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December 4, 2001

HONORABLE CITY COUNCIL
Oakland, California

Subject: **Proposed Charter Amendment Regarding Living Wage and Labor Standards at Port–Assisted Businesses**

Dear President De La Fuente and Members of the Committee:

Introduction

At its December 4, 2001 meeting, the Council will consider the subject proposed charter amendment. To facilitate that discussion we are furnishing you the language changes that have been proposed by the East Bay Alliance for a Sustainable Economy on behalf of the "Port Living Wage Coalition". Proposed language changes to section 5 of the subject charter amendment, entitled "Preventing Displacement of Workers" are set forth below. .Proposed language changes are in bold face. Proposed language changes to sections 1 and 2 to clarify who is exempted from the measure's coverage also are set forth below with changes in bold face.

"5. Preventing Displacement of Workers

(A) Each PAB which is to replace a prior PAB shall offer employment to the ~~non-management and nonsupervisory~~ **Service** Employees of the prior PAB, if these Employees worked for the prior PAB for at least 90 calendar days. Such Employees may be not be terminated by the new PAB during the first 90 work days except for just cause. The new PAB may operate at lower staffing levels than its predecessor but in such event, shall place the prior Service Employees on a preferential reinstatement list based on seniority. For purposes of this Agreement, a PAB "replaces" another if it (1) assumes all or part of the lease, contract or subcontract of a prior employer or obtains a new lease, contract, or sublease, and (2) offers employment which Service Employees of the prior PAB can perform. In the case of a replacement connected to the new PAB relocating from another location, in staffing decisions the new PAB may recognize seniority from its prior locations in addition to the seniority of the prior PAB's workforce.

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professionals, paraprofessionals, confidential and office employees."

(B)Notwithstanding Section 902(e) or any other provision of the City Charter, except in an emergency the Port shall not enter into any private contract for **regular (non-temporary)** work **which is not of a professional, scientific or technical nature and** which was performed by persons employed by the Port as of June 30, 2001, nor for the same class of work, including such work at new or expanded Port facilities."

"1. Scope and Definitions

The following definitions shall apply throughout this Section:

A. "Port" means the Port of Oakland.

B. "Port-Assisted Business" or "PAB" means (1) any person receiving in excess of $50,000 worth of financial assistance from the Port, or (2) any Port Contractor **if the person employs more than 20 persons per pay period, unless in the prior 12 pay periods the person has not had more than 20 such employees and will not have more than 20 in the next 12 pay periods. A PAB shall be deemed to employ more than 20 persons if it is part of an "enterprise" as defined under the Fair Labor Standards Act employing more than 20 persons.** "Port Contractor" means any person party to a Port Contract as herein defined.

C. "Port Contract" means:

(1) Any service contract with the Port for work to be performed at the Port under which the Port is expected to pay more than $50,000 over the term of the contract;

(2) Any contract, lease or license from the Port involving payments to the Port expected to exceed $50,000 either (a) over the term of the contract, lease or license, or (b) during the next 5 years if the current term is less than 1 year but may be renewed or extended, either with or without amendment;

(3) any subcontract, sublease, sublicense, management agreement or other transfer or assignment of any right, title or interest received from the Port pursuant to any of the foregoing contracts, leases or licenses.

A contract, lease or license with the Port or any agreement derived therefrom shall not be deemed a Port Contract unless entered into after enactment of this Section, or

amended after enactment of this Section to benefit in any way the party dealing with the Port.

D. "Employee" means any individual employed by a PAB in Port-related employment. ~~If the PAB employs more than 20 persons per pay period, unless in the prior 12 pay periods the PAB has not had more than 20 such employees and will not have more than 20 in the next 12 pay periods. A PAB shall be deemed to employ more than 20 persons it is part of an "enterprise" as defined under the Fair Labor Standards Act employing more than 20 persons.~~

2. Exemptions from coverage

~~In addition to the above exemption for workforces of fewer than 20 workers~~, ~~t~~The following persons shall also be exempt from coverage under this Section:

A. An Employee who is (1) under twenty-one (21) years of age and (2) employed by a nonprofit entity for after-school or summer employment or for training for a period not longer than ninety (90) days, shall be exempt.

B. An Employee who spends less than 25 percent of his work time on Port-related employment.

C. A person who employs not more than 20 employees per pay period.

Conclusion

None of the proposed languages change our legal conclusion regarding the legality of the proposed charter amendment, which we restate here.

The proposed charter amendment contains three provisions that raise legal issues: Living Wage, Worker Retention and Labor Peace (now called "Labor Standards")..The Living Wage provision is supported by substantial legal authority and similar provisions have been adopted in many jurisdictions. Although fewer decisions have addressed the validity of the second provision, Worker Retention, the authority that does exist, from the Court of Appeals for the D.C. Circuit, provides strong support for its validity. Little case law exists in regard to the third provision, Labor Peace (now Labor Standards). Although a federal district court in this Circuit upheld a Labor Peace (now Labor Standards) provision which is similar in pertinent respects to the Labor Peace (now Labor Standards) provision in the charter amendment, no appellate court

has issued a decision squarely addressing the validity of such provisions. Therefore, although it is difficult to predict the outcome of a legal challenge, based on the analysis provided in this report, we believe the City could present a solid basis for defending the labor peace provision.

Very truly yours,

JOHN A. RUSSO
City Attorney

Attorney Assigned:
Barbara J. Parker

CITY OF OAKLAND
AGENDA REPORT

TO: Office of the City Manager
ATTN: Robert C. Bobb
FROM: Community & Economic Development Agency
DATE: November 29, 2001

RE: **AN ANALYSIS OF THE PROPOSED CHARTER AMENDMENT REGARDING LIVING WAGE AND LABOR PEACE AT PORT-ASSISTED BUSINESSES**

SUMMARY

The City Council Rules Committee has asked the Community and Economic Development Agency to analyze the economic impact of a proposed ballot measure entitled, "Charter Amendment Regarding Living Wage and Labor Peace at Port Assisted Businesses", should it be adopted. While there has not been adequate time to complete a thorough economic analysis, we offer the following report. The proposed ballot measure significantly differs from the Living Wage Ordinances adopted by the City of Oakland and the Port of Oakland. The City's ordinance applies to businesses receiving $100,000 or more in financial assistance from the City (city financial aid recipients, or CFARs) and service contractors receiving $25,000 or more for the furnishing of services to the City. It does not apply to the purchase of products, equipment, or commodities or to construction contracts. The Port ordinance is based upon the City's and has nearly identical provisions, with some minor differences[1]. Neither ordinance applies to tenants of the City or Port of Oakland. City and Port staff have written reports during the process of adopting the existing living wage ordinances that indicated that, while there would be some increased costs to the City/Port and the affected businesses, the public interest outweighed these impacts. The same cannot be said of the proposed ballot measure before the City Council.

The ballot measure under consideration would affect a much larger group of businesses and non-profits in ways that cannot be immediately tabulated. This report attempts to provide a quick assessment of the potential impacts.

FISCAL IMPACT

While staff has not had adequate time to provide a thorough economic analysis of the fiscal impact of this proposed measure on the City of Oakland, we make the following general observations:

- Several of the provisions provide a disincentive for new tenants to locate in Port properties. To the extent that this results in increased vacancies and businesses locating outside of the Port and outside of Oakland, this will reduce Port revenues and could impact the City through reduced sales taxes and business license fees;
- The new provisions applying to Port contractors goes far beyond what other cities are doing and could increase the Port's cost of doing business; and,

[1] For example, per the Tidelands Trust, the Port cannot offer a subsidy to a private, for-profit business. Therefore, the Port ordinance indicates that covered activities include non-profit organizations that receive port assistance, as opposed to referring to for-profit and non-profit organizations.

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- Several of the provisions have the potential to impact highly paid professional workers who typically do not receive protections from public agencies because the charter amendment requires retention of non-management and non-supervisory employees of a prior employer.

BACKGROUND

Entities, including for profit and non-profit business, must comply with the "Living Wage and Labor at Peace at the Port" measure if they:

1) Receive more than $50,000 in financial assistance from the Port;
2) Receive a contract of more than $50,000 from the Port;
3) Pay the Port in excess of $50,000 for a lease, license, contract (*the dollar figure is calculated over the lifetime of a lease, license or contract or for the next 5 years if the agreement is for less than one year, but may be renewed)*; or,
4) Are sub-lessees and/or subcontractors of entities that must comply.

The ballot measure refers to these entities as "Port-Assisted Businesses" (PABs) even though under number 3, above, the tenants are paying the Port market rate rent.

Exemptions are provided for:

- Businesses with fewer than 20 workers;
- An employee who is under 20 years of age and employed by a non-profit for less than ninety (90) days; and/or,
- An employee who spends less than 25% of work time on Port-related employment.

The provisions of the ballot measure require that:

1) **Living Wage:** All applicable PABs must pay the living wage of $10.50 per hour to all their employees, with a credit of $1.37 per hour for providing health benefits;
2) **Worker Retention:** If a new PAB replaces a prior contractor, subcontractor or lessee, then the new PAB must retain the prior contractor's employees for 90 days, unless just cause exists to discharge them; and,
3) **Labor Peace:** All hospitality and/or retail food PABs that either pay to or receive from the Port of Oakland $50,000 during the length of the agreement must "be or become a signatory to a valid collective bargaining agreement or other contracts under 22 USC section 185(a) with any labor organization representing or seeking to represent any of the PABs employees on the Port property." The agreement must contain a no-strike pledge for 5 years or for the length of the Port's interest in the business, whichever is less.

The ballot measure goes on to prohibit **contracting out** work that Port employees performed as of June 30, 2001, except in an emergency situation. This is more restrictive than the current charter provision (applying to the City and Port), that allows contracting out so long as the contract is for professional, scientific or technical work that is temporary in nature and does not result in the loss of employment or salary of permanent civil service employees.

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For Port contracts and leases, including renewals and/or amendments, the ballot measure would only apply to agreements entered into after its adoption.

KEY ISSUES AND IMPACTS

Although the exact dollar impact cannot be determined at this time, each of the proposed elements of the ballot measure will likely result in some increased costs to entities with a financial relationship with the Port of Oakland. In general, businesses and non-profits affected by the proposed ballot measure can respond in one of four ways:

- raise prices – this could involve increased prices to the Port for service contracts, increased costs for other businesses in the Port area (e.g. airlines) and/or to individual customers. For non-profits, it would mean increased fund raising and/or grant writing;
- lower costs – cost reductions could involve the lowering of personnel costs; including laying off workers. Employers may also provide fewer and smaller raises to employees, or reduce overtime opportunities. Businesses could also seek to lower costs by asking the Port to reduce their rental payments to compensate for the increased costs associated with the ballot measure;
- reduce profit - a business could reduce profits in order to absorb the costs of a living wage requirement. Some businesses may do this, especially if the added cost is extremely low. However, small and start-up firms may already have a minimal profit structure that prohibits absorbing those costs. In many cases, those are the types of firms that Port of Oakland tries to support through its Non-Discrimination and Small Local Business Utilization Policy; or,
- refuse to compete – this could involve refusing to compete for a Port contract or deciding that being a Port tenant was not viable financially.

Each of the various elements and their potential impacts are described below.

➢ **Living Wage Salaries**

Port Contractors

Given the fact that the existing Port living wage ordinance applies to contractors with contracts in excess of $25,000, the salary requirement of the ballot measure applying to contractors is duplicative of existing law.

Port Tenants

Per the Port of Oakland, the Port currently has over 1,000 lease and other type of agreements with businesses and individuals. These entities range from American Lung Association of California and Alaska Airlines to Yoshi's Japanese Restaurant and United Parcel Service. The agreements include lease agreements, terminal operating agreements, management agreements, and tie down agreements for private airplanes stored at the airport (see attachment A for a partial listing of Port

tenants). With few exceptions, rents are as high as the market will bear[2]. Pursuant to the ballot measure, all tenants will be required to comply with the living wage because they are in a lease agreement with the Port. Their sub-lessees would similarly be required to comply.

CEDA staff has reviewed a June 6, 2000 analysis of impacts upon Port tenants of living wage salary positions and how they would address the increased costs. A total of 51 businesses responded to a survey designed by Port staff which was sent to tenants of the Aviation, Maritime, and Commercial Real Estate divisions of the Port. Collectively, the respondents employed 2,455 workers. The study found that:

- Nearly ¾ of Aviation and Commercial Real Estate respondents would be impacted by the living wage salary provisions; only one Maritime respondent would be affected;
- Nearly 20% of the employees of the respondents would potentially benefit from the salary provisions; and,
- The total annual costs to the affected respondents would be $1,745,600.

To address the increased costs, the businesses indicated they may take a number of actions. The survey found that:

- 72% of the businesses would charge customers more;
- 39% would move away from the Port area or stop doing business with Port tenants;
- 36% would reduce their number of employees;
- 32% would reduce other operating costs
- 29% would absorb the increased costs out of profits; and,
- 7% would increase revenue by other means[3].

Another option expressed in the written comments would be to ask for a reduction in the rent paid to the Port.

A UC Berkeley study prepared at the request of State Senator Don Perata surveyed 168 tenants and service contractors of the Port of Oakland[4]. The report found that:

> *About 2,600 low-paid workers at the Port of Oakland would directly benefit from the proposed living wage ordinance. They would receive an average pay and benefits increase of $2.25 per hour, and up to 12 days of paid leave per year[5]. In total, these low wage workers would receive an additional $4.7 million in wages and $3.3 million in health benefits each year.*

[2] The City of Oakland and East Bay Regional Parks (EBRP) both benefit from $1 annual rent for the parkland under their management. If the reduced rent has a value of $50,000 or more over the life of the agreement (or over a 5 year period), then the City and EBPR may be subject to the proposed ballot measure.
[3] The total is greater than 100% because respondents were allowed to give multiple answers.
[4] The report does not distinguish between contractor and tenant which limits its usage for this report. Is not possible to determine if contractors, which receive payment from the Port, view the measure differently than tenants, which make payments to the Port. The contractors have the capacity to return some of the increased costs directly to the Port by increasing their contract costs while most tenants do not have this option available to them.
[5] Not part of the proposed ballot measure.

In addition, approximately 500 more workers would benefit indirectly because of a "wage push" effect. They would receive an average pay increase of $1.16 per hour. The total indirect wage push for workers just above and below the living wage level amounts to a $2.1 million increase each year.

The 3,100 living wage beneficiaries would comprise about 27 percent of all non-supervisory employees of Port leaseholders.[6]

The study further found that, "the total cost of the living wage policy would be about $13 million per year". Excluding the cost of the 12 days of paid leave, which is not part of the ballot measure (total cost of $2 million), the cost of the salary component of the ballot measure would be $11 million per year. Cost increases would occur primarily at the airport and with the commercial real estate tenants due to the fact that nearly all maritime salaries already exceed the living wage. It concludes that, "these costs will be absorbed easily by Port leaseholders, visitors to the waterfront, and passengers at the Oakland airport. Business will not be driven away and Port revenues will not go down. Bond ratings for the Port should remain unaffected"[7].

The conclusion is based upon the finding that the provisions would increase leaseholder's aggregate wage bill by 4.4 percent, which is 1.1 percent of gross revenue. However, given that not all leaseholders will be affected, an aggregate assessment of this type minimizes the impact on any individual business. When considering specific employment sectors, the report found that airport security, airport curbside assistance, and entertainment and personal services would experience costs increases greater than 10 percent of their gross revenues. "Restaurants, hotels, warehousing, retail stores, car rental agencies, and parking lots would all experience smaller, but significant, increases in costs".[8]

In considering the impacts to the Port's commercial real estate revenues, the report found that about a dozen firms would experience impacts in excess of 10 percent of their business costs. At least three of these are national businesses, Best Western, Motel 6 and the Old Spaghetti Factory. The report was confident that the increased costs could be absorbed by these businesses, however, the businesses themselves are not quoted.

Businesses Contracting with the Port

Pursuant to the proposed ballot measure, businesses that contracted with the Port for services in excess of $50,000 per year would be required to comply with the salary provisions. When questioned about what services the Port provides for a fee other than being a landlord, Port staff were unable to identify any services other than the provision of electricity to some of their tenants.

Although implementing an expanded living wage salary provision involving all Port tenants would have clear positive impacts upon workers earning less than the living wage, it could negatively impact existing businesses during the current economic downturn. Those tenant industries that would be most impacted by the living wage salary provision are those that are also feeling some of

[6] Zabin, Carol, Michael Reich, Peter Hall, Living Wages at the Port of Oakland, Institute of Industrial Relations, U.C. Berkeley, CA, December 1999, page 2.
[7] Ibid., p. 4.
[8] Ibid, p. 20.

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the most severe negative impacts of the current economic downturn, i.e., the hospitality, aviation, and entertainment industries. Many of these are already engaged in worker layoffs; the increased salary costs could result in further layoffs.

A further point of concern is that the ballot measure specifically states that tips or gratuities are not to be considered when determining if an employee is paid below the living wage. As a result, individuals whose actual income is greater than the living wage, will receive an hourly increase in pay rate. Should tips be included as wages, this could reduce some of the costs to the impacted businesses.

- **Worker Retention**

As presently written, the worker retention provision will apply to all PABs, including Port contractors, tenants, and businesses contracting with the Port for Port services. It mandates that a new Port contractor, tenant, or business contracting with the Port hire the employees of its predecessor for a 90 day period. Termination during this time can only occur for just cause.

The District of Columbia and the City of Philadelphia have worker retention provisions that apply throughout those cities. However, upon review of the ordinances, it was discovered that they only apply to contracts relating to specific types of industries that typically employ low wage workers while the Port of Oakland ballot measure would apply to all industries and all incomes, so long as the position was non-management and non-supervisory.

The Philadelphia ordinance only relates to contracts for security, janitorial, building maintenance, food and beverage, hotel service, or health care services, including any subcontracts for these services (Section 9-2302 of the Philadelphia Code of Ordinance and Home Rule Charter). Likewise, the Washington D.C. ordinance applies to contracts involving: (1) food service workers in a hotel, restaurant, cafeteria, apartment building, hospital, nursing care facility, or similar establishment; (2) employees hired by a contractor to perform janitorial or building maintenance services in an office building, institution, or similar establishment; (3) nonprofessional employees hired by a contractor to perform health care or related support services in a hospital, nursing care facility, or similar establishment (Section 32-101 of Title 32, Chapter 1, Displaced Worker Protection). The ordinances require that when a new contractor in the above-listed industries takes the place of another, the new contractor must offer employment to the predecessor's employees. If fewer positions are required than before, the positions must be filled based upon seniority.

The proposed ballot measure, as written, would apply to <u>all</u> types of contracts with the Port of Oakland, including contracts involving highly salaried professional positions, so long as they are not managers or supervisors. Consider a scenario in which the Port decides to no longer contract with "AB Architects" to design the airport roadway street improvements and instead wishes to work with "CD Architects". Under the ballot measure, "CD Architects" would be <u>required</u> to hire the other firm's non-management and non-supervisory staff for 90 days, even though they may have a full contingent of staff in their offices.

The proposed measure, as written, would also apply to businesses leasing space from the Port. As part of entering into a lease agreement, new tenants will be <u>required</u> to hire the prior tenant's staff if the new business has jobs the prior tenant's employees can perform. It is highly unlikely that

prospective tenants will find it acceptable to be forced to hire the previous employer's staff as part of entering into a lease agreement. The ballot measure does allow the businesses to acknowledge seniority, but the requirement will place the businesses in a situation where if they wish to maintain their existing staff and comply with the measure they may be forced to pay increased labor costs for a 90 day period. For new businesses that may be operating on a small budget with a limited time period to make a profit, the worker retention provision could preclude them from locating in the Port area.

Furthermore, the measure is silent on the issue of who will determine whether the prior PABs employees can do the work of the new PAB. Both the Washington, D.C. and the Philadelphia ordinances require that employees are informed of their right to file a wrongful discharge suit if they believe the new employer did not follow the ordinance provisions. Applied as proposed in Oakland, this will expose prospective tenants to wrongful discharge litigation, a further disincentive to locating in the Port. On the other hand, if an administrative appeal procedure were created, this would likely create an increased cost burden to the Port and may result in appeals extending for lengthy periods of time.

While data does not exist regarding the specific impact of this provision, it will likely provide a severe disincentive to businesses currently doing business or considering doing business with the Port of Oakland. For tenants, this provision may encourage them to look for rental locations that do not involve the Port of Oakland. They could remain in Oakland, but they may also be encouraged to consider locations in other parts of the Bay Area. For contractors, the provisions may prevent them from working with the Port in the future, even if they are qualified to perform the service. Lastly, the ballot measure, does not compare to the Philadelphia and Washington D.C. models as it significantly expands the number and type of businesses affected by the worker retention provision. Even if it did emulate the other cities, adoption of such a measure during this time of economic uncertainty could result in a negative impact on the Port, its tenants and contractors that would outweigh the benefits to the workers.

- **Labor Peace**

The Labor Peace provisions will require that all hospitality and retail food industries enter into collective bargaining agreements or other contracts with each labor organization representing or seeking to represent the employees. The labor provisions must have no-strike agreements for 5 years or for however long the entity has a financial relationship with the Port.

According to the East Bay Alliance for a Sustainable Economy (EBASE), several hotels already have collective bargaining agreements or neutrality agreements indicating that they take no steps to oppose unionization of their workforce. The Oakland Airport Hilton, for example, is unionized, while neutrality agreements exist for Homewood Suites and Simeon development at I-880 and Hegenberger Road.

The Port has experience requiring collective bargaining agreements for maritime and aviation construction projects. Their current contracts require that if a selected construction contractor is not unionized, the contractor needs to pay union wages and pay into the union pension fund. The contracts also include no strike provisions.

Insufficient data exists to determine the potential impacts of this provision upon the hospitality or food industries.

➢ **No Contracting Out**

The contracting out provision proposed in the ballot measure is significantly stronger than the existing charter provisions the City and Port share. At present, both agencies are precluded from contracting for a service if it would result in loss of employment or salary of permanent civil service employees. The proposed language prevents contracting for a class of work currently performed by Port staff whether or not existing positions would not be impacted by the proposed contract. Implementation of this provision would prevent the Port from contracting out design work related to temporary construction projects leading them to significantly increase staff for a limited duration project.

For example, the Port currently has one licensed structural engineer on staff. As part of the $1.4 billion airport expansion, the Port estimates that approximately 20 structural engineers will need to be involved in the design and construction of the airport terminal complex alone. This work will last only a limited number of years and the end result would likely be employee layoffs. In contrast, any private engineering firm that receives the contract would continue to secure additional contracts that would allow it to maintain the existing workforce. Under the airport expansion project, the Port anticipates entering into up to 5,000 contractual agreements for design, construction, security, etc. The Port also relies on several specialized outside counsel for lawsuits, such as the recent airport litigation and when issuing bonds, which does not occur with great frequency.

One can surmise that this provision will dramatically increase the operating costs for the Port, as they will be required to hire additional staff even for limited duration projects. The current charter provision is sufficient to prevent contracting from adversely impacting the existing workforce.

➢ **Potential Economic Impacts**

The proposed ballot measure equally applies its provisions to Port contractors and Port tenants even though each has a significantly different financial relationship with the Port. The provisions may be particularly problematic for tenants who pay the Port for the opportunity to locate their business on Port property, as opposed to contractors who receive financial benefit from their relationship with the Port.

Pursuant to the proposed ballot measure, businesses and non-profits seeking to lease a space in which to operate would be forced to pay a minimum salary to their workers, potentially hire the employee of the previous tenant and/or be subject to wrongful discharge litigation, and allow collective bargaining among its workforce if it is a hospitality or food service business. Evidence does not suggest that in the increasingly competitive Bay Area commercial rental market, the desirability of Port property is so high that businesses will be willing to accept the resulting increased costs and administrative requirements. Instead, there is potential that businesses will locate elsewhere. Should this occur, it will have a negative impact upon Port revenues and may impact the City of Oakland through reduced sales taxes and business tax fees.

Under the proposed ballot measure, contractors would be subject to two new provisions, the worker retention and the labor peace provisions. While it is not unusual to place expectations upon contractors receiving financial benefit from a public agency, as opposed to tenants paying for a lease, the worker retention provision proposed in Oakland goes far beyond what has been implemented in other cities and could significantly increase the Port's cost of doing business. In addition, the provision is not limited to historically low wage industries, as is done in Philadelphia and Washington, D.C. This could result in considerable benefit to highly paid professionals who typically do not need government protection.

To the extent that businesses vacate the Port rental spaces and are not replaced or that the Port is forced to reduce rental rates, Port and City revenues could be impacted. The Port will experience a loss in rental income, while the City could experience a loss of sales tax and/or business license tax revenue if the businesses leave Oakland. If customers refuse to accept the increased costs, the businesses may ultimately fold.

Further loss of rent will occur due to the way some of the leases are structured. Some of the Port leases are for a percentage of gross profit above the break-even point. If costs increase for these businesses, it will result in reduced rental payments to the Port.

On the other hand, little or no impact to City revenues could occur if the displaced Port tenants instead lease in other parts of Oakland. However, given the current economic market and the fact that the Port offers a unique leasing product in Jack London Square and at the airport, that may not be likely for many of the displaced tenants.

- **Ballot Language**

Before the proposed measure is forwarded to the Oakland voters, the synopsis included in the draft resolution needs to be changed so that it is more reflective of the proposed measure provisions. The existing language shown does not refer to the fact that tenants would need to comply with the provisions, does not accurately describe the no contracting out provisions, and is inaccurate in its description of the labor peace provisions, i.e., it makes no mention of the fact that hospitality and food businesses will be required to enter into collective bargaining agreements.

ENVIRONMENTAL OPPORTUNITIES

The proposed measures are designed to improve economic sustainability by increasing the income of low wage earners. However, they have additional impacts that could result in employee layoffs and other cost cutting measures. Further analysis is needed to evaluate the environmental and sustainable opportunities.

DISABILITY AND SENIOR CITIZEN ACCESS

The proposed measure will not affect disability and senior citizen access.

RECOMMENDATION(S) AND RATIONALE

The proposed ballot measure includes several potentially significant changes to the contracting and leasing environment within the Port of Oakland. The full impacts of these changes are not known at this time. Staff recommends that City Council accept this informational report.

ACTION REQUESTED OF THE CITY COUNCIL

Staff recommends that City Council accept this informational report.

Respectfully submitted,

WILLIAM E. CLAGGETT
Executive Director

Prepared by:
Monica R. Lamboy, Chief Administrative Officer

APPROVED AND FORWARDED TO THE
RULES COMMITTEE

Robert C. Bobb /acc
OFFICE OF THE CITY MANAGER

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Port of OaklandTenants (partial listing)

COMMERCIAL REAL ESTATE TENANTS	
NAME	ADDRESS
AFI Marketing (Mingles)	370 Embarcadero Oakland, CA 94607
Alameda City of Bureau of Electricity	Underground below estuary
American Lung Association of California	424 Pendleton Way Oakland, CA 94621
Artship Foundation	Adjacent to Ninth Avenue Terminal
Athens Baking Company, LLC	Vacant land on Embarcadero near Diesel St.
Bank of America (ATM)	Washington Street Garage
Barnes and Noble Bookstore	98 Broadway Oakland, CA 94607
Barnes and Noble Coffee Shop	98 Broadway Oakland, CA 94607
Bay Area Rapid Transit	Open area south side of 7th Street
Beverages and More!	525 Embarcadero Oakland, CA 94607
Blickman Turkus DBA BT Commercial Real Estate	530 Water Street #750 Oakland, CA 94607
Butterflies and Critters	423 Water Street Oakland, CA 94607
Buttner, Edgar L. Trustee 7717 Oakport	Land at 7717 Oakport
Buttner, Edgar L. Trustee 7719/21/23 Oakport	7719/21/23 Oakport
Buttner, Edgar L. Trustee 7729 Oakport	7729 Oakport
California Alliance for Jobs	70 Washington Street #425 Oakland, CA 94607
California Canoe & Kayak, Inc.	409 Water Street Oakland, CA 94607
California Canoe & Kayak, Inc.	415 Water Street Oakland, CA 94607
California Canoe & Kayak, Inc., Storage	409 Water Street Oakland, CA 94607
Cavin, Lyle C., Jr. Law Offices	70 Washington Street #325 Oakland, CA 94607
City of Oakland	Estuary Park
City of Oakland DBA Police Training Center	70 Washington Street #210 Oakland, CA 94607
City of Oakland, A Municipal Corp. DBA Port of Oakland	530 Water Street 1st - 6th Floors
Concept Marine Associates, Inc.	Port Building J-120, 2nd Floor, 1853 Embarcadero
Cost Plus	Parking Lot 2nd & Embarcadero
Creamer, J. Fletcher & Son, Inc.	Land at 2121 Diesel Street
D. Philbrick (Philbrick Boat Works)	603 Embarcadero Oakland, CA 94606
Dealey, Renton & Associates	66 Jack London Square, #210 Oakland, CA 94607
Dockside Boat and Bed	Potomac Yard Oakland, CA 94607
Dockside Boat and Bed-Boat Concession Agreement	Various vessels in the Jack London Marianas
Dow-Pac Properties	100 Washington Street Oakland, CA 94607
East Bay Regional Park District-Easement	
East Bay Regional Park District-Park Area	
EBMUD-Estuary Park Estuary Park Easements	
EBMUD-Roadway Easement near 5th Avenue	San Antonio Creek near 5th Avenue Oakland
EBMUD-San Antonio Wet Weather Facility	
Creek Plant	
EBMUD-Wet Weather Dechlor Easement	
Edgewater Associates	8407 Edgewater Drive Oakland, CA 94621
El Torito Restaurants, Inc.	67 Jack London Square Oakland, CA 94607
Embarcadero Business Park, LLC	1900 Embarcadero-Cove
Ericksen, Arbuthnot, Kilduff, Day & Lindstrom, Inc.	530 Water Street #720 Oakland, CA 94607
Executive Inn	1755 Embarcadero Oakland, CA 94607
Forman, William & Shannon (Courtyard on the Cove)	1940-1946 Embarcadero
Fraser Mechanical	Dennison and Embarcadero
G.K.W., Inc.	One Embarcadero Cove Oakland, CA 94606
G.K.W., Inc.	One Embarcadero Cove Oakland, CA 94606

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G.K.W., Inc. Berth	One Embarcadero Cove Oakland, CA 94606
Golden State Diesel Marine	351 Embarcadero Oakland, CA 94606
Hahn's Hibachi	66 Jack London Square Oakland, CA 94607
Heinolds	90 Franklin Street Oakland, CA 94607
Hilken-Hansen Enterprises	295 Hegenberger Road Oakland, CA 94612
Il Pescatore Ristorante	75 Jack London Square Oakland, CA 94607
ILWU Local 91	1851 Embarcadero Oakland, CA 94606
Intigre Marine, Ltd.	1155 Embarcadero Oakland, CA 94606
Intigre Marine, Ltd.	1155 Embarcadero Oakland, CA 94606
J.W. Silviera Company	One Fifth Avenue Oakland, CA 94606
Jal Vue Window	295 6th Avenue Oakland, CA
John Baker,DBA Oakland Marine Service	Water/Land @ foot of 5th Avenue Oakland, CA
Joyce S. Hooks DBA Time Out for Fun and Games	435 Water Street Oakland, CA 94607
Kaiser Sand and Gravel	5th and Embarcadero
Karibu Ethnic Gifts and Accessories	425 Water Street Oakland, CA 94607
KTVU, Inc.	296 5th Avenue Oakland, CA 94606
Lad Food Services	66 Jack London Square, #200 Oakland, CA 94607
Lakeside Metals	455 Ninth Street Oakland, CA 94606
Lee, Laura DBA Oyster Reef	1000 Embarcadero Oakland, CA 94606
Ma. Teresita E. Banguis DBA ORCS Mgmt. Systems	70 Washington Street #215 Oakland, CA 94607
Main Street California Inc. DBA TGI Friday's	Water Street II 450 Water Street
Marine Max	Bldgs. P-104,P-113,P-114,P-108,P-106, + water/vacant land
Motel 6 (Formerly Apple Inn Motel)	1801 Embarcadero Oakland, CA
Murasaki Jack London Square	419 Water Street Oakland, CA 94607
Murphy, Kerry J.	7727 Oakport Oakland, CA
Narin, Norman et al	105 Embarcadero Oakland, CA 94606
National Furiture Liquidators, Inc.	845 Embarcadero Oakland, CA 94606
National Railroad passenger Corp.-Amtrak	530 Water Street 5th Floor Oakland, CA 94607
New York Life Insurance Company	70 Washington Street #200 Oakland, CA 94607
Northern California marine Assn-Boat Show	Center Basin Marina JLS
Northern California Marine Association-Fuel Dock	2 Webster Street Oakland, CA 94607
Oakland Airport Hilton	One Hegenberger Road Oakland, CA 94614
Oakland Hospitality LLC	Homewood Suites Hotel 714 Franklin Street
Oakland International Trade & Visitors Center	530 Water Street #740 Oakland, CA 94607
Oakland Telecard, LLC	Ports Bldgs. F111 & F601
Oakland, City of -City Service Center	7101 Edgewater Drive Oakland, CA
Oakland, City of -Fire Station and Fire Boat #2	Building E-503
Oakland, City of-San Antonio Sewer pipeline Ease	Easement near San Antoino Creek
OFD Historical Society	2400 Embarcadero Oakland, CA 94606
Orient Reefer Container Services	Vacant land, foot of 5th Avenue
OSF International, Inc. Old Spaghetti Factory	61 Webster Street Oakland, Ca 94607
Out and About	476 Water Street Oakland, CA 94607
Pacific Bell Mobile Services	Pacific Bell Mobile Services
Pacific Coast Container	70 Washingto Street #450 Oakland, CA 94607
Park Tilden Corporation	2400 Embarcadero Oakland, CA 94606
Patelco Credit Union	Pavillion Kiosk 1 98 Broadway Oakland, CA 94607
Peninsula Holdings, Inc. DBA Tony Roma's	55 Washington Street Oakland, CA 94607
Port of Oakland Commercial Real Estate	70 Washington Street #205 Oakland, CA 94607
Port of Oakland Crane Division	70 Washington Street #495 Oakland, CA 94607
Port of Oakland-Equal Opportunity	70 Washington Street #205 Oakland, CA 94607
Praxair Distribution	901 Embarcadero Oakland, CA 94606

