and hiring goals, then the City of San Francisco implements a good faith effort policy while also monitoring Section 3 numbers on a project. When there is no Federal funding they have a stricter mandatory hiring policy, similar to the Oakland LEP.

In the new policy, be clear about the responsibilities of the city vs the responsibilities of the owner/developer, Prime Contractor, and Subcontractors. The city needs to help track compliance, the current standard is for the GC to track everything, including the payment of prevailing wage. There was a recent change implemented in LCP Tracker where the GC is required to accept the payrolls and approve the apprentices the subcontractors enter before it is visible to the city. The city does not hold check ins or review any local hire reports until the project closeout phase. This leaves no time for corrective action on the part of the subcontractors, and does not help provide hiring opportunities.

Another attendee at the meeting mentioned staffing and response times and I would also like to provide feedback that I and my subcontractors often need to send multiple emails and follow up to get responses to emails sent to the city, so adequate staffing is very important as well as a clear understanding of who in the department handles what types of emails, and the contacts for supervisors in case emails need to be escalated or we are not getting timely responses.