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Restaurants Unlimited Kincaids	1 Franklin Street Oakland, CA 94607
Samuel Fredericks DBA Samuel's Gallery	70 Franklin Street Oakland, CA 94607
Score Holdings, Inc. DBA Score!	66 Jack London Square 3rd Floor Oakland, CA
Scotland Gifts Dot Com LLC	472 Water Street Oakland, CA 94607
Scott's Jack London Square	2 Broadway Oakland, CA 94607
Scott's Jack London Square-Banquet Facility	2 Broadway Oakland, CA 94607
Seabreeze Cafe	280 6th Avenue Oakland, CA 94606
Ship Shape Marine	280 6th Avenue Oakland, CA 94606
Sonni of California Inc. DBA Hat Generation	431 Water Street Oakland, CA 94607
Telemedia Communication Systems, Inc.	351 Embarcadero Oakland, CA 94606
The Assoc. For the Preservation of the Potomac	540 Water Street Oakland, CA 94607
Thunderbird Properties	296 6th Avenue Oakland, CA
Two Dog Net, Inc.	70 Washington Street #310 Oakland, CA
United Parcel Service, Inc.	8400 Pardee Street Oakland, CA
Uno's Jack London Square	70 Washington/499 Embarcadero West
Van Matre Lumber Company	251 5th Avenue Oakland, CA 94606
Waterfront Plaza Hotel-West Basin Parking	10 Washington Street Oakland, CA 94607
Waterfront Plaza Hotel-Jack Bistro	10 Washington Street Oakland, CA 94607
Waterfront Plaza Hotel	10 Washington Street Oakland, CA 94607
Waterfront Plaza Hotel-Banquet and Meeting Rooms	Water Street II 473 Water Street Oakland, CA 94607
Waterfront Plaza Hotel-Expansion	10 Washington Street Oakland, CA 94607
Waterfront Plaza Hotel-Gift Ship	Water Street III # 493
Waterfront Valet Parking Service	Parking Lot, Broadway
Wells Farge ATM	70 Washington/Washington Street II Oakland, CA
Wulfing, Elam & Associates	Service Station-Business Park, 451 Hegenberger Rd
Yoshi's Japanese Restaurant, Inc.	510 Embarcadero Oakland, CA 94607

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AIRPORT TENANTS	
Name	Address
AP Enterprises	P.O. Box 281943 San Francisco, CA 94128
Aero Nova, Inc.	905 E. Martin Luther King Jr. Drive #270
A2Z Aircraft Services	P.O. Box 250368 San Francisco, CA 94028
Air Terminal Services, Inc. (ATS)	#1 Airport Drive, Box 42 Oakland, CA 94621
Airborne Freight Corporation	7683 Earhart Road, Hangar 9 Oakland, CA
Airport Terminal Service, Inc.	500 Northwest Plaza, Suite 1100 Saint Louis, MO
Airwell, Inc.	8300 Earhart Road Oakland, CA 94621
Alaska Airlines	#1 Airport Drive, Box 24 Oakland, CA 94621
Allegro Air	2787 Sussex Way Redwood City, CA 94061
Aloha Airlines	#1 Airport Drive, Box 32 Oakland, CA 94621
American West	#1 Airport Drive, Box 26 Oakland, CA 94621
American Airlines	#1 Airport Drive, Box 14 Oakland, CA 94621
American Building Service	P.O. Box 32 San Leandro, CA 94577
Ameriflight	9717 Earhart Road, Hangar 2 Oakland, CA 94621
A.O.G. Services	P.O. Box 57041 Hayward, CA 94545
Argenbright Security, Inc.	1860 El Camino Real, #300 Burlingame, CA 94010
Artisan Manufacturing Company	P.O. Box 2653 Bldg. L-553 Oakland, CA 94614
Astro-Aire Enterprises	P.O. Box 2335 Bldg. L-820 Oakland, CA 94614
Avis Rent A Car Systems, Inc.	P.O. Box 2521 Oakland, CA 94614
Bank of America	P.O. Box 4127 Bldg. L-810 Oakland, CA 94614
Bayair, Inc.	7951 Earhart Road Bldg. L-810/L-710/Land
Bay Avionics	P.O. Box 6636, Airport Station Oakland, CA 94603
Budget Rent A Car Systems, Inc.	#1 Airport Drive Oakland, CA 94621
Cal-Air Aviation Service	P.O. Box 281103 San Francisco, CA 94128
Chevron Real Estate Mgmt. Co.	7799 Earhart Road Bldg. L-881/ (Hgr. 10)
Chevron U.S.A., Inc.	P.O. Box 6565 Bldg. L-503 Oakland, CA 94621
Civil Air Patrol	P. O. Box 1596 Bldg. L-631 San Leandro, CA 94577
Continental Airlines	#1 Airport Drive, Box 26 Oakland, CA 94621
Delta Airlines	#1 Airport Drive, Box 38 Oakland, CA 94621
Dollar Rent A Car System, Inc.	P.O. Box 2642 Oakland, CA 94614
Enterprise Rent A Car Company of S. F.	192-98th Avenuen Oakland, CA 94603
Federal Express Corporation	#1 Sally Ride Way Oakland, CA 94621
Hallmark Aviation Service	5757 W. Century Blulevard, # 860 L. A. CA 90045
Hilltop Aviation Service	9351 Earhart Road, # 113 Oakland, CA 94621
Huntleigh USA Corporation	10332 Old Olive Street Road St. Louis MO 63141
JetBlue Airways Corporation	#1 Airport Drive, Box 9 Oakland, CA 94621
Kaiser, Inc.	P.O. Box 2626 Bldg. L-310 Oakland, CA 94614
Link Services	P.O. Box 6605 L-710 Oakland, CA 94621
LSG/SKYCHEFS	P. O. Box 14088 Oakland, CA 94614
Mexicana Airlines	#1 Airport Drive, Box 27 Oakland, CA 94621
Mosher Management	8517 Earhart Road Oakland, CA 94621
Mosher Management	605 Chenery Street #B San Francisco 94131
National Car Rental System, Inc.	#1 Airport Drive, Box 36 Oakland, CA 94621
Next Century	123 Second Street L-820 Sausalito, CA 94965
Night Hawk, Inc.	1070 Beachy Street L-629 Oakland, CA 94621
North Field Aviation	P.O. Box 6087 L-908 Oakland, CA 94603
Oakland Flyers	P.O. Box 6033 Oakland, CA 94603

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Ogden Aviation Services	#1 Airport Drive, Box 33 Oakland, CA 94621
One Source Building Services, Inc.	1735 E. Wilshire Avenue Santa Ana, CA 92705
Pacific Gas & Electric	P.O. Box 2641 L-810 Oakland, CA 94614
Pegasus Aviation	8991 Earhart Road L-310 Oakland, CA 94621
Rainin Instrument	7951 Earhart Road Oakland, CA 94621
Rolls-Royce	P.O. Box 6069 Oakland, CA 94603
Runex Enterprises	5061 Toyon Way Antioch, CA 94509
Safeway, Inc.	7843 Earhart Road Oakland, CA 94621
Sierra Academy of Aeronautics, Inc.	P. O. Box 2429 Oakland, CA 94614
SkyWest Airlens, c/o Delta Airlines	#1 Airport Drive, Box 38 Oakland, CA 94621
Southwest Airlines	#1 Airport Drive, Box 25 Oakland, CA 94621
Space Air Supply, Inc.	9260 Earhart Road Oakland, CA 94621
Swissport Fueling	P.O. Box 6366 Oakland,CA 94614
Tag Aviation USA	7951 Earhart Road Oakland, CA 94621
The Hertz Corporation	#1 Airport Drive, Box 40 Oakland, CA 94621
Thrifty Car Rental	70 Hegenberger Loop Oakland, CA 94621
Today's Aircraft	7683 Earhart Road Oakland, CA 94621
Today's Aircraft Maintenance Contracting Org.	P.O. Box 2237 Vacaville, CA 95696
Trans-Box Systems	P.O. Box 6278 Oakland, CA 94603
Trans-Pacific Aviation Services	P. O. Box 282656 San Francisco 94128
United Airlines	#1 Airport Drive, Box 2 Oakland, CA 94621
United Airlines OAKFL	1100 Airport Drive Oakland, CA 94621
United Parcel Service, Inc.	8400 Pardee Drive Oakland, CA 94621
United States Postal Service	7201 Earhart Road Oakland, CA 94621
USS/FAA/DOT	8250 Earhart Road Oakland, CA 94621
USS/FAA/DOT	1027 Grumman Street Oakland, CA 94621
USS/FAA/DOT	1029 Grumman Street Oakland, CA 94621
USS/FAA/DOT	8517 Earhart Road #100 Oakland, CA 94621
Western Aerospace Museum	P. O. Box 14264 Airport Station
Worldwide Flight Services	#1 Airport Drive, Box 5 Oakland, CA 94621

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CHART - EXHIBIT C

Proposed Port Living Wage and Labor Peace Charter Amendment	**Oakland Living Wage Ordinance, O.M.C. Chapter 2.28**
Service Contracts	**Service Contracts**
Applies to **all contracts for services** over $50,000	Applies to **all contracts for services** over $25,000 *Secs. 2.28.010, 2.28.020*
Service contract threshold $50,000	Service contract threshold $25,000 *Secs. 2.28.020*
No explicit provision regarding duration of requirement to pay living wages.	Wages and other benefits requirements last for duration of service contract *Sec. 2.28.040(B)*
Applies to **all employees** of **PABs with > 20 employees/pay period** who spend 25% or more time on Port-related employment, unless PAB has not employed > 20 employees for prior 12 pay periods, and will not employ that number for future 12 pay periods. **Applies automatically** to an **"Enterprise"** as **defined** under **FLSA**	Applies to employees of contractors or subcontractors who **actually perform work for** the **City** *Sec. 2.28.020(2)(1)*
Applies to **contracts and amendments** executed after effective date of Charter Provision.	Applies to **contracts and amendments** executed after effective date of ordinance.
Port Assisted Business ("PAB")	**City Financial Assistance Recipient ("CFAR")**
Applies to Port Agreements and sub-agreements involving	Applies to City and Redevelopment Agency

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real property interests when certain threshold is met	development projects when receiving "financial assistance" from the City/Agency *Secs. 2.28.010 & 2.28.020*
Applies to Port leases and licenses	*Does **not apply** to City leases and licenses*
Threshold **$50,000*** ***No time limit on calculating receipt of threshold amount**	Financial assistance threshold is **$100,000 during 12 month period** *Sec. 2.28.020*
No definition or description of events that trigger threshold	Detailed description of circumstances or situations considered "financial assistance" *Sec. 2.28.020(1)*
Applies to **all employees** of **PABs with > 20 employees/pay period** who spend 25% or more time on Port-related employment, unless PAB has not employed > 20 employees for prior 12 pay periods, and will not employ that number for future 12 pay periods. **Applies automatically** to an **"Enterprise"** as **defined** under **FLSA**	Applies to CFAR tenants and leaseholders with at least **20 employees** for **each working day** in **20 calendar weeks during 12 months after occupation or use** of property *Sec. 2.28.020(2)*
Applies to employees of **PABs** that **spend 75%** or more of their **time** on "Port-related employment"	Applies to employees of **CFARs** that **spend 50%** or more of their **time** on funded **program/activity** or **property** *Sec. 2.28.020(2)(2)*
No such limit on PABs.	Applies to employees of **service contractors** (greater than $25,000) **of CFARs** that **spend 50% or more** of their **time** on funded **program/activity** or **property** *Sec. 2.28.020(2)(3)*
No duration of requirement	Duration of requirement for

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	life of assistance contract - **Or, 5 years** in cases of assistance for real or tangible property purchase or for construction *Sec. 2.28.040(A)*
Applies to **contracts, leases, licenses and amendments** executed after effective date of Charter Provision.	Applies to **contracts and amendments** executed after effective date of Charter Provision.
No requirement	**Service & CFAR Subcontractor Duty**
N/A	Duty to pay living wage extends to employees of Subcontractors of Service Contractors & certain CFAR Tenants/Leaseholders *Sec. 2.28.110(B),(C),(D) & (E)*
No Requirement	**RFP, Contract & Declaration** *Sec. 2.28.100*
N/a	Requires City and Agency to include specific language in contracts and RFPs to put contractors and CFARs on notice *Sec. 2.28.100*
N/a	Requires contractor to sign declaration of intent to pay prevailing wage *Sec. 2.28.110(A)*
Wages/Benefits	**Wages/Benefits**
Wage/health benefit requirement <u>not</u> limited to employees performing work under Port contract	*Wage/health and other benefits limited to employees performing work under City Contract.*
Sets apparent "credit"* up	Provides initial

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to $1.37/hour for wages w/out h.b. *"Credit" is not defined as part of "wages"	differential between wages w/h.b. and wages w/out h.b. of $1.25/hour Sec. 2.28.030(A)
Not provided	Provides 12 compensated days off per year Sec. 2.28.030(B)(1)
Not provided	Provides 10 uncompensated days off per year for employee or family member sick leave Sec. 2.28.030(B)(2)
No post-execution requirement	Evidence of health insurance due 30 days post-execution of contract Sec. 2.28.030(C)
Displacment of Workers	DISPLACEMENT OF WORKERS
Requires PAB that replaces a PAB to offer jobs to prior, non-management, non-supervisory workforce, for at least 90 days (if workers worked for prior PAB for 90 days or more); Termination for just cause during first 90 days; Replacement PAB must maintain seniority list* and reinstate prior PAB's employees. Defines what constitutes replacement *Unclear whether list must be maintained for first 90 days or some longer period.	*No requirement*
Contracting Out	***Contracting Out***

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Prohibits contracting out of work if Port employees performed work as of 6/30/2001, except if emergency	*No such requirement - City is subject to current Charter § 902(e) which allows contracting out if no loss of employment or salary to permanent employees.*
Labor Peace Provisions	***Labor Peace Provisions***
Requires that Port Contracts in which Port has proprietary interest* and which are involved in hospitality or retail food industry sign labor agreements that include no-strike clauses. **Proprietary interest is defined in section 6(B). Provides relief from requirement if 3rd party neutral makes certain findings	*No requirement*
Waiver by Labor Agreement	**Waiver by Labor Agreement**
Waiver prohibited except that employees may waive provisions other than labor peace (section 6) in a valid collective bargaining agreement.	Living Wage ord. may be **explicitly, clearly and unambiguously waived** by employees **in collective bargaining agreement** *Sec. 2.28.160*
Exemptions	**Exemptions** *Sec. 2.28.090*
Exempts PABs that have not employed > than 20 people for prior 12 pay periods, and will not employ > 20 persons for future 12 pay periods	Employers with fewer than 5 employees *Sec. 2.28.090(A)*
	Trainees in a City-approved job training program - for training period *Sec. 2.28.090(B)*
Youth employees under 21 -	Youth employees under 21 -

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after school, summer work, less than 90 days employed	after school, summer work, less than 90 days employed *Sec. 2.28.090(C)*
PAB employees who spend less than 25% time on "Port related employment"	CFAR employees who spend less than 50% time on City funded **program/activity** or **property**
	Employees of **service contractors** (greater than $25,000) **of CFARs** that **spend less than 50%** of their **time** on funded **program/activity** or **property**
	Employees of CFAR tenants and leaseholders who employ fewer than **20 employees** for **each working day** in **20 calendar weeks during 12 months after occupation or use** of property
No right of Port to waive	**One-year Waiver by Council, Renewable** *Sec. 2.28.080*
N/A	CITY MANAGER RECOMMENDATION & CITY COUNCIL FINDING: 1) **ECONOMIC HARDSHIP**, 2) WAIVER **WILL FURTHER CITY'S INTERESTS IN CREATING TRAINING JOBS** LIKELY TO LEED TO PERMANNENT LIVING WAGE JOBS, 3) **NO DISPLACEMENT** OR REPLACEMENT OF EXISTING EMPLOYEES, 4) **BALANCE OF COMPETING INTERESTS** WEIGHS CLEARLY IN FAVOR OF WAIVER
N/A	CITY COUNCIL FINDS THAT ITS IN THE **BEST INTERESTS OF THE CITY** TO WAIVE
Enforcement	**Enforcement** *Secs. 2.28.120, 2.28.130, 2.28.140*
City Manager **may** promulgate implementation rules & regulations	City Manager **required** to promulgate implementation rules and regulations, &

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	provide reports to City Council *Sec. 2.28.120*
Not provided	Authorizes City to take action/remedies against contractor/CFAR (e.g., suspend payments; get money back; debar contractor/CFAR; $500/week fine; wage restitution) *Sec. 2.28.130*
Not provided	City process for reviewing employee complaint *Sec. 2.28.140*
Savings Clause	**Savings Clause**
Not applicable to extent will cause loss of any federal or state funding of Port activities.	This Ord. is applicable to all City, Federal and State funded contracts/CFARs to the extent that it is consonant with laws that authorize the funding *Sec. 2.28.170*

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OAKLAND CITY COUNCIL

RESOLUTION NO. _____C.M.S.

INTRODUCED BY COUNCILMEMBER_____

RESOLUTION SUBMITTING, ON THE CITY COUNCIL'S OWN MOTION, A PROPOSED CHARTER AMENDMENT, ENTITLED, "LIVING WAGE AND LABOR STANDARDS AT PORT-ASSISTED BUSINESSES", TO BE SUBMITTED TO THE ELECTORS AT THE NOMINATING MUNICIPAL ELECTION ON MARCH 5, 2002; DIRECTING THE CITY CLERK TO FIX THE DATE FOR SUBMISSION OF ARGUMENTS, TO PROVIDE FOR NOTICE AND PUBLICATION IN ACCORDANCE WITH THE STATEWIDE PRIMARY ELECTION, EACH TO BE HELD ON MARCH 5, 2002

WHEREAS, Oakland City Charter Article VII specifies the role and responsibilities of the City's Port Department and created the Board of Port Commissioners; and

WHEREAS, the Board of Port Commissioners oversees the operations of the Port Department which includes the Port of Oakland and the Oakland airport; and

WHEREAS, with certain exceptions the ordinances passed by the Oakland City Council do not apply to the Port Department; and

WHEREAS, due to the Board of Port Commissioners' role and responsibilities under the current City Charter, the City of Oakland's Living Wage Ordinance does not apply to the Port of Oakland; and

WHEREAS, contractors and lease holders receive a substantial benefit from doing business at the Port of Oakland, in part because of the large public investment in infrastructure, such that it is fair to require them to adhere to certain minimum labor standards in dealing with their employees at the Port; and

WHEREAS, the Port has a substantial proprietary interest in certain contracts with employers in the hospitality and retail food industry because the Port will receive a percentage of the revenues or income from the business, and that proprietary interest would be affected by labor

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disruptions at the Port; and

WHEREAS, an amendment to the Oakland City Charter adding section 728 to Article VII would:

(1) require payment of a "living wage" of not less than $10.50 without health benefits, which is the same amount the City of Oakland Living Wage ordinance currently requires, by Port tenants and contractors doing more than $50,000 in business with the Port,
(2) require, with certain exceptions, that new Port contractors doing more than $50,000 with the Port, who replace a prior Port contractor; hire the non-management and non-supervisory employees of the prior Port contractor for a period of not less than 90 days and terminate such employees only for just cause during the 90 day period if the employees can perform the new contractor's work; and
(3) prohibit the Port Department from entering into private contracts to perform work that Port employees performed as of June 30, 2001 except in the case of an emergency; and
(4) require that in exchange for a no-strike agreement, future Port contractors in the hospitality (e.g. hotel or motel businesses) or retail food industry, shall be or become signatory to valid collective bargaining agreements or other contract with each labor organization representing or seeking to represent any of that contractor's employees on Port property, if over the term of the Port contract the Port is entitled to receive a percentage of the revenues or income of the contractor's business as rents, royalties or other income equal to at least $50,000; and

WHEREAS, the proposed Charter amendment would provide for a living wage for employees of Port contractor who do significant business with the Port; protect workers from displacement by private contractors by requiring that Port contractors who replace a prior Port contractor assume the non-management and non-supervisory workers of the prior Port contractor and limiting contracting out of work performed by Port employees; and prevent labor disputes from injuring the Port's revenue stream by requiring no strike clauses in the Port contractor's agreements with labor organizations; now, therefore, be it

RESOLVED: That the Oakland City Charter is amended to add the following section which shall read as follows:

"Section 728. LIVING WAGE AND LABOR PEACE AT PORT-ASSISTED BUSINESSES

1. Scope and Definitions.

The following definitions shall apply throughout this Section:

A. "Port" means the Port of Oakland.

B. "Port-Assisted Business" or "PAB" means (1) any person receiving in excess

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of $50,000 worth of financial assistance from the Port, or (2) any Port Contractor. "Port Contractor" means any person party to a Port Contract as herein defined.

C. "Port Contract" means:

(1) Any service contract with the Port for work to be performed at the Port under which the Port is expected to pay more than $50,000 over the term of the contract;

(2) Any contract, lease or license from the Port involving payments to the Port expected to exceed $50,000 either (a) over the term of the contract, lease or license, or (b) during the next 5 years if the current term is less than 1 year but may be renewed or extended, either with or without amendment;

(3) any subcontract, sublease, sublicense, management agreement or other transfer or assignment of any right, title or interest received from the Port pursuant to any of the foregoing contracts, leases or licenses.

A contract, lease or license with the Port or any agreement derived therefrom shall not be deemed a Port Contract unless entered into after enactment of this Section, or amended after enactment of this Section to benefit in any way the party dealing with the Port.

D. "Employee" means any individual employed by a PAB in Port-related employment if the PAB employs more than 20 persons per pay period, unless in the prior 12 pay periods the PAB has not had more than 20 such employees and will not have more than 20 in the next 12 pay periods. A PAB shall be deemed to employ more than 20 persons if it is part of an "enterprise" as defined under the Fair Labor Standards Act employing more than 20 persons.

E. "Person" include any natural person, corporation, partnership, limited liability company, joint venture, sole proprietorship, association, trust or any other entity.

F. "Valid collective bargaining agreement" as used herein means a collective bargaining agreement entered into between the person and a labor organization lawfully serving as the exclusive collective bargaining representative for such person's employees.

G. "Contract under 29 U.S.C.§185(a)" as used herein means a contract to which 29 U.S.C. §185(a) applies, as that provision has been interpreted by the United States Supreme Court.

2. Exemptions from coverage

In addition to the above exemption for workforces of fewer than 20 workers, the following persons shall also be exempt from coverage under this Section:

A. An Employee who is (1) under twenty-one (21) years of age and (2) employed by a nonprofit entity for after-school or summer employment or for training for a period not longer than ninety (90) days, shall be exempt.

B. An Employee who spends less than 25 percent of his work time on Port-related employment.

3. Payment of minimum compensation to Employees

Port-Assisted Businesses shall provide compensation to each Employee of at least the following:

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A. Minimum Compensation

The initial minimum compensation shall be wages and health benefits totaling at least ten dollars and fifty cents ($10.50) per hour, or if greater, the rate of any living wage ordinance of the City of Oakland.

B. Credit for Health Benefits

The PAB shall receive a credit against the minimum wage required by this Section of up to $1.37 per hour for the amount it spends on average for health benefits for all Employees covered by this Section and their dependents. For example, if an employer spends an average of $1.25 per hour for health insurance, then the employer need only pay each Employee at least $9.25 per hour in wages.

C. Adjustments

Beginning one year after the effective date of this Section, the above rates shall be upwardly adjusted annually, no later than April 1st, in proportion to the increase as of the preceding December 31st over the prior year in the Bay Region's Consumer Price Index as published by the U.S. Bureau of Labor Statistics. Tips or gratuities received by Employees shall not be credited or offset against the rates of compensation required by this Section. The Port shall publish a bulletin by April 1st of each year announcing the adjusted rates, which shall take effect upon such publication. Such bulletin will be distributed to all PABs covered by this and to any other person who has filed with the Port a request to receive such notice. A PAB shall provide written notification of the rate adjustments to each of its Employees and to its covered tenants, contractors and subcontractors, who shall provide written notices to each of their Employees, if any, and make the necessary payroll adjustments by July 1 following the Port's notice of the adjustment.

4. Notifying Employees of their potential right to the federal earned income credit.

Each PAB shall inform each Employee who makes less than twelve dollars ($12.00) per hour of his or her possible right to the federal Earned Income Credit ("EIC") under Section 2 of the Internal Revenue Code of 1954, 26 U.S.C. §32, and shall make available the forms required to secure advance EIC payments from the business. These forms shall be provided to the eligible Employees in English (and other languages spoken by a significant number of such Employees) within thirty (30) days of employment under this Section and as required by the Internal Revenue Code.

5. Preventing Displacement of Workers

(A) Each PAB which is to replace a prior PAB shall offer employment to the nonmanagement and nonsupervisory Employees of the prior PAB, if these Employees worked for the prior PAB for at least 90 calendar days. Such Employees may be not be terminated by the new PAB during the first 90 work days except for just cause. The new PAB may operate at lower staffing levels than its predecessor but in such event, shall place the prior Employees on a preferential reinstatement list based on seniority. For purposes of this Section, a PAB "replaces" another if it (1) assumes all or part of the lease, contract or subcontract of a prior employer or obtains a new lease, contract, or sublease, and (2) offers employment which Employees of the prior PAB can perform. In the case of a replacement connected to the new PAB relocating from another location, in staffing decisions the new PAB may recognize seniority from its prior locations in addition to the seniority of the prior PAB's workforce.

(B) Notwithstanding Section 902(e) or any other provision of the City Charter, except in an emergency the Port shall not enter into any private contract for work which was performed by persons employed by the Port as of June 30, 2001, nor for the same class of work, including such work at new or expanded Port facilities.

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6. **Agreements required to protect Port's proprietary interests from effects of labor disputes**

(A) As a condition precedent to any Port Contract in which the Port has a proprietary interest and which is in the Hospitality or Retail Food Industry, each such PAB shall be or become signatory to valid collective bargaining agreements or other contracts under 29 U.S.C. §185(a) with each labor organization representing or seeking to represent any of that PAB's Employees on Port property. Each such agreement or contract must contain a provision limiting the ability of the labor organization and its members (and in the case of a collective bargaining agreement, all employees covered by the agreement) to engage in picketing, work stoppages, boycotts or other economic interference with the Port for the duration of the Port's proprietary interest in such PAB's operation or for 5 years, whichever is less ("No-Strike Pledge"). Each such PAB shall also be required to ensure that any of its contractors, subcontractors, tenants, subtenants, licensees or sublicensees in the Hospitality or Retail Food Industry which are likely to impact the Port's proprietary interest will also be covered by No-Strike Pledges.

(B) For purposes of this subsection, "Hospitality or Retail Food Industry" includes hotels, motels or similar businesses, or on-site preparation, service or retailing of food, beverage or medication. A "proprietary interest" shall not be deemed to exist without (1) the Port being entitled to receive a percentage of the revenues or income of a business as rents, royalties or other income, and (2) the Port being expected to receive $50,000 or more in such rents, royalties or other income over the duration of the contract, lease or license.

(C) A PAB shall be relieved of the obligations of this subsection for any period of time during which a third-party neutral agreeable to the Port, the PAB and the Alameda Central Labor Council has found, after notice and hearing, either (a) that the labor organization is placing unreasonable conditions upon its No-Strike Pledge, or (b) that the Port lacks a legally-sufficient proprietary interest in such PAB's operation or the proposed agreement would be otherwise unlawful. If the parties are unable to agree upon a neutral, the PAB may contact the Federal Mediation and Conciliation Service (FMCS) to obtain a list of seven arbitrators affiliated with the National Academy of Arbitrators, from which the parties shall select a neutral by striking off names. At the PAB's request, such proceeding shall be conducted according to the FMCS expedited arbitration procedure. The Port shall bear the neutral's fees.

7. **Retaliation and discrimination barred; no waiver of rights.**

A. A PAB shall not discharge, reduce the compensation of or otherwise discriminate against any person for making a complaint to the Port, participating in any of its proceedings, using any civil remedies to enforce his or her rights, or otherwise asserting his or her rights under this Section.

B. Any waiver by an individual of any of the provisions of this Section shall be deemed contrary to public policy and shall be void and unenforceable, except that Employees shall not be barred from entering into a written valid collective bargaining agreement waiving a provision of this Section (other than subsection 6) if such waiver is set forth in clear and unambiguous terms. Any request to an individual by a PAB to waive his or her rights under this Section shall constitute a violation of this Section.

8. **Enforcement**

A. Each PAB shall maintain for each person in Port-related employment a record of his or her name, pay rate and, if the PAB claims credit for health benefits, the sums paid by the PAB for the employee's health benefits. The PAB shall submit a copy of such records to the Port at least by March 31st, June 30th, September 30th and December 31st of each year, unless the PAB has employed less than 20 persons during the preceding quarter, in which case

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the PAB need only submit a copy of such records every December 31st. Failure to provide a copy of such records within five days of the due date will result in a penalty of five hundred dollars ($500.00) per day. Each PAB shall maintain a record of the name, address, job classification, hours worked, and pay and health benefits received of each person employed, and shall preserve them for at least three years.

B. If a PAB provides health benefits to persons in Port-related employment but does not pay for them on a per-hour basis, then upon the PAB's request, the amount of the hourly credit against its wage obligation shall be the Port's reasonable estimate of the PAB's average hourly cost to provide health benefits to its Employees in Port-related employment. The PAB shall support its request with such documentation as is reasonably requested by the Port or any interested party, including labor organizations in such industry.

C. Each PAB shall give written notification to each current Employee, and to each new Employee at time of hire, of his or her rights under this Section. The notification shall be in the form provided by the Port in English, Spanish and other languages spoken by a significant number of the employees, and shall also be posted prominently in areas at the work site where it will be seen by all Employees.

D. Each PAB shall permit access to work sites and relevant payroll records for authorized Port representatives for the purpose of monitoring compliance with this Section, investigating employee complaints of noncompliance and evaluating the operation and effects of this Section, including the production for inspection and copying of its payroll records for any or all persons employed by the PAB. Each PAB shall permit a representative of the labor organizations in its industry to have access to its workforce at the Port during non-working time and in non-work areas for the purpose of ensuring compliance with this Section.

E. Notwithstanding any provision in Article VI of this Charter to the contrary, the City Manager may develop rules and regulations for the Port's activities in (1) Port review of contract documents to insure that relevant language and information are included in the Port's RFP's, agreements and other relevant documents, (2) Port monitoring of the operations of the contractors, subcontractors and financial assistance recipients to insure compliance including the review, investigation and resolution of specific concerns or complaints about the employment practices of a PAB relative to this section, and (3) provision by the Port of notice and hearing as to alleged violations of this section.

9. Private Rights of Action.

A. Any person claiming a violation of this Section may bring an action against the PAB in the Municipal Court or Superior Court of the State of California, as appropriate, to enforce the provisions of this Section and shall be entitled to all remedies available to remedy any violation of this Section, including but not limited to back pay, reinstatement or injunctive relief. Violations of this Section are declared to irreparably harm the public and covered employees generally.

B. Any employee proving a violation of this Section shall recover from the PAB treble his or her lost normal daily compensation and fringe benefits, together with interest thereon, and any consequential damages suffered by the employee.

C. The Court shall award reasonable attorney's fees, witness fees and costs to any plaintiff who prevails in an action to enforce this Section.

D. No criminal penalties shall attach for any violation of this Section, nor shall this Section give rise to any cause of action for damages against the Port or the City.

E. No remedy set forth in this Section is intended to be exclusive or a prerequisite for asserting a claim for relief to enforce any rights hereunder in a court of law. This

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Section shall not be construed to limit an employee's right to bring a common law cause of action for wrongful termination.

10. Severability

If any provision or application of this Section is declared illegal, invalid or inoperative, in whole or in part, by any court of competent jurisdiction, the remaining provisions and portions thereof and applications not declared illegal, invalid or inoperative shall remain in full force or effect. The courts are hereby authorized to reform the provisions of this Section, including limiting the scope of coverage or striking the five-year provision of subsection 6, in order to preserve the maximum permissible effect of each subsection herein. Nothing herein may be construed to impair any contractual obligations of the Port. This Section shall not be applied to the extent it will cause the loss of any federal or state funding of Port activities.". ; and be it

FURTHER RESOLVED: That in accordance with the Elections Code and Chapter 3 of the Oakland Municipal Code, the City Clerk shall fix and determine a date for submission of arguments for or against said proposed charter amendment, and said date shall be posted in the Office of the City Clerk; and be it

FURTHER RESOLVED: That in accordance with the Elections Code and Chapter 3 of the Oakland Municipal Code, the City Clerk shall provide for notice and publication as to said proposed charter amendment in the manner provided for by law; and be it

FURTHER RESOLVED: That each ballot used at said municipal election shall have printed therein, in addition to any other matter required by law the following:

PROPOSED CHARTER AMENDMENT

MEASURE PROVIDING FOR LIVING WAGE AND LABOR STANDARDS AT PORT-ASSISTED BUSINESSES

MEASURE _____

Measure _____. Shall the Oakland City Charter be amended to add section 728 to (a) require that specified Port of Oakland contractors pay a minimum living wage of $10.50 and retain qualified employees of the previous contractor for at least 90 days; (b) prohibit contracting-out of Port employees' work except in emergencies;, and (c) require that certain hospitality and retail food contractors sign labor agreements with labor organizations that include no-strike pledges?	Yes	
	No	

FURTHER RESOLVED: that the City Clerk and City Manager are hereby authorized and directed to take any and all actions necessary under law to prepare for and conduct the March 5, 2002 election and appropriate all monies necessary for the City Manager and City Clerk to prepare and conduct the March 5, 2002 election, consistent with law.

IN COUNCIL, OAKLAND, CALIFORNIA, _____, 2001

PASSED BY THE FOLLOWING VOTE:

AYES- BRUNNER, CHANG, MAYNE, NADEL, REID, SPEES, WAN AND PRESIDENT DE LA FUENTE

NOTES-

ABSENT-

ABSTENTION-

S-4

S-4-1

OPA/COUNCIL

DEC 0 4 2001

ATTEST:_____

CEDA FLOYD
City Clerk and Clerk of the Council
of the City of Oakland, California

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CITY OF OAKLAND

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

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November 29, 2001

City Council Rules and Legislation Committee
Oakland, California

Subject: **Proposed Charter Amendment Regarding Living Wage and Labor Peace at Port –Assisted Businesses**

Chairman Spees and Members of the Committee:

Introduction

The Council has been asked to place a proposed charter amendment on the March 5, 2002 ballot. The measure, entitled "Living Wage and Labor Peace at Port-Assisted Businesses," includes four provisions:

(1) **Living Wage**: requires that Port tenants, contractors and assignees of such contractors whose contracts exceed $50,000, pay a "living wage" of not less than $10.50 per hour without health benefits (contractors receive a credit against the living wage of up to $1.37 per hour for the average amount they expend for health benefits for employees covered by the measure.);

(2) **Preventing Worker Displacement ("Worker Retention")**: requires, with certain exceptions, that a new Port contractor, doing more than $50,000 of business with the Port of Oakland, retain for 90 days the non-management, non-supervisory employees of the Port contractor it replaces if the employees can perform the new contractor's work, and permits termination of such employees only for just cause during the 90-day period if the employees can perform the new contractor's work;

(3) **Contracting Out**: prohibits the Port from entering into any private contract for work that was performed by Port employees as of June 30, 2001, except in the case of an emergency;

(4) **Labor Peace**: requires that future Port contractors in the hospitality (e.g. hotel or motel businesses) or retail food industry, shall be or become signatory to a

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valid collective bargaining agreement or other labor contracts containing no-strike provisions with each labor organization representing or seeking to represent any of that contractor's employees on Port property, if over the term of the Port contract the Port is entitled to receive a percentage of the revenues or income of the contractor's business as rents, royalties or other income equal to at least $50,000. This requirement also applies to subcontractors, sublicensees, etc., in the hospitality or retail food industry in which the Port has a proprietary interest.

This report outlines the provisions of the proposed charter amendment, compares its provisions to the City of Oakland Living Wage Ordinance and provides the City Attorney's analysis of the legal issues pertaining to the amendment.

A copy of the proposed charter amendment is attached as Exhibit A. Attached as Exhibit B is a copy of the Port's Living Wage Ordinance which was adopted in October of this year and the Port's Quality Standards Program for Checkpoint security Screeners which was adopted by the Port Board on October 2, 2001. Exhibit C is a chart comparing the provisions of the City of Oakland Living Wage Ordinance and the proposed Charter amendment

Summary Conclusion

Preliminarily, we note that there are no cases directly on point in the state (California) or federal appellate courts (United States Court of Appeals for the Ninth Circuit) regarding the legality of the living wage, worker retention or labor peace provisions of the proposed Charter amendment. Therefore, we can not say with absolute certainty that those provisions would be upheld against a legal challenge.

Nonetheless, we believe there are strong legal arguments that support the legal validity of the living wage provision. Living wage laws have been adopted by more than 60 jurisdictions, including the City of Oakland. We are not aware of any successful challenges to such laws that could be used to invalidate the terms of the proposed charter amendment.

We also believe that there is a strong legal basis for the worker retention provisions of the proposed charter amendment. Rejecting a legal challenge, the federal Court of Appeals for the District of Columbia Circuit recently upheld a similar law passed by the District of Columbia.

There is less legal guidance regarding the labor peace provision of the proposed charter amendment. There are two decisions in the California federal district courts (Northern District of California) on somewhat similar, but not identical, labor peace provisions. Those decisions reached opposite conclusions about the validity of those laws. Because the labor peace provision in the proposed charter amendment is more similar to the law that was upheld, we believe there is a solid basis for defending the

proposed labor peace provision. We also believe the provision has been crafted in a way to minimize the bases for a successful legal challenge by addressing issues that have been raised in other cases.

The fact that the labor peace provision applies only to the Port - rather than to the entire City of Oakland's contracts - should make it easier to establish that the labor peace provision is designed to protect the Port's proprietary interests (e.g. revenues and rental income from its contractors and tenants) rather than as an impermissible regulatory activity. The Port is generally viewed as a business entity that is involved in maritime and other business/commercial activities. By contrast, the City of Oakland regularly serves the interests of its residents through the exercise of its police powers, enactment of ordinances, development of affordable housing, issuance of loans and establishment of programs and policies that protect the health, safety and welfare of its citizens.

The contracting out provision in our view is legally defensible. It gives the Port the option to contract out work in an emergency. Current Charter provisions allow the Port to contract with private parties if the contracts will not result in the loss of employment or salary by permanent civil service employees. Section 902(e) of the Charter.

If the proposed Charter amendment were adopted, and the City or Port were successfully sued in a legal challenge to its provisions, the City and/or Port could be held responsible for the costs of defense and for attorneys' fees.

Finally, we point out that it is not customary to have within the City Charter detailed provisions such as those in the proposed charter amendment. When times change and amendments to the provisions are warranted, voter approval of any amendments would be required. Nevertheless, although the proposed charter amendment could be cast as an ordinance, the measure might be declared invalid by the courts because the charter provisions would override any contrary ordinance. The provisions of the charter give the Board of Port Commissioners the exclusive authority and control over many aspects of the operations of the Port. The measure does address the issue of future changes in two ways: (1) it provides for a cost of living increase in the living wage provision; and (2) it permits the City Manager to promulgate rules and regulations pertaining to the implementation of the measure. The increases in the living wage to offset inflation are self-executing and would not require a charter amendment; nor would the establishment or amendment of rules and regulations promulgated by the City Manager require a charter amendment.

Summary of the Provisions

1. Who's Covered by the Proposed Charter Amendment? - The proposed Charter amendment applies to Port-Assisted Businesses (PABs), which are defined as any Port Contractor and any person who receives in excess of $50,000 of Port financial assistance. A Port Contractor is defined to mean a party to a Port Contract, which is defined in turn to mean "any service contract with the Port for work to be performed at the Port under which the Port is expected to pay more than $50,000 over the term of the contract; (2) any contract, lease, or license from the Port involving payment to the Port expected to exceed $50,000 either (a) over the term of the contract, lease or license, or (b) during the next 5 years if the current term is less than 1 year but may be renewed or extended, either with or without amendment; or (3) any subcontract, sublease, sublicense, management agreement or other transfer or assignment of a right, title or interest received from the Port pursuant to any of the foregoing contracts, leases or licenses." (Section 1(C).) The measure applies only to new contracts and leases and contract amendments that benefit "in any way the party dealing with the Port". (Section 1.)

2. Exemptions - Businesses with fewer than 20 employees, youth trainees and employees spending less than 25% of their time on Port-related business. (Section 2.)

3. Requirements:

a. **Living Wage:** PABs must pay their workers at least $10.50 per hour, or the wage level of the Oakland Living Wage, whichever is greater ("living wage"). The living wage adjusts annually to offset inflation. PABs may receive a credit of up to $1.37 per hour against the living wage level for health benefits payments. The $10.50 is the same as the amount currently provided under the City of Oakland Living Wage Ordinance. (Section 3(A).)

b. **Worker Retention:** A PAB that replaces a prior PAB is required to retain non-management, non-supervisory employees of the prior PAB for at least 90 days, unless just cause exists to discharge them. To qualify for retention the prior PAB's employees must have been employed for the prior PAB for at lease 90 calendar days and must be able to perform the work of the replacement PAB. A PAB replaces another PAB if (1) it assumes all or part of the lease, contract or subcontract of a prior employer or obtains a new lease contract, or sublease, and (2) offers employment which employees of the prior PAB can perform. This provision allows the PAB to operate at lower staffing levels but the PAB t must place the prior employees who are not retained on a preferential reinstatement list based on seniority. The provision also provides for merger of the seniority lists of the prior PAB's employees and the

replacement PAB's employees when the replacement PAB relocates from another location. (Section 5 (A).)

c. **Contracting Out:** Except in the case of emergency the Port is prohibited from contracting out work that Port employees performed as of June 30, 2001. This provision would limit the Port's ability to contract out. The current charter provision allows contracting out so long as the contract does not result in loss of employment or salary to permanent civil service employees. (Section 5(B).)

d. **Labor Peace:** PABs in the hospitality and retail food industries which have contracts in which the Port has a "proprietary interest" (at a minimum, the Port receives a percentage of the employer's income or profits) are required to "be or become a signatory to a valid collective bargaining agreement or other contracts under 22 USC section 185(a) with any labor organization representing or seeking to represent any of the PAB's employees on Port property". Such agreement must contain a no-strike pledge that lasts for five years or the length of the Port's proprietary interest, whichever is less. The labor peace requirements also apply to any work that will be done by any PAB's "contractors, subcontractors, tenants or subtenants, licensees or sublicensees in the hospitality and retail food industry that are likely to impact the Port's proprietary interest". The PAB is relieved of this duty if an arbitrator finds that a union is placing unreasonable conditions upon its no-strike pledge, or that the Port lacks a proprietary interest, or that the proposed agreement is otherwise unlawful. Proprietary interest is defined to mean "at a minimum that the Port be entitled to receive as rents, royalties or other income a percentage of the revenues of a business; and that such amounts are expected to be at least $50,000 over the duration of the contract, lease of license." (Section 6.)

4. **Enforcement:**

a. PAB Reporting and Notification Requirements:

(1) The PAB is required to maintain records documenting the name, pay rate and health benefit payments for each person in Port-related employment and the PAB is required to submit such records to the Port by the end of each quarter of the calendar year. There is an exception to the quarterly reporting requirement for businesses that employed fewer than 20 persons during the preceding calendar quarter; such businesses' reports are due at the end of the calendar year. (Section 4.)

(2) The PAB must notify each current employee and new employee at their time of hire of rights under the charter amendment and of the possible right to federal Earned Income Credit under the federal tax laws if the employee makes less than $12.00 per hour.

(3) The PAB must permit access to its work sites and relevant payroll records for Port representatives to monitor compliance with the provisions of the charter amendment, and to investigate complaints and evaluate the operation and effects of the provisions.

(4) The PAB must produce to Port representatives, upon request, for inspection and copying, its payroll records for all persons employed by the PAB

(5) The PAB must permit a representative of the labor organizations in its industry to have access to its workforce at the Port during non-working time and in non-work areas for the purpose of ensuring compliance with the provisions of this charter amendment.

b. Right of PAB Employee to Sue PAB in Court to Enforce Provisions:

The Charter amendment creates a private right of action in the Superior Court against the PAB to enforce the provisions of this Charter amendment. No cause of action is available against the Port. Upon proof of a violation, the PAB employee is entitled to treble the amount of the employee's daily compensation and fringe benefits, plus interest and consequential damages. Attorneys' fees, witness fees and costs are awarded if the employee prevails in the enforcement action.

5. Other

a. **Severability Clause:** The proposed Charter amendment includes a clause which provides that if any provision of the measure is held invalid or declared illegal by a court, the remaining provisions shall remain in full force and effect. This provision allows a court to reform or amend the provisions or portions of the provisions to insure compliance with applicable law.

b. **The Port Cannot Waive the Provisions, But the Provisions Are Inapplicable to the Extent Port Would Lose Federal or State Funding**

The measure does not apply if its application would cause the Port to lose state or federal funding.

c. No Retaliation or Discrimination:

The proposed Charter amendment prohibits retaliation and discrimination against an employee who complains about noncompliance by a PAB.

d. City Manager's right to issue rules and regulations:

The proposed charter amendment allows the City Manager to promulgate rules and regulations pertaining to the proposed charter amendment. These rules and regulations would be used by the Port in reviewing contracts, to insure compliance with the charter amendment and for purposes of the Port's monitoring and review of violations of the proposed charter amendment.

Analysis

I. Charter Amendment vs. Ordinance; Single Subject Rule

The existing Charter provisions concerning the Port Department make it self-governing except as to certain issues on which City policies govern. (Article VII of the Oakland City Charter.) Section 706 enumerates the complete and exclusive powers of the Board of Port Commissioners. For that reason, an ordinance enacted by the voters could be superseded by the Charter powers granted to the Port Board. Although it is not customary to place in the Charter detailed provisions such as those proposed in the measure, a charter amendment is the only means to insure that the Port would be subject to the measure. For example, the Port is not subject to the City's Living Wage Ordinance.

If the Council declines to put the measure on the ballot, proponents could place it on the ballot by collecting signatures from 15% of the voters.

The State Constitutional provisions and statutes concerning amendment of local charters do not expressly limit each proposed amendment to a single subject. (Article XI section 3.) According to the League of California Cities Municipal Law Handbook, 2000 Edition, Section III-25, most city attorneys have advised local officials that local initiatives are not governed by the single-subject rule that applies to statewide initiatives. The single subject rule is contained in a separate provision of the state constitution that provides for statewide initiatives (Article II section 8(d).) Article XI section 3 gives local voters the power to approve or amend their charter and the Legislature did not include in that provision a single-subject limit as it did elsewhere in the Constitution for statewide matters. (Article II section 11 and Article IV section 9.)

The California Attorney General has approved the practice of placing several charter amendments before the voters in one proposal. The Attorney General opined:

> "Extensive revisions of an existing city charter may be placed before the electorate as proposed amendments under Constitution, Article XI, section 8, subdivision (h) without going through the freeholder procedure provided for new charter proposals. The revisions may be in the form of a single proposal or broken into several individual proposals. Both types of proposals may appear on the same ballot, even though one may be included within the other". (58 Ops. Cal. AG 208, 209 (Oct. 24, 1969.)

The Attorney General concluded that statewide initiatives are governed by different authorities and are distinguishable because they are authorized under a different article of the state constitution than the provision that applies to city charter amendments.

Even if a single subject limit were applied to a city charter amendment, we believe the provisions of the proposal are sufficiently interrelated to pass muster under the approach traditionally used by the California courts in applying the single subject rule. The courts have found it permissible to combine distinct measures into one, as long as there is some logical thread or interrelationship between them. Only recently has the California Supreme Court upheld a single subject challenge to a state initiative. In Senate v. Jones, 21 Cal.4th 1142, 1157 (1999), the court rejected Proposition 24 which included legislative salaries and reapportionment. The Court determined that that there was an insufficient connection between the two provisions where the proponents argued the link was "legislative self-interest", despite the fact that salaries were set by an independent commission appointed by the Governor. The Jones Court explained the test set by prior cases:

> "In the past we have upheld a variety of initiative measures in the face of a single-subject challenge, emphasizing that the initiative process occupies an important and favored status in the California constitutional scheme and that the single-subject requirement should not be interpreted in an unduly narrow or restrictive fashion that would preclude the use of the initiative process to accomplish comprehensive, broad-based reform in a particular area of public concern [citations omitted]. In articulating the proper standard to guide analysis in this context, the governing decisions establish that 'an initiative measure does not violate the single subject requirement if, despite its varied collateral effects, all of its parts are reasonably germane to each other, and to the general purpose or object of the initiative.' [citations omitted] As we recently have explained, 'the single subject provision does not require that each of the provisions of a measure effectively interlock in a functional relationship [citation omitted]. It is enough that the various provisions are reasonably related to a common theme or purpose." 21 Cal. 4th at 1157.

II. Charter Amendment Provisions

A. Executive Summary

The proposed charter amendment contains three main substantive provisions that raise legal issues: a "living wage" requirement (Section 3), a "worker retention" requirement (Section 5), and a "labor peace" provision (Section 6). We believe there is no controversy about the legal validity of the fourth provision, which limits contracting out by the Port to emergency situations if the type of work to be contracted was performed by Port employees as of June 30, 2001. Accordingly, we do not address that provision in our analysis.

There is no controlling precedent from the Ninth Circuit or the California appellate courts regarding the legality of living wage, worker retention, or labor peace provisions, so any conclusions must necessarily be circumscribed. However, as we explain in more detail below, there is a strong basis for believing that the living wage and worker retention provisions would survive legal challenge. Living wage laws have been adopted by more than 60 jurisdictions, including Oakland, and we are not aware of any successful challenges to these laws that would have application to the living wage provision in the proposed charter amendment. There is a pending lawsuit that challenges a living wage ordinance recently adopted by the City of Berkeley, but the living wage provision of the proposed charter amendment does not include the features of the Berkeley ordinance that are the focus of that pending legal challenge.

There also is a strong basis for believing that the worker retention provision of the charter amendment would survive legal challenge. A very similar law passed by the District of Columbia was upheld by the United States Court of Appeals for the District of Columbia Circuit.

It is more difficult to predict the outcome of any legal challenge to the labor peace provision because there is little appellate authority addressing analogous laws. There are two decisions on somewhat similar labor peace ordinances by the United States District Court for the Northern District of California and they reached opposite conclusions about the validity of the ordinances they reviewed. We believe that the provision in the proposed charter amendment is closer to the ordinance that was upheld because of its similarly close nexus between the labor peace requirement and protection of the Port's proprietary interests. Accordingly, the City would have a solid basis for defending the labor peace provision.

The Council may wish to consider making findings about the proprietary interests that support the labor peace requirement so that they can be relied upon if a legal challenge is brought.

B. Legal Issues

A number of possible legal challenges would apply equally to all three provisions of the Charter Amendment. First, a challenge could assert that imposing labor-related requirements on businesses that contract with (or receive financial assistance from) the Port, but not on other businesses, violates the Equal Protection Clause. In order to uphold economic legislation such as the Charter Amendment against such a challenge, however, a court would merely need to find that applying these requirements only to Port-Assisted Businesses (PABs) has a rational relationship to some legitimate state interest. See Pennell v. City of San Jose, 485 U. S. 1, 14 (1987). Because PABs receive substantial benefits from their presence in and/or relationship with the Port, and because the Port's financial health is dependent in part upon the success of these businesses, the Charter Amendment could easily pass such a deferential legal test.

Second, the Charter Amendment could be challenged as violating the "dormant" Commerce Clause, which prohibits state and local legislation that discriminates against out-of-state businesses. The clause allows even-handed regulation to have incidental effects on out-of-state commerce as long as the burden imposed is not "clearly excessive in relation to the putative local benefits." Air Transport Ass'n of Am. v. City and county of San Francisco, 992 F. Supp. 1149, 1161, 1164 (N.D. Cal. 1998), *aff'd and remanded*, 266 F.3d 1064 (9th Cir. 2001). Under this clause, a city or state may "impose burdens on commerce within the market in which it is a participant," as long as it does not "exert a substantial regulatory effect outside that particular market." South-charter amendment does not appear to raise any serious Commerce Clause concerns, because it makes no distinction between in-state and out-of-state businesses and applies only to employees engaged "in Port-related employment." (Section 1(D).) Therefore, it is analogous to portions of an anti-discrimination ordinance that were recently upheld by the Ninth Circuit. See Air Transport Ass'n, 992 F. Supp. at 1163-65 (upholding application of anti-discrimination ordinance to contractors working in San Francisco, for the City and County of San Francisco, or operating elsewhere in California).

Third, an affected business could argue that the charter amendment is preempted by the National Labor Relations Act (NLRA) and/or the Railway Labor Act (RLA) (which applies to railroads and airlines). The same standard applies to NLRA and RLA preemption claims, but the nature and analysis of the preemption argument would differ for each of the Charter Amendment's provisions.

Under some circumstances, laws that impose substantive terms on collective bargaining agreements are preempted by the NLRA, because Congress intended to leave resolution of such matters to the bargaining of the parties. *See* Machinists v. Wisconsin Employment Relations Comm'n, 427 U.S. 132, 140, 153 (1976); Local 24, Teamsters v. Oliver, 358 U.S. 283, 295-96 (1959). The living wage provision might be challenged under this rule. However, the Supreme Court has made clear that states

and localities may adopt "minimal . . . labor standards" that grant protections to individual workers, even if such minimums apply to the negotiated terms of collective bargaining agreements. Metropolitan Life Insurance Co. v. Massachusetts Travelers Insurance Co., , 471 U.S. 724, 755 (1985). While the Ninth Circuit has found that one ordinance that set minimum wage and benefit standards did not to fall under the *Metropolitan Life* rule, this ordinance was unlike the charter amendment in that its wage and benefit levels were based on collectively bargained rates in each locality, varied by location and by craft, and applied only to certain construction projects. *See* Chamber of Commerce v. Bragdon, 64 F.3d 497, 502 (9th Cir. 1995). The charter amendment, in contrast, establishes a single standard that applies to all job classifications and to all businesses of a certain size that have contracts with or receive significant financial assistance from the Port. It is therefore similar to the type of minimum labor standards laws that have been held to be consistent with federal labor law.

An NLRA preemption challenge to the worker retention provision would argue that mandating that a new contractor hire the employees of its predecessor effectively requires the new contractor to become a "successor employer" for purposes of the NLRA (which means that the new contractor would have a duty to bargain with the union representing its predecessor's employees). . However, a very similar law, adopted by the District of Columbia, was upheld in Washington Service Contractors Coalition v. District of Columbia, 54 F.3d 811 (D.C. Cir. 1995), *cert. denied* 516 U.S. 1145 (1996), which held that the law did not require new contractors to become successor employers, but merely that the employees be retained, and that it was analogous to other minimum labor standards under Metropolitan Life. *See* Washington Service Contractors, 54 F.3d at 817-18. There do not appear to be any relevant differences between the Charter Amendment and the District of Columbia law, and so similar reasoning should apply here.

The labor peace provision could be challenged as NLRA-preempted because it requires PABs to negotiate and enter into either a collective bargaining agreement or another contract with a labor organization that falls within 29 U.S.C. §185(a). However, in Building & Construction Trades Council v. Associate builders and Contractors, 507 U.S. 218, 231-32 (1993), the Supreme Court held that the NLRA does not preempt state action when the state is acting in its proprietary interests as an owner and manager of property. The key question is therefore likely to be whether the courts view the labor peace provision as a permissible effort by the Port to protect its proprietary interests rather than an impermissible effort by the Port to regulate labor relations matters already regulated by federal law.

Two district court decisions have reached opposite conclusions in ruling on preemption challenges to similar labor peace provisions. In Hotel Employees & Restaurant Employees Union, Local 2 v. Marriott Corp., 1993 WL 341286 (N.D. Cal. 1993), a labor peace provision was upheld as an appropriate exercise of proprietary power because the local agency that imposed the requirement would receive a

percentage of the business's revenues as part of lease payments and so had a substantial proprietary interest in labor peace. In Aeroground, Inc. v. City of San Francisco, 2001 WL 1048459 (N.D. Cal. 2001), in contrast, a labor peace provision which applied to most employers that operated at an airport was struck down as preempted because the provision had a weak nexus to the airport commission's proprietary interests. Here, the strong nexus between the labor peace requirement and the Port's proprietary interest makes the labor peace provision of the Charter Amendment closer to the provision that was upheld as permissible in Hotel Employees than to the one at issue in Aeroground. Further protection against such a challenge is provided by the Charter Amendment's statement that its labor peace provision will *not* apply to a particular situation if a neutral decisionmaker concludes that "the Port lacks a legally-sufficient proprietary interest." Section 6(b). [1]

Conclusion

The proposed charter amendment contains three provisions that raise legal issues: Living Wage, Worker Retention and Labor Peace. The Living Wage provision is supported by substantial legal authority and similar provisions have been adopted in many jurisdictions. Although fewer decisions have addressed the validity of the second provision, Worker Retention, the authority that does exist, from the Court of Appeals for the D.C. Circuit, provides strong support for its validity. Little case law exists in regard to the third provision, Labor Peace. Although a federal district court in this Circuit upheld a Labor Peace provision which is similar in pertinent respects to the Labor Peace provision in the charter amendment, no appellate court has issued a decision

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[1] A challenge to the Berkeley living wage ordinance, which is currently pending in federal court, raises two additional legal arguments. First, the plaintiff argues that the Berkeley ordinance violates the Contracts Clause by imposing new requirements upon parties to *existing* lease agreements. However, this theory is inapplicable to the Charter Amendment, which, by its terms, applies only to businesses that enter or amend contracts *after* its enactment. (*See* Section 1(C)(3).) Second, the plaintiff in the Berkeley case argues that allowing these provisions to be waived by a collective bargaining agreement impermissibly delegates governmental authority in violation of the Due Process Clause. However, provisions that allow unionized workforces to opt out of otherwise applicable labor standards are commonly included in labor legislation, *see, e.g.*, Viceroy Gold Corporation v. Aubry, 75 F.3d 482, 489-91 (9th Cir. 1996), and the argument that such provisions involve the delegation of government authority is without any apparent legal merit.

squarely addressing the validity of such provisions. Therefore, although it is difficult to predict the outcome of a legal challenge, based on the analysis provided in this report, we believe the City could present a solid basis for defending the labor peace provision.

Very truly yours,

JOHN A. RUSSO
City Attorney

Attorney Assigned:
Barbara J. Parker

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Rev. 11/14/01 - EXHIBIT A

The Charter of the City of Oakland is hereby amended to add the following section:

728. LIVING WAGE AND LABOR PEACE AT PORT-ASSISTED BUSINESSES

1. Scope and Definitions.

The following definitions shall apply throughout this Section:

A. "Port" means the Port of Oakland.

B. "Port-Assisted Business" or "PAB" means (1) any person receiving in excess of $50,000 worth of financial assistance from the Port, or (2) any Port Contractor. "Port Contractor" means any person party to a Port Contract as herein defined.

C. "Port Contract" means:

(1) Any service contract with the Port for work to be performed at the Port under which the Port is expected to pay more than $50,000 over the term of the contract;

(2) Any contract, lease or license from the Port involving payments to the Port expected to exceed $50,000 either (a) over the term of the contract, lease or license, or (b) during the next 5 years if the current term is less than 1 year but may be renewed or extended, either with or without amendment;

(3) any subcontract, sublease, sublicense, management agreement or other transfer or assignment of any right, title or interest received from the Port pursuant to any of the foregoing contracts, leases or licenses.

A contract, lease or license with the Port or any agreement derived therefrom shall not be deemed a Port Contract unless entered into after enactment of this Section, or amended after enactment of this Section to benefit in any way the party dealing with the Port.

D. "Employee" means any individual employed by a PAB in Port-related employment if the PAB employs more than 20 persons per pay period, unless in the prior 12 pay periods the PAB has not had more than 20 such employees and will not have more than 20 in the next 12 pay periods. A PAB shall be deemed to employ more than 20 persons if it is part of an "enterprise" as defined under the Fair Labor Standards Act employing more than 20 persons.

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E. "Person" include any natural person, corporation, partnership, limited liability company, joint venture, sole proprietorship, association, trust or any other entity.

F. "Valid collective bargaining agreement" as used herein means a collective bargaining agreement entered into between the person and a labor organization lawfully serving as the exclusive collective bargaining representative for such person's employees.

G. "Contract under 29 U.S.C.§185(a)" as used herein means a contract to which 29 U.S.C. §185(a) applies, as that provision has been interpreted by the United States Supreme Court.

2. Exemptions from coverage

In addition to the above exemption for workforces of fewer than 20 workers, the following persons shall also be exempt from coverage under this Section:

A. An Employee who is (1) under twenty-one (21) years of age and (2) employed by a nonprofit entity for after-school or summer employment or for training for a period not longer than ninety (90) days, shall be exempt.

B. An Employee who spends less than 25 percent of his work time on Port-related employment.

3. Payment of minimum compensation to Employees

Port-Assisted Businesses shall provide compensation to each Employee of at least the following:

A. Minimum Compensation

The initial minimum compensation shall be wages and health benefits totalling at least ten dollars and fifty cents ($10.50) per hour, or if greater, the rate of any living wage ordinance of the City of Oakland.

B. Credit for Health Benefits

The PAB shall receive a credit against the minimum wage required by this Section of up to $1.37 per hour for the amount it spends on average for health benefits for all Employees covered by this Section and their dependents. For example, if an employer spends an average of $1.25 per hour for health insurance, then the employer need only pay each Employee at least $9.25 per hour in wages.

C. Adjustments

Beginning one year after the effective date of this Section, the above rates shall be upwardly adjusted annually, no later than April 1st, in proportion to the increase as of the preceding December 31st over the prior year in the Bay Region's Consumer Price Index as published by the U.S. Bureau of Labor Statistics. Tips or gratuities received by Employees shall not be credited or offset against the rates of compensation required by this Section. The Port shall publish a bulletin by April 1st of each year announcing the adjusted rates, which shall take effect upon such publication. Such bulletin will be distributed to all PABs covered by this and to any other person who has filed with the Port a request to receive such notice. A PAB shall provide written notification of the rate adjustments to each of its Employees and to its covered tenants, contractors and subcontractors, who shall provide written notices to each of their Employees, if any, and make the necessary payroll adjustments by July 1 following the Port's notice of the adjustment.

4. Notifying Employees of their potential right to the federal earned income credit.

Each PAB shall inform each Employee who makes less than twelve dollars ($12.00) per hour of his or her possible right to the federal Earned Income Credit ("EIC") under Section 2 of the Internal Revenue Code of 1954, 26 U.S.C. §32, and shall make available the forms required to secure advance EIC payments from the business. These forms shall be provided to the eligible Employees in English (and other languages spoken by a significant number of such Employees) within thirty (30) days of employment under this Section and as required by the Internal Revenue Code.

5. Preventing Displacement of Workers

(A) Each PAB which is to replace a prior PAB shall offer employment to the nonmanagement and nonsupervisory Employees of the prior PAB, if these Employees worked for the prior PAB for at least 90 calendar days. Such Employees may be not be terminated by the new PAB during the first 90 work days except for just cause. The new PAB may operate at lower staffing levels than its predecessor but in such event, shall place the prior Employees on a preferential reinstatement list based on seniority. For purposes of this Section, a PAB "replaces" another if it (1) assumes all or part of the lease, contract or subcontract of a prior employer or obtains a new lease, contract, or sublease, and (2) offers employment which Employees of the prior PAB can perform. In the case of a replacement connected to the new PAB relocating from another location, in staffing decisions the new PAB may recognize seniority from its prior locations in addition to the seniority of the prior PAB's workforce.

(B) Notwithstanding Section 902(e) or any other provision of the City Charter, except in an emergency the Port shall not enter into any private contract for work which was performed by persons employed by the Port as of June 30, 2001, nor for the same class of work, including such work at new or expanded Port facilities.

6. Agreements required to protect Port's proprietary interests from effects of labor disputes

(A) As a condition precedent to any Port Contract in which the Port has a proprietary interest and which is in the Hospitality or Retail Food Industry, each such PAB shall be or become signatory to valid collective bargaining agreements or other contracts under 29 U.S.C. §185(a) with each labor organization representing or seeking to represent any of that PAB's Employees on Port property. Each such agreement or contract must contain a provision limiting the ability of the labor organization and its members (and in the case of a collective bargaining agreement, all employees covered by the agreement) to engage in picketing, work stoppages, boycotts or other economic interference with the Port for the duration of the Port's proprietary interest in such PAB's operation or for 5 years, whichever is less ("No-Strike Pledge"). Each such PAB shall also be required to ensure that any of its contractors, subcontractors, tenants, subtenants, licensees or sublicensees in the Hospitality or Retail Food Industry which are likely to impact the Port's proprietary interest will also be covered by No-Strike Pledges.

(B) For purposes of this subsection, "Hospitality or Retail Food Industry" includes hotels, motels or similar businesses, or on-site preparation, service or retailing of food, beverage or medication. A "proprietary interest" shall not be deemed to exist without (1) the Port being entitled to receive a percentage of the revenues or income of a business as rents, royalties or other income, and (2) the Port being expected to receive $50,000 or more in such rents, royalties or other income over the duration of the contract, lease or license.

(C) A PAB shall be relieved of the obligations of this subsection for any period of time during which a third-party neutral agreeable to the Port, the PAB and the Alameda Central Labor Council has found, after notice and hearing, either (a) that the labor organization is placing unreasonable conditions upon its No-Strike Pledge, or (b) that the Port lacks a legally-sufficient proprietary interest in such PAB's operation or the proposed agreement would be otherwise unlawful. If the parties are unable to agree upon a neutral, the PAB may contact the Federal Mediation and Conciliation Service (FMCS) to obtain a list of seven arbitrators affiliated with the National Academy of Arbitrators, from which the parties shall select a neutral by striking off names. At the PAB's request, such proceeding shall be conducted according to the FMCS expedited arbitration procedure. The Port shall bear the neutral's fees.

7. Retaliation and discrimination barred; no waiver of rights.

A. A PAB shall not discharge, reduce the compensation of or otherwise discriminate against any person for making a complaint to the Port, participating in any of its proceedings, using any civil remedies to enforce his or her rights, or otherwise asserting his or her rights under this Section.

B. Any waiver by an individual of any of the provisions of this Section shall be deemed contrary to public policy and shall be void and unenforceable, except that Employees shall not be

barred from entering into a written valid collective bargaining agreement waiving a provision of this Section (other than subsection 6) if such waiver is set forth in clear and unambiguous terms. Any request to an individual by a PAB to waive his or her rights under this Section shall constitute a violation of this Section.

8. Enforcement

A. Each PAB shall maintain for each person in Port-related employment a record of his or her name, pay rate and, if the PAB claims credit for health benefits, the sums paid by the PAB for the Employee's health benefits. The PAB shall submit a copy of such records to the Port at least by March 31st, June 30th, September 30th and December 31st of each year, unless the PAB has employed less than 20 persons during the preceding quarter, in which case the PAB need only submit a copy of such records every December 31st. Failure to provide a copy of such records within five days of the due date will result in a penalty of five hundred dollars ($500.00) per day. Each PAB shall maintain a record of the name, address, job classification, hours worked, and pay and health benefits received of each person employed, and shall preserve them for at least three years.

B. If a PAB provides health benefits to persons in Port-related employment but does not pay for them on a per-hour basis, then upon the PAB's request, the amount of the hourly credit against its wage obligation shall be the Port's reasonable estimate of the PAB's average hourly cost to provide health benefits to its Employees in Port-related employment. The PAB shall support its request with such documentation as is reasonably requested by the Port or any interested party, including labor organizations in such industry.

C. Each PAB shall give written notification to each current Employee, and to each new Employee at time of hire, of his or her rights under this Section. The notification shall be in the form provided by the Port in English, Spanish and other languages spoken by a significant number of the Employees, and shall also be posted prominently in areas at the work site where it will be seen by all Employees.

D. Each PAB shall permit access to work sites and relevant payroll records for authorized Port representatives for the purpose of monitoring compliance with this Section, investigating employee complaints of noncompliance and evaluating the operation and effects of this Section, including the production for inspection and copying of its payroll records for any or all persons employed by the PAB. Each PAB shall permit a representative of the labor organizations in its industry to have access to its workforce at the Port during non-working time and in non-work areas for the purpose of ensuring compliance with this Section.

E. Notwithstanding any provision in Article VI of this Charter to the contrary, the City Manager may develop rules and regulations for the Port's activities in (1) Port review of contract documents to insure that relevant language and information are included in the Port's RFP's, agreements and other relevant documents, (2) Port monitoring of the operations of the

contractors, subcontractors and financial assistance recipients to insure compliance including the review, investigation and resolution of specific concerns or complaints about the employment practices of a PAB relative to this section, and (3) provision by the Port of notice and hearing as to alleged violations of this section.

9. Private Rights of Action.

A. Any person claiming a violation of this Section may bring an action against the PAB in the Municipal Court or Superior Court of the State of California, as appropriate, to enforce the provisions of this Section and shall be entitled to all remedies available to remedy any violation of this Section, including but not limited to back pay, reinstatement or injunctive relief. Violations of this Section are declared to irreparably harm the public and covered employees generally.

B. Any employee proving a violation of this Section shall recover from the PAB treble his or her lost normal daily compensation and fringe benefits, together with interest thereon, and any consequential damages suffered by the employee.

C. The Court shall award reasonable attorney's fees, witness fees and costs to any plaintiff who prevails in an action to enforce this Section.

D. No criminal penalties shall attach for any violation of this Section, nor shall this Section give rise to any cause of action for damages against the Port or the City.

E. No remedy set forth in this Section is intended to be exclusive or a prerequisite for asserting a claim for relief to enforce any rights hereunder in a court of law. This Section shall not be construed to limit an employee's right to bring a common law cause of action for wrongful termination.

10. Severability

If any provision or application of this Section is declared illegal, invalid or inoperative, in whole or in part, by any court of competent jurisdiction, the remaining provisions and portions thereof and applications not declared illegal, invalid or inoperative shall remain in full force or effect. The courts are hereby authorized to reform the provisions of this Section, including limiting the scope of coverage or striking the five-year provision of subsection 6, in order to preserve the maximum permissible effect of each subsection herein. Nothing herein may be construed to impair any contractual obligations of the Port. This Section shall not be applied to the extent it will cause the loss of any federal or state funding of Port activities.

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Port of Oakland's Quality Standards Program for Checkpoint Security Screeners

On October 2, 2001, the Port of Oakland's Board of Port Commissioners adopted a Quality Standards Program for Checkpoint Security Screeners ("Program") that sets minimum standards for hiring practices, training, equipment, and compensation by firms that employ persons who perform checkpoint security screener services. The Program reinforces FAR Part 108 requirements and sets total minimum hourly compensation for covered employees at $10.00 per hour with benefits, and $11.25 without benefits. Benefits include HMO membership, 12 paid days off per year and 10 unpaid days off per year.

Covered employers include any firm, including airlines and third party vendors, that employs personnel involved in performing checkpoint security screening services. Currently, Part 108 of Federal Aviation Regulations (FAR) governs air carriers and their covered employees, some of whom are also covered by the Program.

Covered employees are those who work as checkpoint security screeners at Oakland International Airport.

Standards that must be met encompass the following areas:

1. Hiring practices
   - Most of the specified hiring requirements, such as high school diploma or equivalent work experience, match Federal regulatory requirements (FAR Part 108)
   - Additional requirements address employees' communications, interpersonal, observational and crisis-management skills. The Program also requires that each employee achieve a score of 85% on tests of detection and judgmental skills. A remedial testing program is provided for employees involved in checkpoint failures.
2. Training
   - Initial and recurrent training programs and employee records management must comply with Federal and other applicable regulations.
3. Equipment
   - Use and maintenance of equipment must meet Federal and other applicable requirements
4. Compensation
   - Minimum hourly wage is $10.00 if health and time-off benefits are provided; $11.25 if health and time-off benefits are not provided, with annual CPI adjustments on January 1. Employees are not entitled to the higher wage if they reject the employer's offer of benefits.
   - Benefits are defined as:
     - Company-paid membership in a group medical plan
     - Twelve days of paid leave per year
     - Ten days of unpaid leave per year

In addition, each employer is required to establish an internal quality assurance program that meets the specifications of the Program.

EXHIBIT B

S-4,

S-4-1

OPA/COUNCIL
DEC 0 4 2001

BOARD OF PORT COMMISSIONERS
CITY OF OAKLAND

PORT ORDINANCE NO. 3666

AN ORDINANCE ESTABLISHING A LIVING WAGE REQUIREMENT.

WHEREAS the Board of Port Commissioners desires to establish a policy providing for payment of a prescribed minimum level of compensation to employees of Port contractors and recipients of Port subsidies; and

WHEREAS the following conditions and procedures are hereby adopted; now therefore,

BE IT ORDAINED by the Board of Port Commissioners of the City of Oakland as follows:

Statement of Purpose

1. The Board of Port Commissioners is vested with the complete and exclusive power to make decisions concerning the expenditure of Port funds, whether such funds are expended within the Port Area or outside the Port Area.

2. The Port of Oakland awards many contracts to private firms to provide services to the public and to the Port.

3. The Port of Oakland provides subsidies and grants to nonprofit organizations and governmental entities for the benefit of the public.

4. The Port of Oakland has an interest in promoting an employment environment in which nothing less than a prescribed minimum level of compensation is paid to employees of firms contracting with the Port to provide services to the Port.

5. The Port of Oakland also has an interest in promoting an employment environment in which nothing less than a minimum level of compensation is paid to the employees of nonprofit organizations receiving subsidies or grants from the Port.

6. The Port of Oakland has an interest in encouraging contractors or subsidized organizations to provide health care benefits to their employees or to provide their employees with an employer contribution toward the cost of health benefits.

Section 1. Title and Purpose

This Ordinance shall be known as the "Port of Oakland Living Wage Ordinance." The purpose of this Ordinance is to require that nothing less than the prescribed minimum level of compensation (living wage) be paid to employees of Port service contractors and recipients of Port financial assistance and their respective subcontractors.

Section 2. Definitions

"Contractor" means any person employing five (5) or more individuals that enters into a service contract with the Port in an amount equal to or greater than $25,000.

"Covered Activities" means the activities funded by the Port service contract or the activities for which a nonprofit organization receives Port Assistance.

"Employee" means any *individual* who is employed as a service employee of a contractor or subcontractor under the authority of one or more Service Contracts and who expends any of his or her time on Covered Activities, including but not limited to clerical and support staff; *provided, however, Employee shall not include any individual who expends less than twenty five percent (25%) of his or her compensated time on Covered Activities.*

"Employer" means any person who is a Port Assistance recipient, Contractor or subcontractor.

"Nonprofit organization" means a nonprofit organization described in Section 501(c)(3) of the Internal Revenue Code which is exempt from taxation under Section 501(c)(3) of that code, or any nonprofit educational organization qualified under Section 23701(d) of the California Revenue and Taxation Code.

"Person" means any individual, proprietorship, partnership, joint venture, corporation, limited liability trust, association, or other entity that may employ individuals or enter into contracts.

"Port Assistance" means direct assistance in the form of grants or financial subsidies in an amount of $100,000 or more in any fiscal year.

"Service Contract" means a contract by the Port for the funding of services to or for the Port, except where services are incidental to the delivery of products, equipment or commodities, and that involves an expenditure equal to or greater than $25,000. A contract for the purchase or lease of goods, products, equipment, supplies or other property is not a "service contract" for purposes of this definition. A construction contract covered by a local, state or federal prevailing wage statute is not a "service contract".

"Subcontractor" means any person who enters into a contract with a Contractor to assist the Contractor in performing a Service Contract or *with* a Port Assistance recipient to assist the recipient in performing the work for which the Port Assistance is being *given* or to perform services on the property, which is the subject of Port Assistance.

"Trainee" means a person enrolled in a bona fide job training program recognized as such by the Port.

Section 3. Payment of Minimum Compensation to Employees

(a) Wages: Employers shall pay employees a wage of no less than the hourly rates set under the authority of this Ordinance. The initial rate *for fiscal year 2001-2002* shall be $9.13 per hour worked with health benefits, as described below, or otherwise $10.50 per hour. Such rates shall be upwardly adjusted annually in proportion to the increase on December 31 of each year over the immediately preceding December 31 of the Consumer Price Index - U for the San Francisco - Oakland - San Jose Area. The Port shall publish a bulletin by April 1 of each year announcing the adjusted rates, which shall take effect on the following July 1. *The adjusted rates for fiscal year 2001-2002 are $9.13 per hour worked with health benefits and $10.50 without health benefits.*

(b) Health Benefits: Health benefits required by this Ordinance shall consist of the payment of at least *$1.25* per hour worked toward the provision of health care benefits for employees and/or their dependents. Employees who decline health benefits shall not qualify for the higher wage rate established in (a) above.

(c) Compensated Days Off: Employees shall be entitled to at least twelve (12) compensated days off for sick leave, vacation or personal necessity upon reasonable request. Employees who work part time shall be entitled to accrue compensated days off in increments proportional to that accrued by full-time employees. Employees shall be eligible to use accrued days off after the first 6 months of satisfactory employment or consistent with employer policy, whichever is sooner. Paid holidays, consistent with established employer policy, may be counted toward provision of the required 12 compensated days off.

Section 4. Exemptions

The Requirements of this Ordinance to pay minimum compensation shall not be applicable to the following employees:

(a) Employees of Port tenants, subtenants, licensees, concessionaires, franchisees, permittees or grantees of rights of entry.

(b) Employees of subtenants or licensees of the City of Oakland occupying Port property pursuant to an agreement which is covered by the City of Oakland's Living Wage Ordinance.

(c) An employee participating in a bona fide temporary job training program in which a significant component of the employees' compensation consists of acquiring specialized knowledge, abilities or skills in a recognized trade.

(d) An employee who is under 21 years of age, employed by a governmental agency or nonprofit organization for after school or summer employment, or as a trainee for a period of not longer than 90 days.

(e) An employee working for the employer less than 20 hours per week for a period not *longer than* 6 months.

(f) An employee working for an employer who employs 5 or fewer employees.

(g) Employees of employers who have obtained a waiver from the Port of the applicability of this Ordinance as provided herein.

(h) When the Board of Port Commissioners finds and determines that waiver of the applicability of the requirements of this Ordinance to a particular service contract is in the best interest of the Port.

(i) Volunteers *who are not compensated for their work other than for incidental expenses or stipends.*

(j) Employees of contractors on Port public works projects subject to the requirements of Division 2, Part 7, of the California Labor Code, or subject to the provisions of a comparable federal, state or local prevailing wage requirement.

Section 5. Waiver

A service contractor or Port assistance recipient may apply to the Executive Director or his assignee for a waiver of the applicability of the requirements of this Ordinance to a particular service contract or award of Port assistance. Such application for waiver shall set forth with specificity the reasons why the service contractor or Port assistance recipient is unable to comply with the requirements of this Ordinance. Any application for waiver must be made and acted upon prior to execution of a service contract or award of Port assistance.

Section 6. Emergency; Suspension

(a) Emergency: The Executive Director may suspend the applicability of this Ordinance in whole or in part for a maximum of thirty (30) days upon finding of an emergency.

(b) Suspension: The Board of Port Commissioners reserves the right to suspend the applicability of this Ordinance by adoption

of a Resolution setting forth the basis for suspension and the duration of the suspension.

Section 7. Retaliation and Discrimination Prohibited

(a) No employer shall retaliate or discriminate against an employee in his or her terms and conditions of employment by reason of the *individual's* status as an employee protected by the requirements of this Ordinance.

(b) No employer shall retaliate or discriminate against an *individual* in his or her terms and conditions of employment by reason of the *individual* reporting a violation of this Ordinance or for prosecuting an action for enforcement of this Ordinance.

Section 8. Employee Complaints to Port

(a) An employee who alleges violation of any provision of the requirements of this Ordinance may report such acts to the Port. The Executive Director may establish a procedure for receiving and investigating such complaints and take appropriate enforcement action.

(b) Any complaints received shall be treated as confidential matters, to the extent permitted by law. Any complaints received and all investigation documents related thereto shall be deemed exempt from disclosure pursuant to California Government Code, Sections 6254 and 6255.

Section 9. Employees' Private Right of Action to Enforce this Ordinance; Damages, Back Pay, Reinstatement, Reasonable Attorneys Fees and Costs

(a) An employee claiming violation of this Ordinance may bring an action in the Municipal Court or Superior Court of the State of California, as appropriate, against an employer and obtain the following remedies:

(1) Back pay for each day during which the employer failed to pay the compensation required by this Ordinance.

(2) Reinstatement, compensatory damages and punitive damages.

(3) Reasonable attorney's fees and costs.

(b) Notwithstanding any provision of this Ordinance or any other ordinance to the contrary, no criminal penalties shall attach for any violation of this article.

(c) No remedy set forth in this Ordinance is intended to be exclusive or a prerequisite for asserting a claim for relief to enforce any rights hereunder in a court of law. This Ordinance shall not be construed to limit an employee's right to bring a common law cause of action for wrongful termination.

(d) Nothing in this Ordinance authorizes any person to bring an action against the Port and nothing in this Ordinance authorizes a right of action against the Port for the Port's failure to take action hereunder.

(e) Nothing in this Ordinance shall require the Port to take any action authorized herein, and nothing in Ordinance shall be interpreted as requiring the Port to take or refrain from taking any action.

Section 10. Monitoring, Investigation and Compliance

(a) The Executive Director is authorized to develop and implement procedures to carry out the purposes of this Ordinance, and is authorized to promulgate regulations to insure the implementation of this Ordinance, including but not limited to regulations for resolution of employee complaints and regulations for monitoring the operations and compliance of employers, which may include establishing requirements for employers submission to the Port of employment records and requirements for uncompensated days off.

(b) Penalties imposed on employers who violate this Ordinance shall include but not be limited to any or all of the following:

(1) Suspension and/or termination of the service contract, subcontract or Port Assistance.

(2) Repayment of any or all sums paid by the Port.

(3) Deeming the employer ineligible for future Port contracts or Port Assistance.

(4) Payment of a fine payable to the Port of $500 for each week for each employee found by the Port not to have been paid in accordance with this Ordinance;

(5) Payment of wages to affected employees in accordance with this Ordinance, including wage restitution.

Section 11. Obligations of Employers

(a) Employers shall inform all employees earning less than $12 per hour of their possible right to the earned income credit.

(b) Employers shall file a declaration of compliance with their obligations under this Ordinance under penalty of perjury and as consideration for receipt of payment from the Port, in substantially the form of the Certificate of Compliance set forth in Section 17, as it may be modified from time to time by regulations adopted hereunder.

Section 12. Collective Bargaining Agreement

The provisions of this Ordinance, or any part hereof, may be waived by a bona fide collective bargaining agreement, but only if the waiver is explicitly set forth in such agreement.

Section 13. Effective Date

This Ordinance shall apply to service contracts and awards of Port assistance entered into after the effective date of this Ordinance. In the event that a contract is amended after the effective date and such amendment results in expenditure of Port funds in an amount otherwise covered by this Ordinance, the terms of this Ordinance shall apply to wages payable to employees from and after the effective date of such amendment.

Section 14. Review

The Executive Director shall periodically report to the Board on the effects and implementation of this Ordinance.

Section 15. Regulations

The Executive Director is hereby authorized to adopt and promulgate regulations, consistent with this Ordinance, as shall be necessary or convenient to implement this Ordinance.

Section 16. Severability

In the event any provision of this Ordinance is held invalid or unenforceable by any court of competent jurisdiction, such holding will not invalidate or render unenforceable any other provisions hereof.

Section 17. Form of Certificate of Compliance with Port of Oakland Living Wage Ordinance

(a) The undersigned (hereafter "Contractor") submits this certificate under penalty of perjury and as a condition of payment of its invoice(s) for services provided under the _____ agreement between the Port and Contractor.

(b) Contractor hereby certifies that all Employees of Contractor engaged in Covered Activities (both as defined in Port Ordinance No. ____ (hereafter the "Port's Living Wage Ordinance") shall be compensated in compliance with the requirements of the Port's Living Wage Ordinance.

(c) Contractor acknowledges that the Port is relying on Contractor's certification of compliance with the Port's Living Wage Ordinance as a condition of payment of Contractor's invoice(s).

(d) Contractor hereby certifies that claims, records and statements relating to Contractor's compliance with the Port's Living Wage Ordinance are true and accurate, that such claims, records and statements are made with the knowledge that the Port will rely on such claims, records and statements, and that such claims, records and statements are submitted to the Port for the express benefit of Contractor's Employees engaged in Covered Activities.

(e) All terms used herein and not defined shall have the meaning ascribed to such terms in the Port's Living Wage Ordinance.

In Board of Port Commissioners, Oakland, California, October 2, 2001. Passed to print for one day by the following vote: Ayes: Commissioners Ayers-Johnson, Kiang, Protopappas, Scates, Uribe and President Tagami - 6. Noes: None. Absent: Commissioner Kramer - 1.

Christopher C. Marshall
Secretary of the Board

Adopted at a regular meeting held October 16, 2001

By the following Vote:

Ayes: Commissioners Ayers-Johnson, Kiang, Protopappas, Scates, Uribe and President Tagami - 6

Noes: None

Abstained: Commissioner Kramer - 1

Absent: None

President.

Attest Secretary.

Approved as to form and legality:

Port Attorney

35751

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OPA/COUNCIL

DEC 0 4 2001

DRAFT
OAKLAND CITY COUNCIL

RESOLUTION NO. _____C.M.S.

INTRODUCED BY COUNCILMEMBER_____

RESOLUTION SUBMITTING, ON THE CITY COUNCIL'S OWN MOTION, A PROPOSED CHARTER AMENDMENT, ENTITLED, "LIVING WAGE AND LABOR PEACE AT PORT-ASSISTED BUSINESSES", TO BE SUBMITTED TO THE ELECTORS AT THE NOMINATING MUNICIPAL ELECTION ON MARCH 5, 2002; DIRECTING THE CITY CLERK TO FIX THE DATE FOR SUBMISSION OF ARGUMENTS, TO PROVIDE FOR NOTICE AND PUBLICATION IN ACCORDANCE WITH THE STATEWIDE PRIMARY ELECTION, EACH TO BE HELD ON MARCH 5, 2002

WHEREAS, Oakland City Charter Article VII specifies the role and responsibilities of the City's Port Department and created the Board of Port Commissioners; and

WHEREAS, the Board of Port Commissioners oversees the operations of the Port Department which includes the Port of Oakland and the Oakland airport; and

WHEREAS, with certain exceptions the ordinances passed by the Oakland City Council do not apply to the Port Department; and

WHEREAS, due to the Board of Port Commissioners' role and responsibilities under the current City Charter, the City of Oakland's Living Wage Ordinance does not apply to the Port of Oakland; and

WHEREAS, contractors and lease holders receive a substantial benefit from doing business at the Port of Oakland, in part because of the large public investment in infrastructure, such that it is fair to require them to adhere to certain minimum labor standards in dealing with their employees at the Port; and

WHEREAS, the Port has a substantial proprietary interest in certain contracts with employers in the hospitality and retail food industry because the Port will receive a percentage of the revenues or income from the business, and that proprietary interest would be affected by labor

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OPA COUNCIL
DEC 0 4 2001

disruptions at the Port; and

WHEREAS, an amendment to the Oakland City Charter adding section 728 to Article VII would:

(1) require payment of a "living wage" of not less than $10.50 without health benefits, which is the same amount the City of Oakland Living Wage ordinance currently requires, by Port tenants and contractors doing more than $50,000 in business with the Port,
(2) require, with certain exceptions, that new Port contractors doing more than $50,000 with the Port, who replace a prior Port contractor; hire the non-management and non-supervisory employees of the prior Port contractor for a period of not less than 90 days and terminate such employees only for just cause during the 90 day period if the employees can perform the new contractor's work; and
(3) prohibit the Port Department from entering into private contracts to perform work that Port employees performed as of June 30, 2001 except in the case of an emergency; and
(4) require that in exchange for a no-strike agreement, future Port contractors in the hospitality (e.g. hotel or motel businesses) or retail food industry, shall be or become signatory to valid collective bargaining agreements or other contract with each labor organization representing or seeking to represent any of that contractor's employees on Port property, if over the term of the Port contract the Port is entitled to receive a percentage of the revenues or income of the contractor's business as rents, royalties or other income equal to at least $50,000; and

WHEREAS, the proposed Charter amendment would provide for a living wage for employees of Port contractor who do significant business with the Port; protect workers from displacement by private contractors by requiring that Port contractors who replace a prior Port contractor assume the non-management and non-supervisory workers of the prior Port contractor and limiting contracting out of work performed by Port employees; and prevent labor disputes from injuring the Port's revenue stream by requiring no strike clauses in the Port contractor's agreements with labor organizations; now, therefore, be it

RESOLVED: That the Oakland City Charter is amended to add the following section which shall read as follows:

"Section 728. LIVING WAGE AND LABOR PEACE AT PORT-ASSISTED BUSINESSES

1. Scope and Definitions.

The following definitions shall apply throughout this Section:

A. "Port" means the Port of Oakland.

B. "Port-Assisted Business" or "PAB" means (1) any person receiving in excess

of $50,000 worth of financial assistance from the Port, or (2) any Port Contractor. "Port Contractor" means any person party to a Port Contract as herein defined.

C. "Port Contract" means:

(1) Any service contract with the Port for work to be performed at the Port under which the Port is expected to pay more than $50,000 over the term of the contract;

(2) Any contract, lease or license from the Port involving payments to the Port expected to exceed $50,000 either (a) over the term of the contract, lease or license, or (b) during the next 5 years if the current term is less than 1 year but may be renewed or extended, either with or without amendment;

(3) any subcontract, sublease, sublicense, management agreement or other transfer or assignment of any right, title or interest received from the Port pursuant to any of the foregoing contracts, leases or licenses.

A contract, lease or license with the Port or any agreement derived therefrom shall not be deemed a Port Contract unless entered into after enactment of this Section, or amended after enactment of this Section to benefit in any way the party dealing with the Port.

D. "Employee" means any individual employed by a PAB in Port-related employment if the PAB employs more than 20 persons per pay period, unless in the prior 12 pay periods the PAB has not had more than 20 such employees and will not have more than 20 in the next 12 pay periods. A PAB shall be deemed to employ more than 20 persons if it is part of an "enterprise" as defined under the Fair Labor Standards Act employing more than 20 persons.

E. "Person" include any natural person, corporation, partnership, limited liability company, joint venture, sole proprietorship, association, trust or any other entity.

F. "Valid collective bargaining agreement" as used herein means a collective bargaining agreement entered into between the person and a labor organization lawfully serving as the exclusive collective bargaining representative for such person's employees.

G. "Contract under 29 U.S.C.§185(a)" as used herein means a contract to which 29 U.S.C. §185(a) applies, as that provision has been interpreted by the United States Supreme Court.

2. Exemptions from coverage

In addition to the above exemption for workforces of fewer than 20 workers, the following persons shall also be exempt from coverage under this Section:

A. An Employee who is (1) under twenty-one (21) years of age and (2) employed by a nonprofit entity for after-school or summer employment or for training for a period not longer than ninety (90) days, shall be exempt.

B. An Employee who spends less than 25 percent of his work time on Port-related employment.

3. Payment of minimum compensation to Employees

Port-Assisted Businesses shall provide compensation to each Employee of at least the following:

A. Minimum Compensation

The initial minimum compensation shall be wages and health benefits totaling at least ten dollars and fifty cents ($10.50) per hour, or if greater, the rate of any living wage ordinance of the City of Oakland.

B. Credit for Health Benefits

The PAB shall receive a credit against the minimum wage required by this Section of up to $1.37 per hour for the amount it spends on average for health benefits for all Employees covered by this Section and their dependents. For example, if an employer spends an average of $1.25 per hour for health insurance, then the employer need only pay each Employee at least $9.25 per hour in wages.

C. Adjustments

Beginning one year after the effective date of this Section, the above rates shall be upwardly adjusted annually, no later than April 1st, in proportion to the increase as of the preceding December 31st over the prior year in the Bay Region's Consumer Price Index as published by the U.S. Bureau of Labor Statistics. Tips or gratuities received by Employees shall not be credited or offset against the rates of compensation required by this Section. The Port shall publish a bulletin by April 1st of each year announcing the adjusted rates, which shall take effect upon such publication. Such bulletin will be distributed to all PABs covered by this and to any other person who has filed with the Port a request to receive such notice. A PAB shall provide written notification of the rate adjustments to each of its Employees and to its covered tenants, contractors and subcontractors, who shall provide written notices to each of their Employees, if any, and make the necessary payroll adjustments by July 1 following the Port's notice of the adjustment.

4. Notifying Employees of their potential right to the federal earned income credit.

Each PAB shall inform each Employee who makes less than twelve dollars ($12.00) per hour of his or her possible right to the federal Earned Income Credit ("EIC") under Section 2 of the Internal Revenue Code of 1954, 26 U.S.C. §32, and shall make available the forms required to secure advance EIC payments from the business. These forms shall be provided to the eligible Employees in English (and other languages spoken by a significant number of such Employees) within thirty (30) days of employment under this Section and as required by the Internal Revenue Code.

5. Preventing Displacement of Workers

(A) Each PAB which is to replace a prior PAB shall offer employment to the nonmanagement and nonsupervisory Employees of the prior PAB, if these Employees worked for the prior PAB for at least 90 calendar days. Such Employees may be not be terminated by the new PAB during the first 90 work days except for just cause. The new PAB may operate at lower staffing levels than its predecessor but in such event, shall place the prior Employees on a preferential reinstatement list based on seniority. For purposes of this Section, a PAB "replaces" another if it (1) assumes all or part of the lease, contract or subcontract of a prior employer or obtains a new lease, contract, or sublease, and (2) offers employment which Employees of the prior PAB can perform. In the case of a replacement connected to the new PAB relocating from another location, in staffing decisions the new PAB may recognize seniority from its prior locations in addition to the seniority of the prior PAB's workforce.

(B) Notwithstanding Section 902(e) or any other provision of the City Charter, except in an emergency the Port shall not enter into any private contract for work which was performed by persons employed by the Port as of June 30, 2001, nor for the same class of work, including such work at new or expanded Port facilities.

6. Agreements required to protect Port's proprietary interests from effects of labor disputes

(A) As a condition precedent to any Port Contract in which the Port has a proprietary interest and which is in the Hospitality or Retail Food Industry, each such PAB shall be or become signatory to valid collective bargaining agreements or other contracts under 29 U.S.C. §185(a) with each labor organization representing or seeking to represent any of that PAB's Employees on Port property. Each such agreement or contract must contain a provision limiting the ability of the labor organization and its members (and in the case of a collective bargaining agreement, all employees covered by the agreement) to engage in picketing, work stoppages, boycotts or other economic interference with the Port for the duration of the Port's proprietary interest in such PAB's operation or for 5 years, whichever is less ("No-Strike Pledge"). Each such PAB shall also be required to ensure that any of its contractors, subcontractors, tenants, subtenants, licensees or sublicensees in the Hospitality or Retail Food Industry which are likely to impact the Port's proprietary interest will also be covered by No-Strike Pledges.

(B) For purposes of this subsection, "Hospitality or Retail Food Industry" includes hotels, motels or similar businesses, or on-site preparation, service or retailing of food, beverage or medication. A "proprietary interest" shall not be deemed to exist without (1) the Port being entitled to receive a percentage of the revenues or income of a business as rents, royalties or other income, and (2) the Port being expected to receive $50,000 or more in such rents, royalties or other income over the duration of the contract, lease or license.

(C) A PAB shall be relieved of the obligations of this subsection for any period of time during which a third-party neutral agreeable to the Port, the PAB and the Alameda Central Labor Council has found, after notice and hearing, either (a) that the labor organization is placing unreasonable conditions upon its No-Strike Pledge, or (b) that the Port lacks a legally-sufficient proprietary interest in such PAB's operation or the proposed agreement would be otherwise unlawful. If the parties are unable to agree upon a neutral, the PAB may contact the Federal Mediation and Conciliation Service (FMCS) to obtain a list of seven arbitrators affiliated with the National Academy of Arbitrators, from which the parties shall select a neutral by striking off names. At the PAB's request, such proceeding shall be conducted according to the FMCS expedited arbitration procedure. The Port shall bear the neutral's fees.

7. Retaliation and discrimination barred; no waiver of rights.

A. A PAB shall not discharge, reduce the compensation of or otherwise discriminate against any person for making a complaint to the Port, participating in any of its proceedings, using any civil remedies to enforce his or her rights, or otherwise asserting his or her rights under this Section.

B. Any waiver by an individual of any of the provisions of this Section shall be deemed contrary to public policy and shall be void and unenforceable, except that Employees shall not be barred from entering into a written valid collective bargaining agreement waiving a provision of this Section (other than subsection 6) if such waiver is set forth in clear and unambiguous terms. Any request to an individual by a PAB to waive his or her rights under this Section shall constitute a violation of this Section.

8. Enforcement

A. Each PAB shall maintain for each person in Port-related employment a record of his or her name, pay rate and, if the PAB claims credit for health benefits, the sums paid by the PAB for the employee's health benefits. The PAB shall submit a copy of such records to the Port at least by March 31st, June 30th, September 30th and December 31st of each year, unless the PAB has employed less than 20 persons during the preceding quarter, in which case

the PAB need only submit a copy of such records every December 31st. Failure to provide a copy of such records within five days of the due date will result in a penalty of five hundred dollars ($500.00) per day. Each PAB shall maintain a record of the name, address, job classification, hours worked, and pay and health benefits received of each person employed, and shall preserve them for at least three years.

B. If a PAB provides health benefits to persons in Port-related employment but does not pay for them on a per-hour basis, then upon the PAB's request, the amount of the hourly credit against its wage obligation shall be the Port's reasonable estimate of the PAB's average hourly cost to provide health benefits to its Employees in Port-related employment. The PAB shall support its request with such documentation as is reasonably requested by the Port or any interested party, including labor organizations in such industry.

C. Each PAB shall give written notification to each current Employee, and to each new Employee at time of hire, of his or her rights under this Section. The notification shall be in the form provided by the Port in English, Spanish and other languages spoken by a significant number of the employees, and shall also be posted prominently in areas at the work site where it will be seen by all Employees.

D. Each PAB shall permit access to work sites and relevant payroll records for authorized Port representatives for the purpose of monitoring compliance with this Section, investigating employee complaints of noncompliance and evaluating the operation and effects of this Section, including the production for inspection and copying of its payroll records for any or all persons employed by the PAB. Each PAB shall permit a representative of the labor organizations in its industry to have access to its workforce at the Port during non-working time and in non-work areas for the purpose of ensuring compliance with this Section.

E. Notwithstanding any provision in Article VI of this Charter to the contrary, the City Manager may develop rules and regulations for the Port's activities in (1) Port review of contract documents to insure that relevant language and information are included in the Port's RFP's, agreements and other relevant documents, (2) Port monitoring of the operations of the contractors, subcontractors and financial assistance recipients to insure compliance including the review, investigation and resolution of specific concerns or complaints about the employment practices of a PAB relative to this section, and (3) provision by the Port of notice and hearing as to alleged violations of this section.

9. Private Rights of Action.

A. Any person claiming a violation of this Section may bring an action against the PAB in the Municipal Court or Superior Court of the State of California, as appropriate, to enforce the provisions of this Section and shall be entitled to all remedies available to remedy any violation of this Section, including but not limited to back pay, reinstatement or injunctive relief. Violations of this Section are declared to irreparably harm the public and covered employees generally.

B. Any employee proving a violation of this Section shall recover from the PAB treble his or her lost normal daily compensation and fringe benefits, together with interest thereon, and any consequential damages suffered by the employee.

C. The Court shall award reasonable attorney's fees, witness fees and costs to any plaintiff who prevails in an action to enforce this Section.

D. No criminal penalties shall attach for any violation of this Section, nor shall this Section give rise to any cause of action for damages against the Port or the City.

E. No remedy set forth in this Section is intended to be exclusive or a prerequisite for asserting a claim for relief to enforce any rights hereunder in a court of law. This

Section shall not be construed to limit an employee's right to bring a common law cause of action for wrongful termination.

10. Severability

If any provision or application of this Section is declared illegal, invalid or inoperative, in whole or in part, by any court of competent jurisdiction, the remaining provisions and portions thereof and applications not declared illegal, invalid or inoperative shall remain in full force or effect. The courts are hereby authorized to reform the provisions of this Section, including limiting the scope of coverage or striking the five-year provision of subsection 6, in order to preserve the maximum permissible effect of each subsection herein. Nothing herein may be construed to impair any contractual obligations of the Port. This Section shall not be applied to the extent it will cause the loss of any federal or state funding of Port activities.". ; and be it

FURTHER RESOLVED: That in accordance with the Elections Code and Chapter 3 of the Oakland Municipal Code, the City Clerk shall fix and determine a date for submission of arguments for or against said proposed charter amendment, and said date shall be posted in the Office of the City Clerk; and be it

FURTHER RESOLVED: That in accordance with the Elections Code and Chapter 3 of the Oakland Municipal Code, the City Clerk shall provide for notice and publication as to said proposed charter amendment in the manner provided for by law; and be it

FURTHER RESOLVED: That each ballot used at said municipal election shall have printed therein, in addition to any other matter required by law the following:

PROPOSED CHARTER AMENDMENT

MEASURE PROVIDING FOR LIVING WAGE AND LABOR PEACE AT PORT-ASSISTED BUSINESSES

MEASURE _____

Measure _____. Shall Oakland City Charter be amended to add section 728 which would 1) require that certain Port of Oakland contractors pay employees at least $10.50 per hour; 2) require that certain new Port contractors retain their predecessors' nonmanagement and nonsupervisory employees for 90 days; 3) prohibit the Port from contracting out work performed by Port employees as of June 30, 2001, except in an	Yes	

emergency; 4) require that certain Port contractors in the hospitality and retail food industry obtain no-strike agreements from labor organizations to protect the Port's proprietary interests?		
	No	

FURTHER RESOLVED: that the City Clerk and City Manager are hereby authorized and directed to take any and all actions necessary under law to prepare for and conduct the March 5, 2002 election and appropriate all monies necessary for the City Manager and City Clerk to prepare and conduct the March 5, 2002 election, consistent with law.

IN COUNCIL, OAKLAND, CALIFORNIA, (DATE), 20(YEAR)

PASSED BY THE FOLLOWING VOTE:

AYES- BRUNNER, CHANG, MAYNE, NADEL, REID, SPEES, WAN AND PRESIDENT DE LA FUENTE

NOTES-

ABSENT-

ABSTENTION-

ATTEST:_____

CEDA FLOYD
City Clerk and Clerk of the Council
of the City of Oakland, California

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OPA COUNCIL
DEC 0 4 2001

East Bay Alliance for a Sustainable Economy
548 20TH STREET, OAKLAND, CA 94612 • TEL: (510) 893-7106, FAX (510) 893-5362

November 21, 2001

City Clerk Ceda Floyd
City of Oakland
HAND DELIVERED

FILED
OFFICE OF THE CITY CLERK
OAKLAND
01 NOV 26 PM 12:51

Dear Ms Floyd :

The following letter and attachments were hand delivered by us to each of the City Council members. We are enclosing copies for the official record.

Sincerely,

Amaha Kassa
Co-Director

Kirsten Cross
Co-Director

Attachments: Summary of Poll Findings on Port Living Wage Initiative
Summary of UC Berkeley Report on Port Living Wage Impact
Comparison of Living Wage Policies- Port, City, Initiative
Analysis of Port Initiative Implementation Timeline
Summary of Existing Living Wage Laws
UC Berkeley Report on Port Living Wage Impact

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East Bay Alliance for a Sustainable Economy
548 20TH STREET, OAKLAND, CA 94612 • TEL: (510) 893-7106, FAX (510) 893-5362

FILED
OFFICE OF THE CITY CLERK
OAKLAND
01 NOV 26 PM 12:52

November 21, 2001

Council Member
Oakland City Council
HAND DELIVERED

Dear Council Member :

We are writing on behalf of the Port Living Wage coalition, the alliance of labor unions, community organizations and faith-based institutions who are advocating for placing the Port Living Wage and Labor Standards Initiative on the March 2002 ballot. We have reviewed the staff report prepared by the Community and Economic Development Agency on the impact of the Port Living Wage and Labor Standards Initiative. **We found the report to be biased, engaged in speculation without a factual basis** (particularly with regards to the impact on Port-assisted businesses) **and factually inaccurate on several key points** (particularly with regards to what the initiative does and does not require and which businesses would and would not be covered).

We will be issuing a detailed response to the CEDA report prior to next Thursday's meeting of the Rules and Legislation Committee. In the meantime, we urge you to review the following materials, which we are providing in response to the request of members of the Rules and Legislation Committee. We particularly draw your attention to the report prepared by the University of California at Berkeley Institute for Industrial Relations on the impact of a Living Wage policy at the Port of Oakland, which we believe to be more comprehensive and methodologically rigorous than either the City or Port staff reports.

Please feel free to contact us if you have any questions regarding these issues.

Sincerely,

Amaha Kassa
Co-Director

Kirsten Cross
Co-Director

Attachments: Summary of Poll Findings on Port Living Wage Initiative
Summary of UC Berkeley Report on Port Living Wage Impact
Comparison of Living Wage Policies- Port, City, Initiative
Analysis of Port Initiative Implementation Timeline
Summary of Existing Living Wage Laws
UC Berkeley Report on Port Living Wage Impact

Attachment A

East Bay Alliance for a Sustainable Economy
548 20TH STREET, OAKLAND, CA 94612 • TEL: (510) 893-7106, FAX (510) 893-5362

"Port Living Wage and Labor Standards" Initiative Summary of Poll Results

J. Moore Methods of Sacramento conducted an opinion poll in October, 2001 on the Port Living Wage initiative with a representative sampling of Oakland voters. Support for the Port Living Wage is high, ranging from 63% to as high as 78%, depending on the specific question posed. After hearing all arguments pro and con, 70% of respondents supported the initiative.

Answers to Key Questions:

1. "A group of Oakland City elected leaders are considering the idea of placing a measure on the ballot next year which would require any company doing business with the Port of Oakland, through a contract or lease, pay their employees a minimum "living wage" of at least $10.50 an hour. What is your opinion of this ballot initiative idea. Would you likely support or oppose it?"

   Support 75% Oppose 20% No opinion 5%

2. Proponents of this Oakland "living wage" ballot measure proposal are considering asking the Oakland City Council to place this measure on the ballot in time for the upcoming March election. Would you support or oppose the Oakland City Council placing this "living wage" measure on the ballot, rather than requiring proponents to gather signatures to qualify the measure themselves?"

   Support 65% Oppose 28% No Opinion 7%

3. The Port of Oakland recently adopted a policy to pay 150 of the 3,000 low-wage employees working at the Port, a $10.50 an hour "living wage". Would you support or oppose adopting the "living wage" salary levels for the remaining Port of Oakland employees, including janitors, hotel maids, parking lot attendants, waiters and waitresses?"

   Support 78% Oppose 17% No opinion 5%

Key Reasons for Support for the Initiative

- 86% of those polled thought that the high cost of living in the Bay Area is a reason to support the initiative.

- 78% thought that helping "low-paid immigrants and minorities who are working to stay off welfare and improve life for their families" was a reason to support it.

Economic Impact of a Living Wage at the Port of Oakland
Summary

In December 1999, the Center for Labor Education and Research at U. C. Berkeley published a report on the costs and benefits of a living wage law at the Port of Oakland.[1] The study was funded by the U.C. California Research Seminar at the request of State Senator Don Perata. The findings are summarized below.

Background

- The *Port of Oakland* generates over 11,000 jobs directly and 11,000 indirectly.
- 28% of Oakland workers earn below Oakland's living wage level.
- The median household income in West Oakland, the Port's neighboring community, is $14,788.

Benefits

- 3,100 workers would be affected by a Port living wage policy that covered contractors, financial assistance recipients and leaseholders at the same wage as the City's policy.
- 2,600 making less than the living wage would receive an average of $2.25 an hour increase in wages and benefits. Another 500 making just above the living wage would receive a "wage push" of $1.16.
- 41% of the beneficiaries would be African American, 25% Latino, and 19% Asian. 65% would be Oakland residents.
- Some firms would benefit from reduced employee turnover.
- County, State and Federal governments would see some increases in taxes and $250,000 savings in social services.

Costs

- Total cost of wages, benefits and payroll taxes to employers and the Port would be $13 million.
- The average cost to Port leaseholders would be 1% of annual business revenues.
- The cost to the Port Airport Division would amount to $0.59 per passenger departure. Most of the low-wage jobs are related to large airline firms.
- The cost to the Real Estate Division would amount to $0.66 per visitor to Jack London Square.
- Employment growth at the Port would not likely be affected by a living wage policy.

---

[1] Carol Zabin (Ph.D.), Michael Reich (Ph.D.) and Peter Hall (Ph.D. candidate), **Living Wages at the Port of Oakland**, Center for Labor Research and Education, Institute of Industrial Relations, U.C. Berkeley, December 1999. Website: http://violet.berkeley.edu/~iir/clre/clre.html.

Comparison of Key Provisions - City of Oakland Living Wage Ordinance, Port Living Wage Ordinance and Port Living Wage and Labor Standards Initiative

	City of Oakland Living Wage Ordinance	Port Living Wage Ordinance	Port Living Wage & Labor Standards Initiative	Notes
Covered Employers	▪ Contractors over $25,000 ▪ Subsidy recipients (CFARs) over $100,000 ▪ Subcontractors & tenants of the above	▪ Contractors over $25,000 ▪ Only applies to **non-profit** subsidy recipients over $100,000. ▪ Definition of subsidy is much more limited than the City's. ▪ Subcontractors of the above (no tenants)	▪ Contractors over $50,000 ▪ Subsidy recipients over $50,000 ▪ Tenants over $50,000 ▪ Subcontractors & tenants of the above*	*Employers covered by Living Wage and Worker Retention. A more limited group of employers is covered by labor peace requirements- see below.
Estimated Workers Covered	500	150	2,600*	*An additional 500 workers will benefit through the "wage push" effect.
Wage Level	$10.50/hr. w/o health benefits. $9.13 w/health benefits.	$10.50/hr. w/o health benefits. $9.13 w/health benefits.*	$10.50/hr. w/o health benefits. $9.13 w/health benefits.	*The Port Ordinance is written so that an employer gets credit for paying $1.37/hr. towards insurance while only paying $1.25/hr.
Exemptions	▪ Firms with fewer than **5** employees (**20** employees for tenants of CFARs) ▪ Trainees, youth workers ▪ Employees of CFARs and their subcontractors and tenants who spend less than 50% or more of their time on "covered work" *	▪ Firms with fewer than **5** employees ▪ Trainees, youth workers ▪ Employees spending less than 25% of time on "covered work" ▪ Temporary workers ▪ Prevailing wage workers ▪ Anyone deemed "in the best interest of the Port" to exempt ▪ ALL tenants, subtenants, licensees, concessionaires, franchisees, permitees or grantees of rights of entry- even if they are also contractors or subsidy recipients	▪ Firms with fewer than **20** employees ▪ Trainees ▪ Youth workers ▪ Employees who spend less than 25% of their time on "covered work"	*'Covered work" is work related to the contract, project, or property for which the business has an agreement with the City or Port. In the City's ordinance, employees of service contractors who spend *any* of their time on "covered work" are covered.

Attachment C

	City of Oakland Living Wage Ordinance	Port Living Wage Ordinance	Port Living Wage & Labor Standards Initiative	Notes
Monitoring, Enforcement	▪ The City Manager *shall* develop rules & regulations to implement the law and a complaint procedure. ▪ Requires City to pursue "all available legal remedies" when an employer violates the law.	▪ The Executive Director *may* develop rules & regulations to implement the law and a complaint procedure. ▪ The Port is not required to comply with or enforce the law: **"Nothing in this Ordinance shall require the Port to take any action authorized herein, and nothing in Ordinance shall be interpreted as requiring the Port to take or refrain from taking any action."**	▪ The City Manager *shall* develop rules & regulations to implement the law and a complaint procedure.	
Worker Retention	N/A	N/A	Requires employers who take over a contract to retain qualified employees for 90 days, unless they have just cause to do otherwise. Also limits contracting out of Port work to emergencies.	
Labor Peace	N/A	N/A	Requires employers in whom the Port has a proprietary interest to insure against labor disruption & loss of revenue to the Port by securing an agreement that includes a "no-strike" pledge from any labor organization seeking to represent their employees.*	*Applies only to employers in the hospitality & retail food industries from which the Port receives more than $50,000 in revenue. Thresholds of 20 employees and 25% of time spent on "covered work" apply.

Attachment C

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Timetable for Living Wage Initiative Effect on Airport and Real Estate Division Tenants

Airport Businesses to Be Affected Soon—Others Affected Over 40 Years
November 21, 2001

Summary

The Living Wage and Labor Standards Initiative will have an immediately affect on most major firms operating at the Airport but few operating under the Real Estate division. Most Airport related businesses hold short-term licenses to use the airport's facilities that will turn over in one to two years. However, real estate agreements with major businesses, falling in the Jack London Square and Embarcadero areas, tend to be longer in duration and most would not be affected for five to six years. In some cases, leases will not expire in 20 to 40 years. This means that many firms will fall under the requirements after shorter-term fluctuation of the economy.

Background

This report assess how soon major employers at the Port will be affected by the requirements of the Port Living Wage Initiative, if it is placed on the ballot and approved by Oakland voters.

The Port Living Wage Initiative covers all businesses that have financial agreements of some form with the Port of Oakland. This includes firms that are contracted for services, firms receiving financial assistance and firms that pay the Port to use land or facilities. The first two categories currently include only a handful of businesses, and have been assessed elsewhere.[1] The last category, which can be referred to as tenants of the Port, includes the majority of businesses covered by the Port Living Wage Initiative. A study by U.C. Berkeley estimated that 2,500 employees of tenants of the Port would be affected while the Port estimates that only 100 employees of contractors would be affected.

Under the proposed initiative, existing agreements between tenants and the Port *would not* be affected. Only new agreements are affected. If a lease expires in 2010, the tenant would not be expected to meet the living wage requirements for another nine years, assuming they stay in that location. Thus, the costs of the initiative would not be incurred immediately, but as agreements expire and are renewed over time.

Because implementation depends on how quickly tenant agreements with the Port are renewed, it is important to understand the structure of lease agreements at the Port. Below, we explore lease renewal.

[1] Port of Oakland, *Living Wage Costs and Benefits Staff Report*, January 18, 2000.

Port Agreement Turn-over: A 15 Month Snapshot

Between March 31st, 2000 and July 10, 2001 (15 month period), the Port of Oakland signed 85 agreements with 69 private firms for use of Port land or facilities.[2] These agreements are in the forms of lease, ground lease, right-of-entry and indemnity, license, concession, and rental agreements. Nearly all agreements were renewals or amendments of existing ones.

These 85 agreements were split between the Port's divisions as follows:

Division	Agreements
Airport:	60
Maritime:	2
Real Estate:	
Jack London Square:	10
Embarcaderro	9
Other	4

Many major airport-related businesses received new or amended agreements from the Port Commissioners. These included Air Terminal Services (the master lessor for all airport concessions), all of the rental car enterprises, the two largest flight schools, several non-commercial aviation operators, Ontario Aircraft Service (handles cargo), Rolls Royce Engine Services, Sky Chefs (in-flight catering) and United Airlines.

Only one major business at the Embarcadero signed a new or amended an old agreement—the Executive Inn leased additional land for expansion, with the new entire lease expiring in 2040. Other agreements included several temporary uses of vacant parcels for storage and transfer of a lease to new owners of the Reef Restaurant.

Only one major business at Jack London Square required a new or amended agreement—Il Pescatore Restaurant leased additional storage from the Port. The other nine agreements were with businesses that are so small, they would likely fall under the size threshold—two are with Jack London Air, three with Dockside Boat and Bed, one with Samuel's Gallery and one with Jack London Water Taxi Service.

Airport

Most businesses at the airport will be affected by the Living Wage Initiative in one to two years. Although many large operations at the airport hold long-term leases or storage agreements (up to 30 years), nearly all also hold short-term agreements to use Port facilities that turn over every one or two years (called license and concession or right-of-entry agreements).[3]

---

[2] Board of Port Commissioners of the Port of Oakland Calendars, March 31st, 2000 through July 10, 2001.
[3] Master Lease Printout, dated 1 July 2001.

For example, Federal Express has agreements to park aircraft at North Airport that expire in 2020. However, leases for office/warehouse space and a license and concession agreement for use of the heavy aircraft apron are on a month to month basis. These qualify under the initiative's dollar threshold (more than $50,000 over the life of the agreement) and would take place immediately.

Major operations that will likely be affected within one or two years:

Major Airlines
- Alaska Airlines
- America West Airlines
- American Airlines
- Continental
- Delta Airlines
- Southwest Airlines
- United Airlines

Rental Car Companies
- Hertz
- Avis
- Budget
- Dollar
- Enterprise

Other
- Federal Express
- Kaiser Air
- PG&E
- Rolls Royce Engine Services
- Sierra Academy of Aeronautics
- Air Terminal Services (CA1)
- Oakland Fuel Facilities
- Sky Chefs
- UPS

Real Estate Division

The three major real estate areas are Jack London Square, the Embarcadero and near the airport. Although the Port does own some commercial space buildings (such as the old Tribune offices at Jack London Square), most of the real estate holding is land. Many major businesses operating on Port land lease the land and own their buildings. These ground leases are typically long-term, usually in proportion to the amount the business has invested in their own buildings.

Examples of major businesses under lease with the Real Estate Division are:

Major Businesses	Lease Expires[4]	
Barnes and Noble	2002	
TGI Friday's	2004	
Pizzeria Uno	2006	(with two 5-year options to extend—up to 2016)
Old Spaghetti Factory	2007	
Yoshi's	2007	
El Torito Restaurant	2010	
Oakland Airport Hilton	2031	
Motel 6 (Embarcadero)	2032	
Scott' Seafood Restaurant	2041	
Executive Inn (Embarcadero)	2040	
Waterfront Plaza Hotel	2045	

As shown here, some businesses would be affected soon, but most would not be affected for five or six years. In some cases, up to 40 years.

Other business actions may result in a new agreement, however, before the expiration of the lease agreement. This includes amendments for adding space or making improvements and change of ownership, though in some previous cases the existing lease simply changed hands without amendment.

[4] Expiration dates are from Port leases documents for each business.

Summary of Living Wage Laws in the U.S.

By Geography

66 local governments have adopted living wage ordinances in some form, including cities, counties and school districts.

Large living wage cities include Los Angeles, New York, Chicago and Boston.

14 California local governments have adopted living wage laws, including 7 in the Bay Area: Oakland, Berkeley, Hayward, Richmond, San Jose, Santa Clara County and San Francisco.

By Coverage

57 living wage laws cover outsourced service contractors.

36 cover recipients of financial assistance or subsidies. Most of these extend to the tenants and contractors of subsidized businesses. Cities include Oakland, Los Angeles, Detroit, Minneapolis and San Francisco.

5 cover leaseholders and tenants. These are Los Angeles, Berkeley, Richmond, Pittsburgh, PA and San Francisco. The San Francisco law applies a health benefit requirement of tenants at the Port of San Francisco.

5 living wage laws cover either ports or airports, including the following:

- Los Angeles covers the harbor and the airport. The harbor is primarily a real estate operation.
- San Jose covers the airport.
- Miami-Dade County Florida covers the airport
- San Francisco covers both the port and airport. The Port of San Francisco is primarily a real estate operation.

By Additional Provisions

8 cities have passed some form of a worker retention law, either concurrently with living wage ordinances or independently.

- Cities with worker retention requirements on city-related contracts include the City of Los Angeles, San Jose, Santa Cruz, Multnomah County OR (Portland), and Los Angeles County.
- City-wide worker retention laws, that cover all businesses, include the District of Columbia and the City of Philadelphia.

6 cities have some form of labor peace or clauses that assess company labor practices prior to financial agreements—also known as "third tier review" and "responsible bidder"—embedded within living wage ordinances. Labor peace can be found in San Francisco Airport's "Quality Standards Program" and Hartford's and Santa Cruz's living wage ordinances. Third tier review and responsible bidder clauses can be found in San Jose, Minneapolis, and Pittsburgh's living wage laws. Other cities have separate labor peace ordinances, including Marina, CA and Allegheny County, Pennsylvania.

Living Wages at the Port of Oakland

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Living Wages at the Port of Oakland

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Summary and Main Findings

In June of 1999, a coalition of citizen groups proposed that the City of Oakland's Living Wage Ordinance should be extended to cover workers employed by leaseholders and contractors of the Port of Oakland. The Port is currently excluded from the City law. The Port of Oakland is the city's biggest public asset and is frequently touted as the city's principal engine of economic growth. Businesses at the Port's three divisions-- the maritime port, Oakland International Airport, and the waterfront real estate division, which includes Jack London Square-- employ over 11,000 workers and generate indirectly another 11,000 jobs. The Port is planning expansions that will increase these numbers dramatically.

This study estimates the costs and benefits of implementing a specific living wage policy proposal which would cover the leaseholders and on-site service contractors of the Port of Oakland. We based our analysis on the assumption that the living wage policy would follow the provisions of the Oakland law, except that the Port policy would include the category of leaseholders. Leaseholders are only covered in the Oakland law if they receive direct city financial assistance. Following the Oakland law, the proposal we analyzed would require covered businesses to pay their workers $8.30 per hour if they provide health benefits or $9.55 per hour without benefits, with wages indexed to cost-of –living adjustments every year. The proposal would also provide a floor of 12 days of paid leave (and 10 days unpaid leave) for illness, holidays and vacation.

The information used in this analysis is based largely on contract and economic data that we obtained from the Port and from a detailed survey that we conducted of the Port's leaseholders and on-site contractors. Our survey examined the 140 businesses at the Port who would be covered by the proposed ordinance because they are leaseholders or on-site subcontractors, and who employ over five workers. The survey compiled extensive information on firms, jobs and workers, supplemented when necessary by estimates derived from government data sources, by a briefer survey we conducted of firms located near Jack London Square and by selected on-site interviews. We also obtained useful comments from Port officials and other stakeholders.

What kinds of jobs does the Port create and who holds them?

Thirty years ago much of the employment at the Port consisted of highly-paid longshoring jobs in the maritime division. Since then, the number of longshoring jobs in the Bay Area has fallen by half, while employment at the Port's airport and real estate divisions both have increased and are expected to continue to grow in the coming decade. As a result, the maritime division currently contains the lowest number of jobs at the Port (about 2,050), although at the highest average wages (about $32 per hour). The airport is by far the biggest job generator at the Port, with almost 7,300 employees and average wages of $14.50. The real estate division, with 2,100 jobs, produces the lowest wage employment, with an average wage just under $11. Unionized jobs are concentrated

in the maritime division and pay much higher wages than non-union jobs, which are most concentrated in the real estate division. The individual economic sectors with the lowest average wage rates at the port are the hotel, restaurant, parking, security and skycaps, and other services sectors.

Approximately 54 percent of Port workers live in Oakland and about 35 percent are women. About 36 percent of Port workers are African American, about the same as their representation in Oakland as a whole. Asian Americans and Latinos comprise 14 percent and 24 percent of Port workers, respectively.

Average wage disparities among ethnic groups in the Port as a whole are fairly small, with the notable exception of Asian Americans, who earn substantially less than other groups. Within the Port's divisions, however, racial wage disparities have been overcome only in the maritime division, where African Americans constitute about half of the highly-paid longshore workers. In both the airport and the real estate divisions, average wages of whites are about 50 percent higher than those of African Americans.

What would be the benefits of a living wage policy at the Port?

About 2,600 low-paid workers at the Port of Oakland would benefit directly from the proposed living wage ordinance. They would receive an average pay and benefits increase of $2.25 per hour, and up to 12 days of paid leave per year. In total, these low-wage workers would receive an additional $4.7 million in wages and $3.3 million in health benefits each year.

In addition, approximately 500 more workers would benefit indirectly because of a "wage push" effect. They would receive an average pay increase of $1.16 per hour. The total indirect wage push for workers just above and below the living wage level amounts to a $2.1 million increase each year.

The 3,100 living wage beneficiaries would comprise about 27 percent of all non-supervisory employees of Port leaseholders.

About 41 percent of the direct beneficiaries would be African American, 25 percent would be Latino, 19 percent would be Asian American and 15 percent would be white. People of color, especially African Americans, are represented in greater proportions among the benefiting workers than among Port workers as a whole, because currently they are over-represented in low wage jobs. Oaklanders would also benefit disproportionately, comprising 65 percent of the beneficiaries.

What are other benefits of the ordinance?

Firms would receive some benefits due to lower turnover costs and higher productivity among workers earning the living wage standard.

The ordinance would contribute to the county, state and federal public coffers through savings in county health expenditures for the uninsured and increased revenues from income and payroll taxes. This is a small but positive but effect on public finance.

What would be the costs of a living wage policy at the Port?

Living wage costs would increase Port leaseholders' wage bill by 4.4 percent and comprise about 1 percent of leaseholders' annual business revenues.

The total cost to employers of the living wage policy would be about $13 million per year. The cost of increasing wages to $8.30 an hour is about $4.7 million; the costs of providing more health care coverage is $3.3 million; the costs of paying an indirect wage push is $2.1 million; and the costs of paying 12 days of paid leave is $2 million. Employers would also pay an additional $1 million in payroll tax, bringing the total cost increase to about $13 million.

Since not all leases are up for renewal every year, the costs would be phased in over time.

Who would bear the costs and would business growth in Oakland be hurt?

The maritime division would experience almost no increase in cost. Cost increases in the airport and real estate divisions would constitute about 1.5 percent and 4.3 percent of leaseholders' business revenues, respectively.

For the airport, this cost amounts to $0.59 per passenger departure, not enough to change passenger preference for flying out of Oakland. Low wages are concentrated in a few firms who are subcontractors to the major airlines. The airlines could easily absorb these small cost increases and would pass some of them on to consumers.

For the real estate division, the increase in wages and benefits amounts to $0.66 per visitor to Jack London Square annually. The increase in costs to the affected restaurants and hotels is smaller than the premium they get for locating near the waterfront and in Jack London Square, compared to similar businesses in less desirable locations. With business growing in the area, the relatively small increase in costs should not affect the overall business climate.

Employment at the Port would continue to grow and at a rate that is unlikely to be affected by the proposed ordinance. Revenues collected by the Port are also likely to continue to increase.

Conclusions

Enacting a living wage ordinance at the Port of Oakland would help increase the incomes of 3,100 low-wage workers. The costs of the proposed ordinance are about $13 million and comprise only about 1 percent of Port leaseholders' business revenues.

We conclude that these costs will be absorbed easily by Port leaseholders, visitors to the waterfront, and passengers at the Oakland airport. Business will not be driven away and Port revenues will not go down. Bond ratings for the Port should remain unaffected.

The Port will continue to generate large numbers of jobs for Oakland and the region but, without public policy intervention to affect the quality of jobs, many of these will be low-wage jobs. Moreover, racial wage disparities will be perpetuated by this pattern of growth. The structure of job growth at the Port is not unique; it parallels the private economy as a whole. The question facing policy-makers is whether or not a public agency like the Port should act to reverse this pattern of increasing wage polarization as well as the growth of the working poor.

1. Introduction and overview of Living Wage Ordinances

Purpose of this report

This report estimates the costs and benefits of a Living Wage Ordinance that would cover the Port of Oakland. The Oakland City Council unanimously passed a Living Wage Ordinance in March of 1998. Oakland is one of forty cities and counties across the United States that have adopted living wage laws; over fifty others currently are in the process of considering such an ordinance. The Oakland Ordinance did not include the Port of Oakland, which is a semi-autonomous department of the city, governed by an appointed Port Commission.

In June of 1999, a number of citizen's groups, under the banner of the Coalition for an Accountable Port, proposed that the Oakland Ordinance should be extended to cover contracts, rental agreements or leases with the Port of Oakland. The basis for the extension is that the Port of Oakland is the city's biggest public asset and it is frequently touted as the city's principal engine of economic growth. The Port's three divisions-- the maritime port, Oakland International Airport, and the waterfront real estate division, which includes Jack London Square-- generate over 22,000 jobs and the Port is planning expansions that will increase this number dramatically.

The proposed living wage ordinance is designed to increase the pay and benefits of low-wage workers by requiring covered employers to pay a "living wage. Absent a specific written policy proposal from the citizen's groups, we evaluated a living wage proposal that assumed the same wage and benefit provisions as those stipulated in the City of Oakland's ordinance. This would set a wage floor of $8.30 per hour if the employer also pays for health benefits, or $9.55 without health benefits, to be is indexed to inflation in future years. The proposed ordinance would also mandate a floor of 12 days of compensated time off for illness, holidays and vacation. However, it should be noted that the City of Oakland ordinance currently covers leaseholders only if they receive direct public assistance, while the proposal we analyze includes all leaseholders at the Port of Oakland.

Living wage campaigns have arisen in response to the growing problem of inequality and of poverty even among full-time workers. The idea of a living wage is simple. Workers should be able to support themselves and their dependents at a basic self-sufficiency standard on the earnings they receive from full-time employment.

At one time, the minimum wage was set to provide self-sufficiency but it no longer does so. The real buying power of the California minimum wage in 1999 is three-quarters of what it was in 1968, despite the fact that the U.S. economy is 54 percent more productive in 1999 than it was in 1968. If the 1968 minimum wage had kept pace with inflation and productivity growth, it would now be about $11.80 per hour. Since the statewide minimum wage has not been raised to a level sufficient to support a family, the Living Wage campaign represents an attempt to use local government to reinstate a meaningful minimum wage.

A weakness of living wage laws is that in some cases they cover a small number of workers. Estimates of the impact of the City's ordinance have ranged from 400 to 2,200 employees (City of Oakland, 1998). However, only 56 workers on service contracts and 31 workers employed by City financial assistance recipients had received wage increases as of October 1999.[1] This figure is expected to rise as contracts are executed, but even when fully implemented, City personnel have concluded that the number of affected workers will be much closer to the estimate of 400 than to the larger estimate of 3,000.

In some cities, the numbers of workers benefiting from living wage policies is much greater. In Los Angeles, about 9,000 workers may benefit, largely because leaseholders at the Los Angeles International Airport are covered (Uchitelle, 1999). Living wage proponents in Oakland targeted the Port as a way to extend the benefits of the living wage idea to more workers.

This study estimates both costs and the benefits of the proposed ordinance, in the hopes of promoting informed debate among Oakland residents, elected officials, and Port commissioners. While proponents see the living wage as a way to bring low-wage workers out of poverty, there are costs. Opponents are concerned that the proposed policy could drive business away from the Port of Oakland, or could lower revenues for the Port, which is self-supporting. We analyze who is likely to bear the costs of the proposed living wage policy, and whether or not the costs are affordable.

The study was carried out by a team of economists and students from the University of California, Berkeley. It was funded by the UC California Policy Research Seminar, at the request of Senator Don Perata.

We organize the report as follows. We first provide background information on Living Wage ordinances around the country. We then discuss Oakland's economy, with emphasis upon how recent economic growth continues to generate inequality. Next we profile the employment created by businesses who hold leases at the Port of Oakland, using data from a survey of employers that we conducted over the spring and summer of 1999. Using this survey data, we then estimate the benefits and costs of the proposed ordinance and examine the affordability of the ordinance in the context of the Port's overall economic activity.

The Oakland Living Wage Ordinance in national perspective

The Oakland Living Wage Ordinance covers all private businesses and non-profit organizations that have city contracts worth at least $25,000 or receive at least $100,000 in city subsidies per year (and their tenants and leaseholders). The Ordinance initially required a wage of $8.00 per hour with health benefits, and $9.25 without, and is adjusted each year in accordance with the Bay Region Consumer Price Index. The 1999 adjusted

[1] Personal communication, Vivian Inman, Office of Contract Compliance, City of Oakland.

wage level is $9.55 an hour, or $8.30 if the firm provides health benefits.[2] The Ordinance also entitles covered workers to 12 paid days off per year (and 10 days unpaid leave) and it contains an "opt out" provision by which a collective bargaining contract can supersede the requirements of the ordinance.

Oakland's wage standard and coverage

The wage standard in Oakland's Ordinance is lower than estimates of a self-sufficiency wage for the city and lower than the levels mandated in some of the living wage ordinances elsewhere. The California Budget Project has estimated a self-sufficiency wage for Alameda County at $12.92 per hour, substantially above the current Oakland living wage (California Budget Project, 1999). This self-sufficiency wage is based on a family with two parents who are both working and with two children who squeeze into a one-bedroom apartment and use family day care (generally the most inexpensive kind of childcare).

The Oakland standard is also modest compared to other cities that have adopted living wage ordinances, once Oakland's high cost of living is taken into account. As Table 1-1 shows, Baltimore's living wage of $7.90 is equivalent in purchasing power to a wage of $13.27 in Oakland, and Boston's living wage of $8.23 would be $9.29 in Oakland. The $7.51 Los Angeles living wage is equivalent in purchasing power to a wage of $9.52 in Oakland. This ordinance includes workers at LAX airport. The recently announced living wage agreement at the SFO airport provides for $9 per hour, increasing to $10 per hour after one year (Epstein, 1999). This level is equivalent to purchasing power of $8.62 in Oakland.

The City of Oakland's Living Wage Ordinance covers the city's contractors and subsidy recipients. The proposed living wage policy for the Port would include leaseholders, a category of employers not currently covered by the City's Ordinance unless they are also city financial assistance recipients (CFARs) or their tenants. Leaseholders have been included in a number of other living wage policies around the country, including the Los Angeles and Miami airports, and have been proposed for San Francisco's airport and maritime port.

Living wage ordinances around the country vary with respect to the set of employers they cover. However, the underlying principle is similar in all cases: the ordinances recognize the impact of local governments' business decisions on job creation. The living wage mandates that public entities directly or indirectly create good jobs in a particular locality, whether through direct expenditures on contractors or the opportunities created by publicly owned assets such as waterfront property or port facilities.

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[2] An official at the Port of Oakland has questioned the accuracy of the cost of living adjustment of the current City of Oakland Living Wage. The small adjustment suggested - to $8.22 rather than $8.30 - does not materially affect the estimates presented here, and thus we have used the official living wage.

Some living wage ordinances contain additional provisions, such as local hiring requirements, and public disclosure and/or enforcement stipulations. Most living wage laws provide exemptions for small firms: Oakland's Living Wage Ordinance, and the proposal evaluated here, only applies to firms with more than five employees.

2. Recent growth and income distribution trends in Oakland

The Oakland economy is currently undergoing an upswing, with high rates of job and income growth. However, this economic prosperity is distributed unevenly and the area faces a legacy of inequality that will be exacerbated by the current growth trajectory. In this context, policies such as a living wage ordinance can help to distribute the benefits of growth more equitably.

Economic growth in Oakland

Like the rest of California, Oakland experienced an economic recession in the early 1990s. From 1990 to 1993, employment among Oakland residents fell from 167,600 to 162,700, while the city's unemployment rate increased from 6.4 percent to 10.3 percent. With the state's economic recovery in recent years, job and income growth in Oakland has also resumed and the ingredients for a substantial economic boom are in place. In 1998, employment had risen to 174,000; the unemployment rate had fallen to 6.5 percent, and by the third quarter of 1999 it was down to 5.3 percent (Employment Development Department, 1999). Between 1998 and 1999, the Oakland MSA created a net 28,100 new jobs, for a growth rate of 2.9 percent[3] (CB Richard Ellis, 1999). Oakland's central location, good public transportation infrastructure, strong maritime port and air cargo airport, potentially highly valuable housing stock and a number of other elements have combined to create strong growth.

This growth is reflected in rising commercial and residential property values. Class A rents in the East Bay office market have increased 9 percent in the past year, and are projected to increase further (CB Richard Ellis, 1999). Nonresidential construction grew 68 percent between 1996 and 1997, more than double the statewide average of 28 percent, although lagging the Bay Area rate of 83 percent (SF Airport Commission, 1999). The residential housing market is also healthy. Median home prices in Alameda County rose to $247,000 in 1999, nearly double the U. S. urban average, and grew 7.4 percent over the previous year. These real estate statistics provide evidence that Oakland is becoming a more attractive investment and development location.

Those left behind

California has experienced substantial increases in income inequality over the last two decades, even more than the nation as a whole (California Budget Project, 1998; Daly and Royer, 1999). Although we have no detailed studies of recent patterns of inequality in the Bay Area, there are strong indications that the Bay Area is still experiencing growing inequality. We can document continuing inequality both between Oakland and other Bay Area cities and within Oakland itself.

Although Oakland's economy as a whole has begun to catch up to other Bay Area cities, income in Oakland is still lower than elsewhere in the Bay Area. Average wage

[3] The Oakland MSA includes Alameda County and Contra Costa County. Wherever possible, we use data for the City of Oakland.

data also indicate an ongoing between Oakland and its richer neighbors, San Francisco and San Jose, as is shown in Table 2-1.

A large fraction of Oakland residents earn low wages. The latest government survey data show that 45 percent of Oakland workers earn below the self-sufficiency wage of $12.74 per hour while 28 percent earn below the Oakland's living wage of $8.30.[4] By contrast, 40 percent of workers in the Bay Area earn below $12.74 and less than 20 percent earn below the $8.30 wage.

Paralleling the rest of California, wage rates of local jobs are increasingly polarized. Many middle-income jobs have declined in number and the new jobs that are being created are concentrated at the high and low ends of the income scale. As Table 2-2 shows, the two occupations with the greatest projected job growth between 1995 and 2002 in Alameda County are cashiers and retail salespersons, both of which paid on average less than $8 per hour in 1997. Among the top ten occupations in Oakland, about half the total projected number of jobs in 2002 and half of the projected increase from 1995 to 2002 are in jobs earning less than $20,000 per year (in 1997 dollars).

Low wages and poverty are still concentrated in communities of color. African Americans represent 44 percent of the city's total population, but comprise 56 percent of those living below the federal poverty level (Bay Area Economics, 1999). Substantial inequality also exists within Oakland, with significant numbers of the working poor and pockets of poverty concentrated among certain neighborhoods and ethnic groups, especially among African Americans and Latinos. The West Oakland neighborhood that abuts the Port suffers from many of the negative side effects of a successful port, such as traffic congestion, noise, dust, and air pollution. In 1998, median household income in West Oakland was $14,788 and an estimated 22 percent of West Oakland residents received welfare (Bay Area Economics, 1999).

[4] The percentages are calculated in constant 1999 dollars using the CPS March Supplement sample of Oakland and Bay Area residents between 1996 and 1999.

3. Employment and pay at the Port of Oakland

In 1995, as Table 3-1 indicates, about 22,500 jobs were directly or indirectly attributed to the Port of Oakland, according to surveys carried out by consultants to the Port (Martin Associates, various years). This estimate includes Port tenants, leaseholders and contractors, and other firms whose businesses are directly dependent on the Port of Oakland.[5] At one time, the Port provided mainly middle-income jobs in its main activity, maritime shipping, where largely unionized longshore and trucking jobs provided important opportunities for upward mobility, particularly for African American workers in Oakland. As we discuss below, the transformation of the Port's uses and its projected expansions have resulted in the growth of low-wage jobs and will continue to do so in the future.

The Port's transformation

The Port has undergone substantial change over the past thirty years. During this period, revenues and shipping volume have grown rapidly in the maritime port, as San Francisco traffic has shifted to Oakland and trade volumes have risen. However, the number of jobs created for each dollar of goods shipped has declined, and the number of longshore jobs in the Bay Area has fallen to half the level of thirty years ago (Pacific Maritime Association, various years). In contrast, the Port's air and real estate divisions, while producing smaller revenue growth, have created growing numbers of jobs and will continue to do so in the future. The real estate division, and to a lesser degree the airport division, create substantial numbers of low wage jobs.

In the maritime port, automation in containerized shipping has sharply reduced the number of jobs generated per ton of cargo moved. The San Francisco Bay longshore workforce fell from 5,366 in 1951 to 1,049 in 1998, while throughput increased from 7 million to 23 million tons during the same period (Pacific Maritime Association, various years).[6] The leading West Coast ports in Southern California and Seattle have maintained longshore employment only because of tremendous growth in the volume of cargo. Cargo throughput in Oakland has grown at a healthy 2.5 percent per year since 1992, but this growth is much less than the annual growth at Long Beach (14 percent), Los Angeles (6.7 percent) and Seattle (5.0 percent) (Port of Oakland, 1998). The Port of Oakland expects to increase cargo throughput as a consequence of its expansion plans, which may lead to a one-time jump in maritime jobs, but long-term employment growth remains limited by on-going automation and constraints on increasing Oakland's market share.

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[5] The latter category comprises port-related businesses such as freight forwarders, customs brokerage houses, and trucking and warehousing firms. These businesses would not be located in the Bay Area without the Port of Oakland, but may not be located on Port land or have a direct financial relationship to the Port. Consequently, they would not be affected by a Living Wage ordinance.

[6] A significant portion of the loss of longshore jobs occurred in San Francisco, although we cannot give an exact breakdown because of lack of data. Oakland essentially has taken over shipping from San Francisco.

Besides stevedoring, short haul trucking is the main on-site occupation in the maritime port (Thurston, 1999). As a consequence of deregulation and de-unionization, about 85 percent of these workers are now owner-operators. While their employment status disqualifies them from coverage under a typical living wage policy, it should be noted that their annual net earnings are quite low.[7]

At the same time, air transport has grown tremendously. Centrally located, Oakland is well situated to serve Alameda and Contra Costa County, which in 1997-8 had the highest population growth in the Bay Area (Willis, 1999). In the last ten years, the number of passengers at Oakland grew by 130 percent, and Oakland's market share for passenger travel for the three major Bay Area airports increased from 10 percent to 15 percent. More dramatically, Oakland has become the main air cargo terminal in the Bay Area. In 1998 Oakland International Airport managed around 50 percent of all Bay Area domestic air cargo, up from around 20 percent in 1987 (Port of Oakland, 1999).

Alternative uses of the Port of Oakland's waterfront real estate have also grown, and created many more jobs in entertainment, leisure and recreation activities. As in other urban areas, there are mounting pressures to make waterfront land accessible for the public use. Over the next few years, uses that are compatible with public access, such as Jack London Square and similar developments, are likely to be supported and prosper. Indeed, after many years of disappointing activity, Jack London Square is becoming a lively commercial and entertainment locale, producing $60 million in business revenues in 1996, with further growth projected (Howe, 1997). Embarcadero Cove, on the southern tip of the estuary, is also slated for mixed use development in the coming years.

The Port's expansion

The Port of Oakland has just begun an unprecedented expansion that involves up to two billion dollars of capital improvements over the next five years. The maritime expansion plan includes the Vision 2000 program of building new berths and a new joint intermodal terminal, and dredging the channel to 50 feet. The expansion plan for Oakland International Airport includes new terminal buildings, a parking garage, and a cross-airport roadway. Revenue bonds will finance maritime and airport expansion. The Port has also recently proposed a $200 million plan for developing the waterfront in the Jack London Square area and has requested bids from private developers (DelVecchio, 1999). The Port does not expect to borrow funds to support this development.[8]

Port expansion is projected to lead to over 5,000 new jobs in the airport and close to 5,000 jobs in the maritime port.[9] Job projections are not yet available for the real estate division.

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[7] A recent survey of short-haul independent operators in Seattle found that average hourly wages were about $8.50 (Farb and Tomescu, 1999).
[8] Personal communication, Omar Benjamin, Director of the Port of Oakland's Real Estate Division.
[9] Personal communication, Ann Whittington, Strategic Planner, Port of Oakland.

Current Port employment patterns

The process of transformation and growth described above has created many more low-wage jobs, while many well-paid, largely unionized jobs have been lost. Here we analyze the current employment and workforce profiles of Port leaseholders in more detail. We find a pattern of high wages in the maritime division, low wages in the real estate division, and a range of wages in the airport division.

This analysis is based on a survey carried out by the UC Berkeley research team. The survey was necessary because the Port does not maintain detailed information about the employment generated by their tenants. (See Appendix A for a detailed description of our survey methodology.) Our survey comprises all businesses that hold leases with the Port and draws upon a list of tenants provided to us by Port officials. Contractors are included only if they have a substantial on-site presence or are direct subcontractors of leaseholders. We excluded building contractors and professional services firms because they are unlikely to employ workers at less than Oakland's living wage level. We did not include any port-related employers that were off-site, since they would not be covered by the proposed ordinance. We excluded employers with five employees or less, since Oakland's Living Wage Ordinance exempts such employers.

After these exclusions, we obtain a total of 140 Port leaseholders who employ about 11,400 workers (see Table 3-2a). These are the employers who would be covered by the proposed ordinance. In Section 4 we will analyze which of these employers would actually be *affected* by the ordinance because they currently pay low wages.

As Table 3-2a shows, the maritime division generates the highest average wages (about $32 per hour), but the lowest number of jobs, about 2,050. The real estate division produces slightly more jobs, but at much lower average wages, under $11. The airport is by far the biggest job generator, with 7,270 jobs, at average wages of $14.50. The wage differences among the Port's divisions correlate with widely different unionization rates. The maritime division is highly unionized, and the real estate division mostly non-union.

We provide a more detailed breakdown of employment, by economic sector rather than port division, in Table 3-2b. The lowest average wage rates at the port are concentrated in the hotel, restaurant, parking, security and skycaps, and entertainment and personal services sectors.[10]

The Port's workforce is unevenly distributed across ethnicity, gender, and residence. These patterns are presented in Table 3-3. About 54 percent of Port workers live in Oakland and about 35 percent are women. About 36 percent of Port workers are African American, similar to their representation in Oakland as a whole (US Bureau of the Census, 1990).

[10] Since retail, restaurant, car rental and parking establishments are located in both the airport and real estate divisions, the sectoral breakdowns do not correspond to different port divisions.

Average wages within Port divisions also vary by demographic group. Table 3-4 presents these patterns, weighted by the number of workers in each category. The wage gap between white and African American workers has been overcome only in the highly unionized maritime division. While overall average wages for African Americans are only slightly lower than for whites ($18.75 compared to $19.73), the wage gap is greater for the airport division ($10.96 compared to $15.80) and the real estate division ($8.88 compared to $12.53). The small number of women in the maritime division partly accounts for their low overall wage relative to workers as a whole.

A relatively small number of jobs and sectors account for most of the low-wage employment. Table 3-5 illustrates the kinds of low wage jobs that exist at the Port. Prominent low-wage occupations include restaurant waiters, rental car agents, airport ramp agents, and entertainment and personal services.

In sum, the survey data tell a powerful story about the types of jobs that are generated by the Port of Oakland. Clearly, the highly unionized maritime division provides the best-paid jobs for Oakland's diverse (male) population. However, these jobs stand in sharp contrast to the many low-wage jobs created in the real estate and airport divisions. Without public policy intervention to affect the quality of jobs, the Port will continue to contribute to the polarized growth trajectory of Oakland and the region. Moreover, racial inequities will be perpetuated by this pattern of growth.

4. The benefits of a living wage ordinance

Enacting a living wage ordinance at the Port could change the mix of jobs and increase wages for the lowest-paid workers. However, such a policy will generate costs as well as benefits. In this section we present our best estimates of the benefits to workers, to employers and to governmental entities of a living wage ordinance at the Port. The benefits for workers are the pay and health coverage increases among workers employed by Port leaseholders, including the indirect pay increases that result from wage push. We discuss how different demographic groups would benefit from the living wage ordinance. Benefits to employers consist of reduced turnover costs and increases in worker productivity. Benefits to governmental entities include reduced demands upon public health facilities and increased income and payroll taxes. We present our estimates of the costs in the succeeding section. Our estimates of both benefits and costs are the most careful that can be developed from the available data.

Benefits to workers

We present the number of low-wage workers who will be affected by the living wage ordinance in Table 4-1. The first and second columns estimate the direct beneficiaries of the ordinance. The first column shows that about 1,750 workers currently earn less than the living wage ($8.30 per hour) and would thus become eligible for a wage and benefit increase. This increase would bring them up to $8.30 per hour with health benefits or $9.55 without health benefits. The second column shows an additional 815 workers currently earn $8.30, but do not receive full health benefits. They are eligible for an improvement in their health benefits or for an increase in their wage to $9.55 per hour. We assume, following the proposed ordinance, that health benefits cost employers $1.25 per hour worked.

Table 4-2 indicates the demographic composition of the workers who would benefit directly from the living wage ordinance. African Americans, Latinos and Asian Americans, comprise a disproportionate number of living wage beneficiaries because they are currently over-represented in low wage jobs. For example, as is shown in Table 4.2b, African Americans comprise 36 percent of all workers at the Port, but 41 percent of workers making less than $9.54 per hour. Whites are over-represented among higher wage workers who would not be affected by the proposed ordinance. Women are over-represented among low-wage workers. Oakland residents are also over-represented among the low-wage category, and thus will also benefit disproportionately from the living wage ordinance.

Following previous research, we estimate that those workers who earn between $7.65 and $11.44 receive a wage increase due to the effect of a "wage push." This effect occurs because employers tend to raise the wages of the next tier of workers when the lowest paid workers in a firm receive a wage hike. Employers do this in order to maintain some of the relative pay differences for those with longer service, more skills or responsibility, or other job-related factors. Studies of wage-push effects find that wage

push pressure is generally confined to wage rates just above the floor wage (see Appendix B). To estimate this effect, we have drawn on research by Card and Krueger (1995), and followed the methodology used in the San Francisco living wage study by Reich et al (1999a and 1999b).

Table 4-3 summarizes the benefits for workers. About 2,600 workers will be directly affected by an increase in wages and/or benefits; and an additional 550 workers will be affected due to the wage push effect, bringing the total number of beneficiaries to over 3,100 workers. Directly affected workers will experience, on average, an increase of $2.25 in their hourly wage, totaling an additional $4.7 million in wages and $3.3 million in health benefits each year (see Table 4.4). Indirectly affected workers will gain $1.16 per hour. The total indirect wage push for workers just above and below the living wage level amounts to a $2.1 million increase each year. These total benefits to workers add up to $10.1 million. The 3,100 living wage beneficiaries would comprise about 27 percent of all non-supervisory employees of Port leaseholders. In addition, employees in covered firms would receive 12 days paid leave per year.

Benefits to employers

The living wage ordinance will increase worker pay, which frequently leads to some savings for employers. We examine here two sources of such savings: the reduced employee turnover costs and the increased productivity that economists expect to occur when wages are increased. These benefits to employers from paying higher wages will offset some of the increased costs, especially among the lowest-paying employers, and it is useful to consider the amounts involved.

Our best data on potential savings concern turnover, which we obtained through our employer survey. According to our summary calculations from the survey data, employee turnover at the Port averages about 25 percent per year, but it is nearly 20 percentage points higher among low-wage firms than among high-wage firms. A recent National Restaurant Association annual survey also found that turnover is about 20 percentage points lower in higher-wage establishments (Restaurants USA, 1999).[11]

Using the 20 percent expected decline in turnover, we calculated the savings in turnover costs as follows. According to the findings in the previous section, we estimate that the proposed ordinance would create an average wage increase of about $2.05 for over 3,000 workers. Increasing pay from $7.50 to $9.55 is equivalent to an increase of about 27 percent. According to the current research literature, as summarized by Card

[11] The same survey reports annual turnover rates among low-wage restaurants that are often in excess of 100 percent (see also Card and Krueger, 1995). The reported turnover rates in our sample may understate considerably the true turnover, especially at low-wage firms at the Port. Some of the respondents may have misinterpreted the survey question on this topic and reported monthly rather than annual turnover statistics. For this reason, we do not present a table with the turnover data, and we use only the summary figures to generate an estimate of the savings that are likely if turnover were reduced. Our calculations do not depend upon the turnover level, only the reduction, and this figure is likely to be robust .

and Krueger, this increase should reduce quits by an equal 27 percent. To be conservative, we use an estimate of 20 percent instead.

This reduction of 20 percentage points in turnover means that in a workplace of 100 people, there will be 20 fewer quits and consequently 20 fewer replacement hires will take place to keep the firm at the same size. Each quit that does occur generates a cost to the firm to replace the worker. This replacement cost consists of lost output while the vacancy has not been filled as well as the recruiting, interviewing, screening and training costs of filling the vacancy and then bringing the new worker up to speed. The training costs usually involve both formal and informal on-the-job training and take the time both of coworkers and the new workers. Replacement costs generally are a higher proportion of pay for occupations higher on the skill ladder, but an estimate of 20 percent of annual salary for each replacement is in the middle of a range for low-paid and unskilled jobs (Brown et al 1997). We use this figure of 20 percent as the replacement cost per replaced worker.

The firm's overall turnover costs consist of the replacement cost per replaced worker multiplied by the number of replaced workers. If 20 fewer workers out of a workforce of 100 have to be replaced, the firm saves the replacement cost per replaced worker (20 percent) multiplied by the 20 percent reduction in the replacement rate, for a 4 percent saving of its labor costs. Since the wage bill usually amounts to 25 to 50 percent of business costs for these firms, a 4 percent saving on labor costs translates into a 1 to 2 percent offset to increased business costs. In other words, the 1.1 percent increase in business costs could be offset entirely by reduced turnover costs.

Productivity is also known to respond to wage increases, as recent economic theory and research findings have emphasized (Freeman and Medoff, 1984; Katz, 1986). This research literature on efficiency wages identifies a number of possible channels through which wage increases generate productivity improvements. For example, higher wages can increase productivity through improved management incentives and efforts to utilize labor more efficiently and to economize on nonlabor inputs. Some of the increase can arise because new hires may come from a more experienced or skilled labor pool. Other productivity improvement sources that are associated with higher wage rates include lower employee supervision costs, increased morale and lower absenteeism and greater amounts of informal and formal training.

Improvements in productivity are particularly important in creating room for firms to increase wages without having to reduce employment or profits or to increase prices. Whenever productivity growth occurs, by definition output per worker hour goes up. Also by definition, wage costs per unit of output are equal to wages per hour divided by output per hour. Consequently, wages per hour can increase at the same rate as output per hour without increasing wage costs per unit of output. Wage costs per unit of output are also known as unit labor costs. If unit labor costs do not increase, firms can maintain profit margins without increasing prices.

Without much more data than are available, we cannot quantify the magnitudes of these effects for firms at the Port. We do know that labor productivity improvements have averaged 2 percent per year in the nonfarm private economy over the past 4 years. An older literature (reviewed by Freeman and Medoff, 1984) showed that firms experienced even greater productivity increases when unionization created a one-time shock to pay of 20 percent or more. More recently, when minimum wages in California went up by 27 percent in 1988 and by 35 percent in 1996-98, low-wage sectors such as restaurants and retail did not experience declines in employment and their prices did not increase faster than overall inflation. In the current era of rapid technological change associated with the computer and the Internet, many establishments have been able to achieve cost reductions in purchasing of supplies, management of records and a host of other improvements. These cost reductions have occurred in low-wage sectors such as restaurants and would be further accelerated by pay increases.

Benefits to governmental entities

The proposed living wage ordinance will also have some impact on public finances. In general we find that these effects will be positive but small. The public sector will collect more revenue as a result of the proposed ordinance, and will contribute less to various subsidy programs.

Increasing pay will mean that the Federal and state governments will collect higher payroll and income tax revenues. We estimate that employers will pay an additional $1 million in payroll taxes (see Table 4-4). This amount includes social security payments, and training, disability and unemployment insurance levies. Individual employees will also pay higher taxes, and/or qualify for a smaller Earned Income Tax Credit. We have not calculated the changes in individual tax payments since we do not have data on the household and tax status of employees.

Public agencies will see savings as some low-wage workers reduce their usage of various public assistance programs. The main decreases probably involve reduced usage of county public health services and reduced food stamp usage. We have not attempted to estimate the reduced food stamp usage since we do not have data on the household characteristics of employees or on program uptake rates. We can, however, indicate the order of magnitude of the impact on the public health system.

Using data provided by the Alameda County Health Department and the state's Medically Indigent Care Reporting System, we estimate that indigent health care currently costs Alameda County approximately $160 annually for each person who does not have private insurance or HMO/prepaid plan. Since we have estimated that the Living Wage Ordinance would extend health benefits to at least 1,550 currently uninsured people, the County's public health savings could amount to some $250,000 per year. This relatively small financial impact is likely to be felt as a positive reduction in waiting times and in the burden on over-worked public-sector health care providers.

5. The costs and affordability of the proposed ordinance

In this section we examine the increased costs to Port leaseholders and the portion of these costs that are likely to be passed on to the Port of Oakland or to consumers. We begin by presenting our estimates of the aggregate costs of complying with the proposed ordinance, in both absolute dollars and relative to the magnitude of Port businesses. We then examine the distribution of those costs among Port divisions and economic sectors. We also consider the impact of higher pay upon employment trends at the Port.

To analyze the affordability of the proposed ordinance we focus on how many firms in each sector would experience cost increases of different magnitudes. We can then consider how the costs might be shifted and borne by the various parties. Finally, we address whether Port firms would lose business or leave the Port and whether other firms would be deterred from locating on the Port because of the proposed ordinance.

Costs to employers

A first approximation of the total cost of the proposed ordinance is equal to the direct and indirect wage and benefit increases documented in the previous section. These costs are shown in Table 5-1. The cost of bringing wages up to $8.30 an hour is about $4.7 million, the costs of providing more health care coverage is $3.3 million, the costs of paying an indirect wage push is $2.1 million, and the costs of paying 12 days of paid leave is $2 million. These costs add up to a total of $12.1 million. In addition, employers must also pay an additional $1 million in payroll taxes, bringing the total cost of the proposed ordinance to about $13 million.

To put this figure in perspective, we have computed the cost as a percentage of the total wage bill that Port leaseholders paid to their workers and as a percentage of the business revenue received by the leaseholders. As Table 5-1 indicates, our calculations show that enacting the living wage ordinance would increase leaseholders' aggregate wage bill by 4.4 percent and that the increase would constitute 1.1 percent of their current revenue. These aggregate figures indicate that the overall cost increases could be absorbed relatively easily. However, the costs of complying with the living wage ordinance will be felt unevenly, and some sectors will experience smaller impacts than others.

We present the distribution of the costs by Port division and economic sector in Table 5-2. As Table 5-2a shows, the maritime division would bear less than $2 million of the cost and the airport and real estate divisions would each bear close to $6 million. To place these absolute dollar amounts in context we also present the increases as percentages of the relevant leaseholders' wage bill and business revenue. Using this yardstick, the real estate division, with an increase equivalent to 14.4 percent of the wage bill and 4.3 percent of revenue, would be most affected by the proposed ordinance. The effect on the airport would not be as great: 4.9 percent of the wage bill and 1.5 percent of

revenue. The effect upon the maritime division is nearly insignificant: 1.2 percent of the wage bill and 0.25 percent of business revenue.

Table 5-2b presents a breakdown in the costs of complying with the living wage ordinance by economic sector. Several activities and industry sectors account for the lion's share of low-wage workers, and therefore of the costs of the proposed ordinance. The sectors that would experience a cost increase greater than 10 percent of their business revenues are airport security, airport curbside assistance, and entertainment and personal services. Restaurants, hotels, warehousing, retail stores, car rental agencies and parking lots all would experience smaller, but significant, increases in costs.

Costs to workers

Economics students are taught that the quantity of labor demanded by firms goes down when the price of labor goes up. Much of the evidence for this prediction comes from past studies of minimum wage increases, which reported declines of about one to three percent in employment for each 10 percent increase in the minimum wage. However, more recent studies have found no measurable decline in employment resulting from minimum wage increases, even when they were comparable in percentage terms to the increases that the living wage ordinance would generate (for a survey, see Card and Krueger, 1995). When studies did find employment reductions, they tended to be concentrated among teenagers.

The relevance of the minimum wage literature for the proposed ordinance is only suggestive, since the pay rates considered here are at higher levels and are greater in absolute terms. Nonetheless, the recent studies indicate that employment reductions are likely to be much smaller than is often considered. The earlier literature neglected to examine the savings in turnover and the increases in productivity that permit wage increases to occur without employment declines. The Port has smaller than average rates of teenage employment, even in the commercial real estate division, which also mitigates employment effects. Finally, since employment at the Port is projected to grow in coming years, we do not expect employment declines to result from a living wage ordinance, although there could be a small decline in the rate of growth of employment.

Affordability

We have estimated that enactment of the proposed living wage ordinance would cost about $13 million in the aggregate. To put this figure in perspective, it amounts to about 8.5 percent of the overall revenue generated by the Port in 1998 (Table 5-3), and 1.1 percent of Port leaseholders' annual revenue. It is also equivalent to the Port's biennial growth rate in revenue over the past five years.

Another perspective on the affordability of a living wage ordinance relates the cost for each of the port's divisions to the business done per customer in each division. These comparisons indicate that living wage costs are equal to 59 cents per passenger departure at the airport, 6 cents per ton of containerized cargo at the Maritime Port, and

66 cents per visitor to Jack London Square. These figures, while small, are not definitive, as we have not yet considered who would actually bear these costs. Nonetheless, their modest size suggests that enacting a living wage for the Port of Oakland could have a minimal financial impact on the Port while benefiting over 3,000 low-wage workers and their families.

For a fuller affordability analysis, we supplement these aggregate costs and the costs per customer figures with a more analytical discussion and examine the affordability issues separately for each of the Port's divisions.

The logical place to begin the analysis is with the firms. To simplify the analysis, we first consider the proportion of firms that would experience little or no direct cost impact from the proposed ordinance and we then turn to the firms that would experience a greater impact. Based upon our survey data and as reported in Table 5-4, 43 percent of all the firms at the port would experience a direct impact that amounted to less than 1 percent of their business revenue. About 14 percent of firms would experience an impact greater than 1 percent but less than 3 percent of business revenue. For this combined 57 percent of the firms, we expect that reductions in turnover costs and normal productivity improvements alone would mean that the firms could offset the entire cost without reducing sales, employment or profits.

A second group in Table 5-4 consists of firms that would experience moderate cost increases. We estimate that 21 percent of the firms would have increases of more than 3 percent but less than 6 percent and that 9 percent would see increases between 6 and 10 percent. A combined 30 percent of firms thus falls into this second group.

Finally, some firms in Table 5-4 would see higher cost increases. About 12 percent of the firms would experience an increase of between 10 and 15 percent of their costs. Only one firm would face a cost increase over 15 percent; as we discuss below, this firm is a subcontractor to the airline companies.

We turn next to considering the likely behavioral response of the firms, separately by port division and economic sector, limiting the discussion to the firms with moderate or greater costs.

Affordability at the Airport

As mentioned, the aggregate cost of the proposed ordinance at the airport amounts to $0.59 per departing passenger. This cost to pay for the living wage will not affect airport demand. Even if passengers were to absorb the entire increase, they would not choose to fly out of another airport to avoid paying this minor expense. The costs to the Airport Division of the Port consequently will be small.

At the airport, the major sectors are the airlines themselves, airline servicing, airport security and curbside assistance, parking, car rental and retail. Of these, the airline companies generally face very small direct cost increases, under 2 percent in Table 5-1b. This sector consists of very large companies that can absorb these costs easily. Southwest

Airlines, the Oakland Airport's largest airline and second highest revenue source, accounts for nearly 13 percent of all the airport's revenue. Southwest has had significant growth in recent years as net income in 1998 increased to $433 million, up from $207 million in 1996[12]. Oakland's second largest airline, United, had net earnings in 1998 of $6.83 billion, up from $5.06 billion in 1996.

The airline service sector (fuelers, cabin cleaners, caterers, baggage handling) generally faces slightly higher costs increases of 1.2 percent of business revenue (see Table 5-1b). These costs are distributed unevenly, but are never greater than 6 percent per firm. The cost increases for these firms presumably would be passed on to the airlines themselves. Some of the firms in this sector are also large. For example, LSG Sky Chef has annual sales of $1.6 billion and is owned by Lufthansa, the German airline company.

The same pattern of small increases applies for airport security. Most of the employment in this sector is for baggage screeners. Again any increased costs are likely to be passed on to the airlines. If the Port pays a security company for overall guard service, it should be possible for the Port to easily pass increased costs to the airlines as well. For example, the landing fees the Airport charges to airlines currently are much lower than for other leading airports: one-half lower than at LAX and one-third lower than at SFO (Reich and Hall, 1999b).

The biggest cost increase-- 40 percent of business costs-- in our sample is for a firm that provides curbside and wheelchair assistance. This firm operates as a subcontractor for the airline companies. Although the cost increase to the firm is substantial, insofar as the organization of work does not permit improving productivity, the firm is likely to pass its increased costs to the airlines, who have a much greater ability to pay. The cost for the airlines would constitute a minimal increase of 1 percent or less. Whether the full cost increase would in turn be passed onto airline passengers and to cargo customers is difficult to determine. Although a partial pass-through is more likely, even a full pass-through would not be noticeable to the airlines' customers.

The other low-wage workers in the Aviation Division are located primarily in car rental, parking and restaurant sectors. Six car rental companies operate at the airport: Alamo, Avis, Budget, Dollar, Hertz, and National. Half of the rental companies in our sample would experience a cost increase of just over 1 percent, an easily-absorbed amount. One company would experience a 4 percent increase, which is also easily affordable. Each of the car rental companies is a well-known national corporation. For example, the parent company of National Car Rental, one of the largest car rental employers, had revenues of nearly $10 billion in the first six months of 1999 alone. National Car Rental sales at the Oakland location are over $10 million per year.

Many of the other low-wage employers at the airport are likely to have a significant ability to pay. Such firms include Huntleigh and ABC Security. Huntleigh Corporation has sales of over $5 million per year.[13] ABC Security has annual sales in

[12] Company revenue details provided in this section are drawn from the American Business Directory.
[13] This is the figure for the Los Angeles office.

Oakland of over $5 million. California One Services has subsidiaries or branches at 17 other airports. At most of these they have a very similar presence to Oakland: $1-2.5m sales and 50-99 employees.

The implementation of the proposed ordinance at the airport would not occur in a single year. Since the air passenger license and temporary use agreements typically are renewed annually, the Airport has significant flexibility in setting rates and it is not locked into long-term contracts. Consequently, without long lease durations in the way, the implementation of a living wage ordinance could take place rather quickly for this group of airport workers. But the rental car, air cargo, air maintenance, and restaurant and bar facilities typically have long-term lease agreements. For these sectors, the implementation of an ordinance is likely to take place over time. Such a phase-in implies that the costs per year would also be phased in over time.

In summary, only a few firms at the airport will actually have significant cost increases. Demand for departures from Oakland is not likely to be affected by a 59 cent increase. Airline services will be able to pass on increases to the airlines, and the airlines will be able to pass on increases to their customers. Many of the firms at the airport have a high ability to pay a living wage. The revenue implications for the Airport consequently are minimal and should not affect any bond-financed expansion costs.

Affordability at the Maritime Division

The impact of a living wage on the Maritime division will be significantly less than in the other divisions. According to Table 5-1a, the cost will be $1.68 million, equivalent to 0.25 percent of business revenue. As is shown in Table 5-1b, the impact within the maritime division upon maritime shipping activities themselves is 0.02 percent, which is essentially zero.

The impact on trucking and warehousing within the maritime division will be larger, about 4.2 percent of business revenue. Some of the trucking companies that will experience a cost increase are large firms that may be able to pay higher wages. For example, according to publicly available business sources, Pacific America, a trucking company and a major employer in the Maritime Division, has over $5 million in sales.

From our survey (but not reported in the table), we know that the bulk of the costs of enacting the living wage will be carried by non-maritime businesses that are located on maritime port land, such as a car rental agency and a restaurant.

In summary, taking all the sectors within the maritime division into account, the overall costs are so small and the pass-through and impact upon the firms' revenue is likely to be even smaller. Consequently, there should not be much impact upon the Port's revenues or bond ratings.

Affordability at the Real Estate Division

The affordability issues at the Real Estate Division are somewhat different from those at the Airport and Maritime Divisions of the Port. First, the overall percentage cost increase is larger: 4.3 percent of business revenue. Second, many of the activities at the port are more subject to competition from nearby businesses. Location at the airport and the port is essential to most of the activities there, so the issue of competition with offsite businesses that pay lower wages is small. At the waterfront, offsite competition is a greater issue. Nonetheless, location of restaurants and other retail businesses at the waterfront provides them with competitive advantages: scenic views, city and port-supported infrastructure created by previous public investment, and a critical concentration of retail businesses. Whether this premium is sufficient to offset the cost increases is the principal issue.

The Port's revenue from the real estate division is also much lower than in the other two divisions. Not counting the revenue growth related to Oakland Portside Associates, operating revenue in the commercial real estate division has hovered at about $10 million in recent years, or one-seventh of the operating revenue in each of the other two divisions. More disturbing, the real estate division has been losing money. Its net operating income has been negative, even before taking depreciation and interest expenses into account (Table 5-3). Any possible reduction in rents in this division consequently generates a great affordability concern for the Port.

Our findings suggest that most of the firms that would be significantly affected by the proposed ordinance are concentrated in the real estate division. Except for about a dozen of these firms, the impact is less than 10 percent of their business costs. To examine whether the Port location provides a corresponding premium, we examined prices charged by businesses at Jack London Square to others at nearby locations.

Businesses on Port-owned land do charge more for their services than in nearby locations, presumably because of the locational advantages. For example, the Motel 6 on Port property is 18 percent more expensive than the Motel 6 adjacent to Port property. Additionally, the Airport Hilton, the Waterfront Plaza Hotel, and the Embarcadero Executive Inn charged on average 32 percent more than hotels immediately adjacent to Port property. Compared to similar hotels in surrounding cities, the three hotels on Port property charged 6 percent more.[14]

For another comparison, we sampled the prices of restaurants in and near Jack London Square. Comparing similar menu items, we found that restaurants on Port land charge on average 16 percent to 30 percent more than restaurants in the surrounding area.[15] These differences are greater than the cost of the proposed ordinance to

[14] Comparable hotels are Radisson, Clarion Suites, Four Points Hotels-Sheraton, and Holiday Inn in the Berkeley Marina, Lake Merritt, and Emeryville respectively.

[15] We compared prices at five restaurants in Jack London Square with prices at five restaurants in the surrounding area. The methodology involved comparing menu prices among the restaurants for both the least expensive seafood and the cost of dinner with the seafood entrée and a caesar salad.

restaurants. They suggest that an increase in costs of 66 cents per customer is affordable without hurting revenue.

Some of the employers in this division are large and profitable companies with a regional or national presence. Potentially affected companies leasing property from the commercial real estate division include Best Western, Motel 6 and the Old Spaghetti Factory. Best Western is an independently owned member of Best Western International, whose hotels had sales in 1998 of $70 million. The Motel 6 on Port property has sales of over $1 million per year while the Motel 6 not on Port property has sales of less than $1 million. The Old Spaghetti Factory has annual revenues of between $2.5 and $5 million and is part of a private company with over 40 total restaurants and $54.6 million in sales.

Vacancy rates at Jack London Square are currently low, which supports recent publicity suggesting that retail establishments at or near Jack London Square are facing increasing market rents. The rent increases reflect the success of local economic development and again indicate that a living wage ordinance can be absorbed by this sector. Indeed, cost increases as a result of rising rents may well dominate any labor cost increases in coming years. It does not seem likely that businesses would be deterred from locating at Jack London Square in such an environment.

In summary, the cost increases for leaseholders in the commercial real estate division are greater than in the other divisions, but are below 10 percent of current business revenue for all but a dozen firms. Even without taking into account the likely business savings due to lower turnover costs and higher productivity, most firms should be able to adjust to the higher labor costs without reducing their workforce or relocating from the Port. Of the dozen firms with greater impact, most will be able to pass on increases to consumers without hurting sales.

In a context of rising rents near Jack London Square, the firms that are most affected are much more likely to increase prices than to obtain reductions in the rent they pay to the Port. Firms that are less affected are also not likely to obtain rent reductions. We conclude that Port revenues in the commercial real estate division should not decline significantly as a result of the proposed ordinance.

6. Conclusion

The Port of Oakland is Oakland's largest public asset and is one of the most important generators of jobs in the City and its environs. In the past, work in the maritime industry provided substantial numbers of well-paid jobs, which provided a path to the middle class for many Oaklanders, especially for African Americans, who currently comprise 50 percent of the Port's longshore workers.

In the future, however, the greatest job growth will occur in the airport and real estate divisions, not the maritime division. The lowest average wage rates at the port are concentrated in the hotel, restaurant, parking, security and skycaps, and other services sectors. These sectors are all part of the growing airport and real estate divisions, where we see both lower average wages and higher wage disparities between whites and people of color.

Without public policy intervention to affect the quality of jobs, the Port will continue to generate large numbers of jobs for Oakland and the region, but many of these will be low-wage jobs. Moreover, racial wage disparities will be perpetuated by this pattern of growth.

Enacting a living wage ordinance at the Port of Oakland would help increase the incomes of 3,100 low-wage workers. The average affected worker will see an increase in income including health benefits of $2.06 per hour. Employees will also get paid leave.

The costs of the proposed ordinance are about $13 million and comprise only about 1 percent of Port leaseholders' business revenues. The maritime division would experience only a very small increase in cost, with shipping activities essentially unaffected. Cost increases in the real estate and airport divisions would constitute about 4.3 percent and 1.5 percent of leaseholders business revenues, respectively.

For the airport, this amounts to $0.59 per departure, certainly not enough to change passenger preference for flying out of Oakland. Low wages are concentrated in a few firms, many of whom are subcontractors to the major airlines. Since they provide essential onsite services, they will be able to pass most cost increases to the airlines, who can easily absorb them and/or pass them on to passengers.

For the real estate division, the increase in wages and benefits amounts to $0.66 per visitor to Jack London Square annually. The increase in costs to the affected restaurants and hotels is smaller than the premium they get for locating near the waterfront and in Jack London Square, compared to similar businesses in less desirable locations. With business growing in the area, the small increase in costs should not affect the overall business climate.

We conclude that the increased wage bill costs can be absorbed by the Port's leaseholders, visitors to the waterfront and passengers at the Oakland airport. Businesses

should not be driven away, Port revenues should not go down and bond ratings for the Port should remain unaffected. The overall effects of a living wage ordinance--considering the benefits and as well as the costs-- should be to redirect economic growth at the Port toward the more equitable path that it had sustained in previous decades.

Appendix A: Survey method and data sources

The primary data source for the Port of Oakland study was a telephone and in-person survey of Port leaseholders and their on-site subcontractors that we conducted in the spring and summer of 1999. Where necessary, we collected supplementary data from a variety of official sources. This appendix discusses the sample universe, sample realization, weighting, estimation procedures, survey methodology, the survey instrument and the supplementary data.

Sample universe and realization

The universe – the list of all firms that are tenants of the Port of Oakland - for the sample survey was generated from the following sources. First, we obtained a list of tenants compiled by the Government Affairs Division of the Port of Oakland. When it became clear that some gaps existed in this data source, requests were directed at the Real Estate and Airport Divisions for further information. Their responses to our requests provided the second source of information. Third, we conducted field visits to complete the universe, in particular to complete the lists of sub-tenants at 80 Swan Way, Embarcadero Cove and Jack London Village and subcontractors such as security and skycap firms at the airport.

From these sources, we generated a list of leaseholders of the Port of Oakland. After duplications, name changes and other sources of error had been identified and corrected or removed, we were left with a list of 278 firms.

We attempted to survey all 278 firms on the list and continually monitored progress in order to ensure a balanced sample realization across port divisions, sectors and geographic areas. Our interviews revealed that 30 firms were no longer tenants of the Port, leaving a total of 248 firms in our universe. About one-third of the firms were not surveyed because they refused to answer our questions or were not traceable. Table A-1 shows the sample realization results.

Weighting procedure

The 168 surveyed tenants / service contractors of the Port of Oakland employ some 9,518 people (both managerial and non-managerial). When data from the American Business Directory for unsurveyed firms is added to this, the total estimated employment at the Port of Oakland is 13,787. The gap between these figures is explained by the fact that we successfully surveyed 68 percent of the possible firms. To adjust for this discrepancy, we weighted each surveyed firm.

The goal of weighting is to determine how many actual firms or employees is represented by each surveyed firm or employee. We generate a factor by which to 'expand' each surveyed firm and employee to generate the actual number of firms and employees. Following standard sample survey methodology, we tried to increase the

accuracy of our weighting (or expansion) factors by comparing apples with apples. For example, a restaurant in the airport should not be taken to represent a trucking firm in the port.

Thus, in the weighting procedure, we used 11 industrial classes (construction, manufacturing, truck, maritime, air, retail, restaurant, finance and related, hotel, services and other) and 7 port regions (Hegenberger, Airport, Embarcadero, Jack London Village, Jack London Square, Port). This means, for example, that each surveyed retail worker in Jack London Square is taken to represent 1.25 actual retail workers in Jack London Square. The weights thus vary by sector and region, thus minimizing the errors in the weighting process.

Once the weights had been applied, we estimated that there were 13,010 people working in the Port of Oakland. This is only slightly lower than the estimate that includes ABD data. Once managerial employees, and those working for firms employing fewer than 5 people are excluded, we are left with 11,430 people. These are the workers who would be covered by a Living Wage Ordinance.

Our overall employment estimate compares well with a combination of employment estimates derived from the Martin Associates (*various dates*) reports for the Real Estate, Airport and Maritime Port Divisions. This data source is out of date – the reports are dated from 1992 to 1997 – and includes all employment related to port activity, regardless of whether it is on Port property or not. However, a realistic estimate of on-site employment from this source ranges between 11,000 and 18,000.

The reported number of firms is also affected by weighting. The 123 surveyed firms that employ one or more non-managerial worker represent 174 firms when weights are applied. Of these, 140 have five or more employees (see Table 3.1). The 45 surveyed firms that have no employees represent 74 actual firms. Thus the weighted number of firms equals the universe of 248 firms.

Questionnaire

The questionnaire for the survey was designed and pilot-tested with restaurant and retail sector employment as the primary target. With minor modifications we made it applicable to other employment sectors. Survey interviews took between 10 and 20 minutes, depending on the number of job titles in the firm. Questions were directed only towards the employment at the establishment on port property (or on employment linked to port-related service contracts) and not the entire firm.

The first section of the questionnaire dealt with the employment profile of the workforce in terms of job permanence, demographic characteristics, unionization levels and benefits. In order to reduce the length of the questionnaire, these questions were applicable only to the non-managerial workforce, and thus demographic profiles per job title / occupation are estimates.

In the second section of the questionnaire, information was collected on each non-managerial job title. This included the number of people with the job title, minimum educational and other qualifications, and starting and average pay. In one-third of all job titles, the average wage was not provided, requiring supplementary information (see below).

The third section of the questionnaire dealt with the recruitment and training practices of the establishment. The questionnaire concluded with two very sensitive questions - the revenue and labor share of business costs - questions which most respondents would not or could not answer.

Supplementary data

Given these and other gaps it became necessary to supplement the survey data in four ways. First, we used the American Business Directory to identify the location, sector, employment and revenues of 190 of the firms. This information helped us to complete the sample universe, to identify potential respondents, to fill information gaps in the interviews, for purposes of weighting the sample, and to check the survey-based total employment estimate.

Second, as noted above, in about one-third of (119 out of 360) job titles surveyed we were not provided with average wage data. To fill this gap, we searched for comparable job titles in comparable firms within the sample, and where appropriate used this source. This filled 34 of the missing average wage rates. In a further 42 cases, we had been provided with the starting wage but no average wage. We multiplied the starting wage by a factor of 1.559 in the case of unionized job titles, and 1.341 in the case of non-unionized job titles to estimate average wages. These factors were generated from the available survey data, and reflect the fact that tenure-based pay increases are larger for unionized than for non-unionized workers. Finally, in 33 cases we were able to fill the average wage gap using average wage data for the 1997 Occupational Employment Series for the Oakland Primary Metropolitan Statistical Area. This left 10 job titles for which we were unable to generate an average wage.

Third, most of the firms employing members of the ILWU (i.e., stevedores and terminal operators) were unable to provide information on the number of longshoremen and clerks they employ, and their pay and benefit scales. This employment is distinguished from other (generally administrative) employment within such firms, and for which we generally were provided full information. In order to complete this component of employment by port tenants, we collected wage and demographic information from the Pacific Maritime Association and from Lawrence Tiebout, the President of ILWU Local 10, and his staff. Although this data is subject to inaccuracy because the San Francisco ILWU hiring hall covers the entire Bay Area, wage rates for these workers are all above $20 per hour. Thus this supplementary data will not bias estimates of the cost and benefit of a Living Wage Ordinance.

Fourth, we extracted microdata from the March Supplement of the Current Population Survey for 1996-9 for the Bay Area Statistical Area. This data provided hourly wage data for the entire Bay Area, for Alameda County and for the City of Oakland.

We also used this data source to supplement our health benefit coverage information. In the questionnaire, we did not distinguish whether employers or employees paid for health coverage, and thus we could not use our survey data to estimate this aspect of the impact of a Living Wage Ordinance. For each job title, we estimated the value of health benefits paid by the employer for each job title based on the average health coverage rates for similar job titles and sectors in the Bay Area.

Appendix B: Supplementary wage calculations

This appendix is devoted to two technical issues in the study. The first issue concerns the impact on wage scales within a firm when the lowest paid workers receive a wage increase. We discuss our methodology and assumptions for estimating these so-called wage push effects of the proposed living wage ordinance. The second issue concerns tip income. Our discussion highlights the complexities of this issue, although our estimates indicate that including a tip credit in the proposed ordinance would make little difference in the aggregate.

Wage push calculations

Although the proposed ordinance mandates pay increases only for workers who are paid less than $8.30 per hour, it is reasonable to ask whether employers would feel pressure to raise the pay of other workers as well. Such wage push pressure would be expected to arise primarily from workers whose wages fall just above the living wage level, since most pay comparisons involve workers in closely related job classifications. Pay increases might be required in order to maintain relative pay differences for those with longer service, more skills or responsibility, or other job-related factors. These indirect effects, which we have called "wage push," have also received such labels as "wage creep," "ripple effects" and "wage contour effects".

An accurate accounting of such increases depends upon our knowledge of the rigidities and flexibilities of the occupational wage structure. The current state of such knowledge is imperfect. Although relative wage structures have compressed in the past, notably in the 1960s and 1970s, in more recent decades they have widened. In the past three years they have stabilized and in some instances have narrowed. A large literature by economists has debated the relative importance of market-based and institutional-based causes of these patterns. Nonetheless, we can draw upon recent experience with minimum wage increases and with living wage ordinances in other cities to develop some reasonable estimates.

The best wage-push analysis of minimum wages is by Card and Krueger (1995), who examined the impact of minimum wage increases upon the pay of above-minimum workers. They found that the indirect effects did indeed concentrate at just above the new minimum. The percentage pay increase for those just above the new minimum averaged less than half of what the workers at the old minimum received. In other words, recent minimum wage increases have led to some compression of the wage structure.[16] This compression is not surprising in historical perspective, since wage inequality in the 1990s has been higher than at any other period since the Bureau of the Census began collecting reliable data in 1947.

[16] Sachdev and Wilkinson (1998) obtain similar findings for the United Kingdom. Both studies find negligible adverse employment effects. See also Reich (1999).

Card and Krueger's results do not apply directly to a living wage ordinance, but they are very suggestive. Since the increases contemplated by the ordinance are greater, in percentage terms, than the minimum wage increases studied by Card and Krueger, the indirect effects may also be greater. On the other hand, minimum wage increases apply to all low-wage workers in the labor market, while living wage ordinances apply only to a small percentage. Consequently, the indirect effects may be restrained by larger labor market forces and could be somewhat smaller. These two considerations work in opposite directions and probably cancel each other.

It therefore seems reasonable to translate Card and Krueger's findings as suggesting that if the largest wage increase at the Port of Oakland were about $4 per hour, an increase of up to $2 per hour might occur for workers currently paid $9.55 per hour. The total wage bill would not go up proportionately, however, because there are fewer workers at the more skilled and supervisory levels that receive higher pay.

Using the underlying survey data on the proportion of workers at each pay level, we have assumed that each worker currently earning between $7.65 to $9.55 would actually receive $10.03 per hour after the Living Wage is implemented. We have also calculated the cost of bringing all workers who are currently paid between $9.55 and $11.44 up to $11.45. We estimate that these indirect wage gains could amount to $2.2 million for employees of Port tenants.

Tip income calculations

The impact of the Living Wage Ordinance depends in part on how tip income is treated. This is a complicated issue that can become a source of controversy. In this appendix we present and discuss our findings in the interests of a more informed debate on this topic, without making a specific recommendation for dealing with tip income. We show that the overall impact of a tip credit would be relatively modest, although it may be important for specific sectors or employers.

Tips constitute an important source of income for employees in various service-sector occupations. In the Oakland Port context, over 1,000 restaurant workers, skycaps and parking valets may earn up to half their income in tips (see Table B-1). For this reason, employers may resist increasing the wages of workers who earn above the living wage level when tips are taken into account. A solution to this problem may be to estimate the value of tip income earned by each employee and allocate this as a tip credit.

However tips are by their nature highly irregular, prone to under-reporting and often inequitably distributed. These features make regulation very difficult and could in restaurants create great inequities since not all employees collect tips directly. Bussers, cleaners and cooks only receive tip income where a pooling system operates. Tips also vary considerably across different restaurants, and workers in fast-food and cafeteria-

style restaurants generally do not receive tips.[17] Enacting and enforcing an equitable tip credit system would be very complicated, and the impact on costs would be modest.

We estimated the value of tips for certain categories of workers. In the case of waiters, bartenders and cocktailers, we assumed that tips added a further 70 percent to an individual's wage. We based this estimate on interviews with restaurant workers and a review of the limited literature on this subject. For other restaurant workers, including bussers, food preparers and other employees, we assumed that tip income would increase an individual's earnings by 10 percent. This amount takes account of the tip sharing that occurs in some establishments. For skycaps and parking valets at the airport, we assumed tips to value of $2 per hour. This assumption was based on interviews with airport workers. In the report, wage data and estimates of the costs and benefits of a Living Wage Ordinance are generally presented without including tips as income

Table B-2 shows that the number of workers benefiting from the Living Wage Ordinance would only fall marginally with a tip credit – from 3,100 to 3,050. This small effect occurs because the estimated value of tip income brings most employees closer to the living wage level without taking them above it. However, the average hourly wage increase per worker falls from $2.06 to $1.67.

A tip credit would result in a decrease in the annual cost of the proposed ordinance of almost $2 million (see Table B-3). Most of this decrease – some $1.5 million - occurs within the restaurant sector. The decrease in costs for the Security and Curbside Assistance sector is small in absolute terms, but it is relatively important since it represents 10 percent of the wage bill in this sector.

[17] The 1988 bill to raise the California minimum wage originally contained a tip credit, but this provision was eliminated by a court decision.

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Table 1-1 Cost of Living and Living Wage Comparisons

	Living wage[1] (unadjusted)	**Wage adjusted with Oakland Cost of Living[2]**
Oakland	$8.30	$8.30
National Comparisons		
Baltimore	$7.90	$13.27
Boston	$8.23	$9.29
Miami	$8.56	$12.96
Regional Comparisons		
Los Angeles	$7.51	$9.52
San Francisco[3]	$11.00	$9.48
San Jose	$9.50	$8.35

Sources: ACCRA Cost of Living Index and Wider Opportunities for Women, Self-Sufficiency Worksheets.

Notes:
1. Living wage with health benefits.
2. Adjusting factor = Oakland CofL/City's CofL (using ACCRA Composite Index for Baltimore, Boston, Los Angeles and Miami, and W.O.W. index for San Francisco and San Jose).
3. Proposed Living Wage.
4. Cost data are for the city, except for Boston (PMSA) and Miami (Dade County).

Table 2-1 Comparison of wage rates for selected Bay Area Central Cities

	Average hourly wage, 1996-9
Oakland	$14.52
San Francisco	$15.97
San Jose	$18.99
All Bay Area Central Cities	$17.68

Source:
Hourly wage from authors analysis of March Supplement of the BLS Current Population Survey, Bay Area Counties, 1996-9 extraction. Adjusted for inflation using the San Francisco-Oakland-San Jose CMSA all urban consumers consumer price index.

Table 2-2 Top Ten Occupations with greatest absolute job growth in Alameda County 1995-2002

Job Title	1995	2000	Total Change	Median Hourly Wage[1]	Mean Annual
Low-wage occupations					
Cashiers	13,450	15,410	1,960	$7.65	$19,190
Retail Salespersons	19,500	21,450	1,950	$7.78	$19,910
Assemblers and Fabricators	7,720	9,210	1,490	$9.21	$20,550
Waiters/Waitresses	6,240	7,480	1,240	$5.67	$13,110
Low-wage total	**46,910**	**53,550**	**6,640**	**-**	**$18,904**
Medium-wage occupations					
Sales Representatives[2]	8,350	9,370	1,020	$19.17	$44,910
Secretaries[3]	11,810	12,700	890	$14.16	$29,870
Teachers (Secondary)	5,170	5,950	780	$24.29[4]	$50,530
Medium-wage total	**25,330**	**28,020**	**2,690**	**-**	**$39,045**
High-wage occupations					
General Managers	17,450	19,380	1,930	$36.93	$74,660
Computer Engineers	1,660	2,800	1,140	$33.81	$65,710
Systems Analysts	1,820	2,870	1,050	$31.41	$61,860
High-wage total	**20,930**	**25,050**	**4,120**	**-**	**$72,837**

Source: California Employment Development Department.

Note:
1. 1997 wage rates for the Oakland PMSA.
2. Sales representatives not including retail or scientific.
3. Secretaries not including legal or medical.
4. No median wage available for teachers. Median hourly wage given is mean yearly wage divided by 2080 hours.

Table 3-1 Port-related employment[1]

	1995	Projected 2010
Airport	10,200	16,500
Maritime	8,800	12,700
Commercial real estate	2,900	Not available
Port staff	580	Not available
Total port employment	22,480	32,680
Total Alameda County employment	525,444	784,840

Sources: County Business Patterns, ABAG web site, Martin and Associates

Note:
1. Includes off-site employment.

Table 3-2a Tenants of the Port of Oakland: firms and employment by revenue division

Revenue Division	Firms[1]	Employees[2]	Percentage of total workforce[3]	Average wage[4], $/hour	Percent of employees unionized
Airport	36	7270	63.6	14.50	44.1
Maritime port	20	2050	17.9	31.66	80.5
Real estate	84	2110	18.4	10.54	4.9
Total	**140**	**11430**	**100.0**	**16.80**	**43.4**

Table 3-2b Tenants of the Port of Oakland: firms and employment by sector

Industry Sector	Firms[1]	Employees[2]	Percent of total workforce[3]	Average wage, $/hour[4]	Percent of employees unionized
Air Cargo	4	4164	36.4	15.84	34.8
Passenger airlines	6	1109	9.7	16.00	82.3
Airline support services	8	745	6.5	12.91	27.5
Security and curbside assistance	3	223	2.0	7.02	0.0
Car rental	6	445	3.9	10.15	57.5
Parking services	3	300	2.6	9.90	69.3
Retail	22	371	3.2	10.65	5.4
Restaurant	16	918	8.0	8.07	23.5
Hotel	16	324	2.8	9.30	0.0
Maritime	9	1601	14.0	37.99	98.0
Trucking and warehousing	10	365	3.2	12.76	7.1
Construction and Manufacturing	4	113	1.0	12.54	72.2
FIRE[5]	7	146	1.3	18.4	0.0
Professional services	21	257	2.2	19.14	5.4
Entertainment and personal services	5	350	3.1	7.32	0.0
Total	**140**	**11430**	**100.0**	**16.80**	**43.2**

Source: UC Berkeley (CLRE) Employer Survey

Notes:
1. Excluding firms with fewer than 5 employees.
2. Non-managerial employees only.
3. Non-managerial employees in sector / total non-managerial employees.
4. Including health benefits. Based on the occupation-weighted sample.
5. Finance, Insurance, and Real Estate.

Table 3-3a Port employment and demographic profiles by revenue division

Revenue Division		Percent of employees who are:					
		Women	**Oakland residents**	**African-American**	**Asian-American**	**Latino**	**White**
Airport	7,270	40.8	69.0	41.9	22.0	16.4	19.6
Maritime Port	2,050	11.3	27.7	37.0	2.4	34.1	26.4
Real Estate	2,110	55.1	64.3	29.1	17.9	23.4	29.6
Total	**11,430**	**35.8**	**53.9**	**35.8**	**14.0**	**23.8**	**26.5**

Table 3-3b Port employment and demographic profiles by industry sector

Industry Sector		Percent of employees who are:					
		Women	**Oakland residents**	**African-American**	**Asian-American**	**Latino**	**White**
Air Cargo	4,164	25.5	60.0	12.1	0.9	2.8	84.1
Passenger airlines	1109	63.6	75.5	28.3	24.1	23.5	24.1
Airline support services	745	45.1	66.7	57.4	9.8	8.8	23.9
Security and curbside assistance	223	27.1	74.3	65.6	26.6	6.0	1.8
Car rental	445	43.9	81.4	63.7	13.8	16.0	6.5
Parking services	300	72.4	40.3	40.2	46.3	1.5	11.1
Retail	371	45.2	72.4	35.3	7.6	18.1	39.4
Restaurant	918	52.3	56.1	23.0	13.3	38.2	25.5
Hotel	324	67.8	85.0	30.0	16.6	40.9	12.4
Maritime	1,601	7.4	31.7	39.8	1.6	21.8	36.9
Trucking and warehousing	365	33.6	10.4	15.1	6.0	63.4	15.2
Construction and Manufacturing	113	4.2	15.7	3.6	4.2	71.4	20.3
FIRE[1]	146	60.5	27.0	14.6	4.9	3.5	77.0
Professional services	257	62.1	28.2	10.6	35.3	9.9	44.2
Entertainment and personal services	350	41.7	92.5	57.2	28.9	3.5	10.4
Total	**11,430**	**35.8**	**53.9**	**35.8**	**14.0**	**23.8**	**26.5**

Source: UC Berkeley (CLRE) Employer Survey

Notes:
1. Finance, Insurance, and Real Estate.
2. The number of employees by sector and the percent of employment by demographic group were calculated based upon the firm-weighted sample universe. See Appendix A.

Table 3-4 Average wage by revenue division and demographic group

Revenue Division	All Employees	Average wage, $/hr[1]						
		Women	Oakland residents	African-American	Asian-American	Latino	White	Unionized
Airport	14.50	13.42	12.18	10.96	11.80	13.07	15.80	14.91
Maritime Port	32.12	23.60	37.29	37.48	21.03	26.27	34.41	37.87
Real Estate	10.27	10.88	8.58	8.88	10.70	9.15	12.53	13.70
All Divisions	**16.81**	**13.41**	**15.27**	**18.75**	**11.88**	**17.89**	**19.73**	**22.19**

Source: UC Berkeley (CLRE) Employer Survey

Notes:
1. Including health benefits, not including tips.
2. Average hourly wages are weighted by the number of employees in each category.

Table 3.5 Low-wage employment at the Port of Oakland[1]

Industry Sector	Job Title	Employees	Average wage, $/hour[2]	Wage range, $/hour[3]
Airline Support services	Fueler / Ramp agent	250	8.40	6.50-9.15
	Food preparation	90	9.10	6.40-10.20
Security and skycap	Skycap and screeners	160	5.95	5.75-6.25
	Security	60	9.00	6.50-9.00
Rental Cars	Rental and service agents, shuttlers	350	8.90	5.75-12.85
Parking Services	Cashier, Valet	225	8.55	5.75-9.05
Retail	Cashier and sales	200	8.25	5.75-12.00
Restaurant	Busser	45	5.90	5.75-7.70
	Dishwasher	90	7.60	5.75-9.40
	Cook, food preparation	190	8.20	5.75-10.70
	Waiter, cocktail server, bartender, host	490	7.45	5.75-15.00
Hotel	Housekeeper / room cleaner	150	7.15	5.75-9.50
	General Maintenance	30	7.90	5.75-8.50
	Desk clerk	60	8.55	5.75-9.25
Trucking And warehousing	Packagers and general labor	200	6.75	5.75-8.50
Entertainment and personal services	Customer services, cleaning	240	6.25	5.75-6.25

Source: UC Berkeley (CLRE) Employer Survey

Notes:
1. Low-wage job titles are defined as those where the starting wage is below $8.30 per hour. Due to tenure-based pay scales, average wage rates for some of these job titles may exceed $8.30 per hour. Since we do not have detailed data on wage scales, the number of workers reported includes all employees within the firm in the relevant job title.
2. Average hourly wages are weighted and do not include tips.
3. Minimum of wage range is lowest starting wage and maximum of wage range is highest average wage.
4. All numbers have been rounded.

Table 4-1a Number of employees by wage category and revenue division

Industry	All Employees	Earning below the proposed living wage[1]	Earning below the proposed living wage plus health benefit level[2]	Indirectly affected by the proposed living wage ordinance[3]	Unaffected by the proposed living wage ordinance[4]
Airport	7265	551	513	321	5880
Maritime Port	1979	175	66	50	1688
Real Estate	2050	1032	236	167	615
Total	**11294**	**1758**	**815**	**538**	**8183**

Table 4-1b Number of employees by wage category and sector

Industry	All Employees	Earning below the proposed living wage[1]	Earning below the proposed living wage plus health benefit level[2]	Indirectly affected by the proposed living wage ordinance[3]	Unaffected by the proposed living wage ordinance[4]
Air Cargo	4164				4164
Passenger airlines	1109	54	22	178	855
Airline support services	745	48	66	127	504
Security and curbside assistance	223	157	66		
Car rental	445	86	193		166
Parking services	300	50	176		74
Retail	371	119	60	56	136
Restaurant	918	691	65	38	124
Hotel	324	171	26	66	61
Maritime	1509			45	1464
Trucking and warehousing	362	140	65		157
Construction and Manufacturing	101			5	96
FIRE[5]	146				146
Professional services	252			20	232
Entertainment and personal services	325	242	76	3	4
Total	**11294**	**1758**	**815**	**538**	**8183**

Source: UC Berkeley (CLRE) Employer Survey

Notes:
1. Earning below $8.30 per hour.
2. Earning between $8.30 and $9.54 per hour.
3. Earning between $9.55 and $11.44 per hour.
4. Earning more than $11.45 per hour.
5. Finance, Insurance, and Real Estate.

Table 4-2a Wage groups by gender

	Directly benefited employees (percent) [1]	All employees (percent)
Men	54.3	64.0
Women	45.7	36.0
Total	**100.0**	**100.0**

Table 4-2b Wage groups by ethnicity

Ethnic Group	Directly benefited employees (percent) [1]	All employees (percent)
White (nonHispanic)	14.7	26.5
African-American	41.1	35.8
Asian and Pacific Islander	18.9	14.0
Latino	25.2	23.8
Total	**100.0**	**100.0**

Table 4-2c Wage group by place of residence

	Directly benefited employees (percent) [1]	All employees (percent)
Oakland residents	64.6	53.9
Non-Oakland residents	35.4	46.1
Total	**100.0**	**100.0**

Source: UC Berkeley (CLRE) Employer Survey

Notes:
1. Those earning less than $9.55 per hour, including health benefits, not including tips. Those workers whose wage plus health benefits are greater than $9.55 are excluded.

Table 4-3 Affected workers and wage and benefit increases

Wage Category	Average hourly wage increase[1]	Average annual wage increase[2]	Number of employees
Directly affected workers (earning under $9.55/hr.)	$2.25	*Full-time*: $4,500 *Part-time*: $2,300	2,573
Indirectly affected workers[3] (earning between $9.55 and $11.44/hr.)	$1.16	*Full-time*: $2,400 *Part-time*: $1,200	538
Total affected workers	**$2.06**	***Full-time*: $3,800** ***Part-time*: $2,00**	**3,111**

Source: UC Berkeley (CLRE) Employer Survey

Notes:
1. Average wage increase attributable to the proposed living wage ordinance, including health coverage but excluding paid days off.
2. Full-time employees are assumed to work 2000 hours per year; part-time employees work on average 1070 hours per according to survey data.
3. Indirectly affected workers are those workers who would benefit from upward wage push pressure with the new higher wage floor.

Table 4-4 Total annual costs

	Total Costs $ millions	Percent of original wage bill
Original annual wage bill, including health insurance	**296.5**	**100.0**
Cost of increasing Wages to $8.30	4.7	1.6
Cost of providing health insurance ($1.25/hour)[1]	3.3	1.1
Cost of the indirect wage push[2]	2.1	0.7
Cost of paid days leave[3]	2.0	0.7
Subtotal (benefits to workers)	**12.1**	**4.1**
Cost of employer-paid taxes on increase[4]	1.0	0.3
Total cost	**13.0**	**4.4**

Source: UC Berkeley (CLRE) Employer Survey

Notes:
1. Health insurance costs are the cost of raising each employee's total compensation to $8.30 per hour with health benefits or $9.55 per hour, less the direct costs of raising workers' wages to $8.30 per hour.
2. Indirect wage push refers to upward wage pressure with the higher floor wage of a living wage. We assumed that wages between $7.65 and $11.44 would be subject to wage push effects.
3. Paid leave costs provide all employees with a leave benefit at the post-ordinance wage rate, taking into account currently received paid leave. Full-time workers are to get 12 days paid leave per year and part-time workers get 6 days.
4. Employer paid taxes are 11.15% of wage bill, including health insurance. Oakland payroll taxes are fixed per employee and are thus unaffected by the living wage ordinance.

Table 5-1a Cost summary, by revenue division

Revenue Division	Total cost $ millions	As percent of old wage bill	As percent of business revenue
Airport	5.84	4.92	1.52
Maritime Port	1.68	1.21	0.25
Real Estate	5.53	14.37	4.31
Total	**13.0**	**4.41**	**1.11**

Table 5-1b Cost summary, by sector

Industry sector	Total cost $ millions	As percent of old wage bill	As percent of business revenue
Air cargo	0.11	0.32	0.10
Passenger airline	1.34	3.63	1.45
Airline services	0.88	4.03	1.21
Security and curbside assistance	1.38	40.0	28.0
Car rental	0.82	9.69	1.94
Parking services	0.55	8.58	6.00
Retail	0.76	10.8	2.15
Restaurant	3.44	28.1	6.56
Hotel	1.11	17.2	5.17
Maritime	0.10	0.08	0.02
Trucking and warehousing	1.41	14.0	4.20
Construction and Manufacturing	0.05	1.91	0.76
FIRE	0.04	0.92	0.37
Professional services	0.06	0.57	0.17
Entertainment and personal services	0.98	29.9	12.0
Total	**13.0**	**4.41**	**1.11**

Notes:
Estimated using labor shares of business revenue derived from the 1998 American Restaurant Association Survey, and the Economic Censuses of Construction, Service Industries, Retail Trade, Manufacturing and Transportation, Communication and Utilities as reported in the US Bureau of the Census web site and the Statistical Abstract of the United States, 1997 and adjusted according to authors' survey.

Table 5-2 Port of Oakland Revenue Divisions: Annual Revenues 1993-1998 (millions $)

Revenue Division	Years ended June 30	Property Lease Rentals[1]	Parking	Dockage and wharfage, and landing fees[2]	Other Operating Revenue[3]	Total Operating Revenue	Net Operating Income (loss)[4]
Aviation	1993	25.9	14.3	7.9	8.8	56.9	4.9
	1994	25.9	15.5	8.4	8.4	58.0	(0.2)
	1995	26.9	17.6	10.2	8.2	62.7	4.6
	1996	28.2	19.1	10.2	8.7	66.1	3.1
	1997	29.3	21.6	9.6	8.4	69.1	6.2
	1998	30.7	21.9	9.9	8.9	71.3	5.4
Maritime	1993	1.7	-	42.6	7.2	51.5	15.6
	1994	1.5	-	43.7	7.1	52.3	11.1
	1995	2.5	-	49.3	8.3	60.1	11.5
	1996	4.6	-	51.9	9.4	65.9	13.8
	1997	6.0	-	53.5	8.2	67.6	11.9
	1998	6.8	-	56.7	9.2	72.6	14.7
Commercial Real Estate[5]	1993	6.7	0.9	-	1.0	8.6	(6.2)
	1994	6.9	0.9	-	1.0	8.9	(5.8)
	1995	7.0	1.0	-	1.0	9.0	(12.1)
	1996	7.5	1.3	-	1.0	9.7	(8.4)
	1997	7.8	1.9	-	1.0	10.7	(8.8)
	1998	6.9	2.6	-	1.1	10.6	(9.0)
Total	1993	34.3	15.2	50.5	17.0	117.0	14.3
	1994	34.3	16.1	52.0	16.5	118.9	5.1
	1995	36.4	18.6	59.4	17.4	131.8	4.0
	1996	40.2	20.3	62.1	19.0	141.7	8.5
	1997	43.1	23.5	63.1	17.6	147.4	9.3
	1998	44.4	24.5	66.6	19.1	154.6	11.1

Source: Port of Oakland Supplementary Schedule of Revenues and Expenses

Notes:
1. Includes airport terminal rental, concessions and other aviation rentals, maritime space assignments and rentals, and lease rentals.
2. Includes dockage, wharfage and related accounts and landing fees.
3. Includes airport field revenue and ground access revenue, cranes, storage and demurrage, marinas and utilities.
4. Net operating income is Total Operating Revenue less Operating Expenses, Depreciation, Amortization and Interest Expense.
5. Excludes Oakland Portside Associates, a subsidiary property management company of the Port of Oakland. According to port officials, Oakland Portland Associates has made a loss during recent years.

Table 5-3 Distribution of firms by increase in business costs

Costs of living wage as percent of business revenue	Percent of firms	Percent of increased costs	Percent of non-managerial employment
0-1%	43.1	5.8	62.9
1-3%	13.8	15.4	12.8
3-6%	20.6	23.7	9.1
6-10%	9.0	19.5	6.6
10-15%	12.6	26.1	7.1
15%+	0.9	9.5	1.4
Total	100.0	100.0	100.0

Source: UC Berkeley (CLRE) Employer Survey

Notes:
For details of business revenue estimates, see Table 5-1.

APPENDIX TABLES

Table A-1 Sample Realization

Survey Result		Firms	
		Number	**Percent**
Done	Interview completed	123	44
	No employees on site	45	16
Not Done	Refusal	58	21
	Not traceable	22	8
Closed / no longer tenants		30	11
Total		**278**	**100**

Table B-1 Tipped Employees

Occupation	Number of workers	Average wage[1], $/hour	Average wage, with tips[2], $/hour
Waiters, bartenders, cocktail server	420	7.87	13.63
Other restaurant employees	500	8.24	9.04
Valet parking	40	7.19	9.19
Skycaps, curbside assistants	100	5.94	7.94

Source: UC Berkeley (CLRE) Employer Survey

Notes:
1. Including health benefits. Based on the occupation-weighted sample.
2. See Appendix A for details.

Table B-2 Wage and benefit increases (with and without tip credit)

Wage Category	Without tip credit		With tip credit[1]	
	Average hourly wage increase[2]	Number of workers	Average hourly wage increase[2]	Number of workers
Directly affected workers (earning under $9.55/hr.)	$2.25	2,573	$1.89	2,192
Indirectly affected workers[3] (earning between $9.55 and $11.44/hr.)	$1.16	538	$1.09	855
Total affected workers	**$2.06**	**3,111**	**$1.67**	**3,047**

Source: UC Berkeley (CLRE) Employer Survey

Notes:
1. Tip credit added to employer-provided wage including health benefits. Hourly tips were estimated for waiters, valets, and skycaps. See Appendix A.
2. Average wage increase attributable to the proposed living wage ordinance.
3. Indirectly affected workers are those workers who would benefit from upward wage push pressure with the new higher wage floor.

Table B-3. Cost summary for sectors with tipped employees

Industry sector		Total cost $ millions	As percent of old wage bill	As percent of business revenue
Security and curbside assistance	Without tip credit	1.38	40.0	28.0
	With tip credit	1.04	30.2	21.2
Parking services	Without tip credit	0.55	8.58	6.00
	With tip credit	0.43	6.74	4.72
Restaurant	Without tip credit	3.44	28.1	6.56
	With tip credit	1.98	16.1	3.77
All Sectors	**Without tip credit**	**13.0**	**4.41**	**1.11**
	With tip credit	**11.1**	**3.76**	**0.95**

Notes: See Table 5-1b.

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East Bay Alliance for a Sustainable Economy

548 20th St., Oakland, CA 94612
Phone: (510) 893-7106 Fax: (510) 893-5362

OFFICE OF THE CITY CLERK
OAKLAND
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Fax Cover Sheet

To:	Fax Number: 238-6699
Company : Office of the City Clerk	Date : 12/4/01

From : Amaha Kassa	Pages including cover page: 12
Company : EBASE	Fax Number : (510) 893-5362

Subject :

Comments:

Please find attached three items sent to City Councilmembers December 3rd, 2001.

1. An EBASE brief responding to the CEDA staff report on the Living Wage Initiative that was submitted to the November 29th Rules Committee.

2. An EBASE response to Councilmembers Spee's questions that he raised at the Rules Committee meeting.

3. Proposed changes to the Initiative that narrows the scope of who is covered and affected by the anti-displacement provision and that creates a waiver process similar to the City's Living Wage Ordinance.

If you have any questions abuot these materials, please feel free to call our Director of Research, Howard Greenwich, at 893-7106 ext 17.

Thank you.

Amaha Kassa
Co-Director

S-4
CC
12.4.01

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Response to Concerns Raised by the CEDA Staff Report on the Port Living Wage

December 3, 2001

SUMMARY

This report responds to concerns raised about the *Living Wage and Labor Standards at Port-Assisted Businesses Initiative* by CEDA staff in a report to City Council dated November 29th, 2001. Some of the CEDA report's conclusions go unreasonably beyond the evidence and should be considered speculation. Other conclusions appropriately point out vague language in the Initiative to which clarifying language is proposed and explained in this response. Overall, we conclude that the costs of the living wage are affordable and will be outweighed by the benefits.

BACKGROUND

Whether the Port of Oakland should adopt a living wage policy has been debated and publicized for over two years at more than 20 public events. Several studies and reports have attempted to answer questions about the impact and it is useful here to briefly review their timeline. These reports include:

- *Living Wages at the Port of Oakland*, a study conducted by the U.C. Berkley Center for Labor Education and Research (CLRE) at the request of State Senator Don Perata and published in December of 1999.
- A Port staff report submitted to the Port Commissioners in January 2000 that assessed the economic impact to the Port of a living wage that covered contractors only.
- A Port staff report submitted in June 2000 that assessed impacts of the living wage on Port tenants. It relied on a partial survey of Port tenants.

CEDA'S OVERALL CONCLUSIONS

The CEDA staff report makes sweeping claims that the Initiative's costs to the public outweigh the benefits, but neither provides solid evidence for the costs, nor attempts to estimate the benefits. For example, the report asserts, "While data does not exist regarding the specific impact of this provision [worker retention], it will likely provide a severe disincentive to businesses currently doing business or considering doing business with the Port of Oakland."[1] The authors provide no negative evidence from other cities or airports with worker retention laws or similar labor standards. Instead, the report simply speculates about employer behavior under

[1] Page 7.

the requirements. The report makes no attempt to either balance the speculation by exploring the benefits of the provision or clarify that the conclusions are based mostly on conjecture.

Furthermore, CEDA relies primarily on evidence from a poorly implemented Port survey of tenants while ignoring the conclusions of a more empirically reliable survey conducted by U.C. Berkeley. The Port survey was hastily conducted in the Spring of 2000 with few resources granted to Port staff. Because Port staff were unable to follow-up with phone calls, the overall response rate was a low 29%.[2] In contrast, the U.C. Berkeley survey was conducted over the course of half a year by six researchers and obtained a response rate of 68%.[3] While the CEDA staff report uses determinations of costs from the U.C. Berkeley study, the University's conclusions about the affordability of the living wage are not reflected in CEDA's conclusions.

The most speculative conclusion of the CEDA staff report is the following statement:

> *City and Port staff have written reports during the process of adopting the existing living wage ordinances that indicated that, while there would be some increased costs to the City/Port and the effected businesses, the public interest outweighed these impacts. The same cannot be said of the ballot measure before the City Council.*

Considering that the report did not adequately explore the initiative's benefits to workers and employers, it seems unreasonable to make a conclusion about weighing costs and benefits. In fact, the Initiative will provide enormous benefit to the public through increased income, benefits and job security to 3,000 low-wage workers who are primarily Oakland residents (65%).[4] Growing economic inequality in the East Bay and the U.S. has created a crisis of low-wage poverty that local governments across the U.S. have responded to with living wage and labor standard policies.[5] Furthermore, Port businesses will pass on, at the most, 66 cents per visit to Jack London Square and 59 cents per ticket for passengers at the Oakland Airport.[6] These seem reasonable costs for the public benefit.

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[2] *Port of Oakland Tenant Responses to Proposed Living Wage Ordinance*, Port of Oakland, June 6, 2000, pg 2.

[3] Zabin, Carol, Michael Reich, Peter Hall, Melanie McCutchan, Christopher Niedt and Egon Terplan, *Living Wages at the Port of Oakland*, U.C. Berkeley Center for Labor Research and Education, December 1999. (www.http://violet.berkeley.edu/~iir/files/portoak.PDF)

[4] Ibid, pg 49.

[5] For evidence of growing inequality, see Greenwich, Howard and Christopher Niedt, *Decade of Divide: Working, Wages and Inequality in the East Bay*, East Bay Alliance for a Sustainable Economy, September 2001 and Bernstein, et.al., *State of Working America 2000/2001*, Economic Policy Institute, 2001.

[6] Ibid, pg 3. Figures are in 1999 dollars.

CEDA'S PRIMARY CONCERNS

The body of CEDA's staff report focuses on three areas of concern with the Initiative. They are:

1. Several of the Initiative's provisions will reduce tenancy in Port facilities and consequently reduce Port and City revenues.
2. The requirement that the Port use public employees for existing and future services will increase the costs of obtaining technical and professional services.
3. The application of the worker displacement provisions to highly paid professional workers goes beyond other cities' laws by applying to highly-paid professionals.

Changes to Preventing Displacement of Workers Clause Eliminates CEDA Concerns

The second and third concerns raised by CEDA staff are effectively eliminated by language changes that have been presented to City Council by the City Attorney in the supplemental agenda packet. The section of concern here is number five, "Preventing Displacement of Workers."

CEDA believed that the broad definition of work under the requirement to not contract out public services would hinder the Port's capacity to expand. The new language would define "work" as non-temporary and not of a professional, scientific or technical nature. This brings the Initiative's scope of services in line with existing City Charter provisions.

CEDA also raised concerns that the worker retention provisions were phrased broadly and would cover professional employees not in need of protection. The new language narrows the scope of the provision to apply to "Service Employees" only, defined as all workers except managers, supervisors, professionals, paraprofessionals, confidential and office employees. The new language exempts professional service contractors as well as office tenants of the Port and any professional firm leasing space or land. Firms covered will include parking attendants at the Port and Jack London Square, shuttlebus drivers at the Airport and non-Port employed security workers. The narrower scope of this provision brings the Initiative more in line with worker retention laws in Philadelphia and Washington D.C., both of which cover all employers in their respective cities.

No Real Disincentives for New Tenants

The CEDA staff report raises three possibilities where prospective tenants would be dissuaded from locating on Port land. They are discussed in turn, below.

1. Concern: Small businesses and start-ups will be unable to pay the living wage costs and will choose to not rent from the Port.

The Initiative clearly exempts businesses with 20 or fewer workers. Several small gift shops at Jack London Square and the See's Candy carts at the Airport are examples of exempt businesses.

2. *Concern: Living wage costs will be a disincentive for tenants to locate at the Port.*

CEDA emphasizes two points under this concern. First is that tenants may refuse to do business with the Port as a response to the Initiative's requirements The second is that businesses facing the highest costs are those already facing hardship during the recession and after 9/11, e.g., hospitality, aviation and entertainment.

The question foremost in many public officials' minds regarding this issue is, how will the stores, restaurants and hotels on Port land respond to the living wage requirements? Will existing tenants leave and will new ones go elsewhere?

- The U.C. Berkeley study determined that Port of Oakland restaurants and hotels were already charging more than nearby businesses for the proximity to the waterfront and would be able to pass additional costs on to consumers as well.[7] Cities such as Emeryville and San Leandro, frequently mentioned as competitors to Oakland, do not have facilities on the same scale as the Port from which Commercial Real Estate (CRE) tenants can benefit.

- Nearly all major hotels in Oakland are already under union contract and have higher wage and benefits standards, including the Airport Hilton on Port land. Some smaller hotels on Port land will be affected, including Motel 6, Executive Inn and the Waterfront Plaza Hotel. These businesses have very long-term ground leases, benefit from proximity to the waterfront and would lose considerable money in facility investment if they left.

- Nearly all airport retail and restaurant tenants already operate under a collective bargaining agreements and have higher wage and benefits standards. What modest costs are incurred will likely be passed on to consumers, who represent a captive market. The U.C. Berkeley study estimates that the total cost of the living wage at the airport, including concessionaires, would be 59 cents per ticket if the costs were passed through to passengers. Compare with this with the over $2 per ticket costs imposed by new security requirements. Futhermore, living wage requirements at SFO and LAX have not driven away concessionaires.

- Businesses that employ low-wage workers will likely experience a cost savings from reduced turnover and increased worker productivity. The U.C. Berkeley study showed that higher wages and benefits resulted in lower quit rates, in turn saving employers re-training costs. The study estimated that, on average, 4% of labor costs will be saved, or about 1.1% of gross revenue. The rate is higher for firms with more low-wage workers. A more recent study of a living wage and labor standards program at San Francisco Airport showed that in one year, turn-over reduced by up to 80%, with the greater reduction occurring in low-wage firms.[8] One-third of all SFO employers, together accounting for over half of all employees, reported improved overall job performance among workers covered by the new standards program, while the rest reported no deterioration.

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[7] Zabin, et.al., pg 24.
[8] Reich, Michael, Peter Hall and Ken Jacobs, *Living Wages and Airport Security Preliminary Report*, U.C. Berkeley Institute for Labor and Employment, September 2001 with "Additional Tables."

In a Port of Oakland survey of tenants, 63% of employers responded that they would experience lower turn-over and 58% said it would be easier to attract new employees. This is an example where the CEDA report emphasized the negative responses from the tenant survey and ignored positive responses.

- CEDA staff pointed out that CRE tenants, including Jack London Square and the Embarcadero, would experience higher percentage costs than airport tenants, including 12 employers that would pay over 10% of gross revenues.[9] These firms, which are mostly restaurants, hotels and stores, face nearby competition and are more limited than airport tenants in passing costs on to consumers. Given their circumstances, it is likely that they will seek a reduction in rent for the amount not saved or absorbed otherwise. Even if the Port reduces rent for CRE tenants, the overall revenue generated by the CRE is only 11% of total Port revenues.

  Increases by a cluster of Port tenants in Jack London Square or Embarcadero will also push up wages and benefits for surrounding businesses as they compete for quality labor. This partially addresses the issue of tenants having to compete with businesses that are not on Port land but are near by.

- The likely scenario for restaurants and retail on Port land is that tenants will absorb the costs in a myriad of ways that will spread it out among their owners, consumers and the Port. Some tenants may decide not to move to Port property, but others will take their place. The Port may experience a modest loss in revenues, but this is weighed against the enormous benefits of the Initiative on the City of Oakland and the region.

  It is useful to compare the cost of the Port's donation of land to other governments, including East Bay Regional Parks and Amtrak. These annual donations cost the Port $33 million a year, a price for a public benefit far in excess to the price of a Port living wage.

3. *Concern: Worker retention may expose Port tenants to employee litigation and dissuade location on Port property.*

The CEDA report conjectures that prospective tenants would find the worker retention provision onerous and choose not to lease from the Port. Of primary concern is twofold: 1) employers with pre-existing staff would have to hire a second set of workers and 2) employers may be more vulnerable to wrongful termination litigation.

Extending worker retention to Port leasholders provides considerable public benefit. Port leaseholders are responsible for much of the Port's key operations for which they hire contractors to perform. Baggage handlers, in-flight catering, fuel handlers and rental car "hikers" are examples of operators that contract not with the Port but Port tenants. The existing workforce could, for any reason, be replaced overnight if the tenants who contract these services change contractors. Basic port operations could lose experienced workers who have decades of experience, are trusted employees and provide high-quality service. Furthermore, it seems

[9] *These numbers are also from Zabin, et.al..*

unreasonable that workers with years of experience could be dismissed overnight because a contract changes hands. The worker retention provision protects both the Port and Port-related workers. Worker retention laws in both San Francisco and Los Angeles cover airport tenants for the same reasons cited here. Additionally, the Los Angeles worker retention law covers concessionaires at the airport.

Cases where the retention of workers creates a burden on leaseholders seem rare. First, a large number of tenants will be excluded under the small business exemption and the proposed, narrower definition of employees affected by worker retention. Insurance brokers, software engineers, small gift shop employees and aviation instructors would not be affected. Second, new tenants would only have to offer work "which employees of the prior PAB can perform." A firm would need to be in a nearly identical industry and specialization to trigger the requirement.

Furthermore, it is hard to imagine a scenario where workers of one tenant would not follow their current employer and instead seek employment with the new tenant. Why would a worker risk leaving a current employer only to be let go from the new one after 90 days? It may occur in the case where a tenant is going out of business or is being bought by another firm. But unless the new firm begins operating within 90 days, the workers will not have an opportunity to start working with the new firm. Most restaurants and retail stores need several months to remodel. If the tenant *is* being bought out and operation of the facility will continue as before, it seems reasonable that the new tenant could actually use the former tenant's workers for an interim period and the workers would be well served to keep what is essentially the same job. In all of these scenarios, the likelihood of a former tenant's employee suing a new tenant seems remote. Finally, we could not verify any lawsuits pending against worker retention laws in other cities.

CONCLUSION

The *Living Wage and Labor Standards at Port-Assisted Businesses Initiative* will provide enormous public benefit relative to the costs, which can be absorbed without disruption of the Port's mission and operations. Costs, born by the Port, businesses and consumers will be affordable and not cause a major disincentive to potential Port tenants. In response to the CEDA staff report, we make the following points:

- The CEDA staff report's overall critique relies heavily on conjecture without seriously trying to weigh the costs with the benefits.
- Specific critiques about the anti-displacement provisions are solved by simple language changes that narrows the scope of workers covered.
- Small businesses with 20 or less employees are categorically exempt from the Initiative.
- Many of the Port's largest tenants, including Airport concessionaires and two hotels, are already under union agreement.
- Evidence suggests that living wage costs will be absorbed by reduced turnover and higher worker productivity.
- Worker retention coverage of Port tenants will greatly benefit the Port and Port-related workers.
- The worker retention provision is highly unlikely to cause undue litigation for Port tenants.

East Bay Alliance for a Sustainable Economy
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Answers to Eight Questions Raised in Rules and Legislation Committee On the Port Living Wage and Labor Standards Initiative

December 3, 2001

Following are eight specific concerns raised by Councilmember Spees at the November 29th Rules and Legislation Committee meeting regarding the Port Living Wage and Labor Standards Initiative. We respond to each in turn.

1. Should these provisions be placed in the Charter or passed in an ordinance?

The Port Commissioners have had the living wage issue before them for over two years. They have refused to consider passing a living wage ordinance that affects all 3,000 low-wage workers at the Port. Because the City Charter sets up the Port as an independent agency, neither Oakland City Council nor Oakland voters can impose legislation on the Port in the form of an ordinance. If City Council finds the proposed legislation important, the only option is to place a charter change on the ballot for the voters to decide.

2. What does Port-assisted business mean precisely and how does it relate to market rate tenants?

A Port-assisted business includes a) contractors of the Port b) businesses subsidized by the Port and c) business holding a lease or license agreement with the Port. We believe that the Port will on occasion subsidize tenants by allowing them to pay sub-market rate rents as inducements for leasing with the Port. However, we consider all lease and license holders Port-assisted businesses as they are benefiting from the use of public resources and from the massive public investment in Port infrastructure.

3. Does the Initiative contain a credit for tipped workers?

Under California law, tips are considered the property of the employee and it is illegal to credit tips towards wages owed workers. We believe that prohibiting tip credit is legally necessary, easier to implement and fair to workers. Allowing a tip credit creates more problems than it solves, primarily because workers are tipped at widely varying rates. For example, airport skycaps regularly receive substantially more in gratuities than airport wheelchair attendants. Furthermore, within each job the amount any worker receives can vary greatly over time. Therefore to implement a tip credit requires taking measures that can result in losses to workers. This includes either estimating tipped income in advance, perhaps inaccurately, or withholding some wages owed workers until the end of the year when they report total tipped income. Finally, a poll of Oakland residents shows that 69% of voters support having a provision in the initiative, which, like State law, does not credit tips towards wages.

4. Why is the youth worker exemption in the Initiative inconsistent with the City of Oakland's living wage exemption for youth workers?

The Initiative's exemption for youth worker is identical to the City's Living Wage Ordinance—workers under 21 that are working for a non-profit or are training for less than 90 days are exempt. The CEDA staff report dated November 29th was in error on this point.

5. Should there be a waiver process for Port businesses as there is in the City's ordinance?

There may be rare and extenuating circumstances where a Port-assisted business faces undue hardship under the Initiative. If the waiver process was as rigorous and accountable as in the City's ordinance, the living wage coalition would be willing to amend the Initiative. The City's waiver process requires a report from the City Manager, a set of criteria that must be met by the businesses seeking a waiver and a vote by City Council. We would not accept a process set forth in the Port's existing living wage ordinance which allows the Port Executive Director to issue waivers without requiring businesses to meet any criteria and without any public process. We have enclosed and sent to the City Attorney proposed waiver language to which we could agree.

6. The coverage of highly-paid professionals by the worker retention and anti-displacement provision, as pointed out by CEDA, needs to be addressed.

We have proposed simple language changes that narrow the scope of work covered by these provisions. Port contracts for non-temporary work of a technical or professional nature would not be included. Likewise, only tenants that employ "service employees" are affected by worker retention. "Service Employees" means all employees except managers, supervisors, professionals, paraprofessionals, confidential and office employees. This effectively eliminates most of CEDAs concerns.

7. Won't the Initiative be vulnerable to legal challenges?

The legal report prepared by the City Attorney's Office explored the legal issues regarding the Initiative thoroughly and comprehensively. It concluded that while some provisions of the initiative may draw suit, that the City was likely to prevail against any legal challenge. Whenever elected officials create social policy, particularly legislation as important as this initiative, they run the risk that those being regulated will take legal action against them. A case in point is Oakland's anti-predatory lending ordinance, which lenders challenged in court and which the City has successfully defended. The City Attorney's assurance that the City is on firm legal ground is as close to a guarantee as the City is likely to get.

8. How will this affect the Metroport development at Hegenberger and I-880?

The Port of Oakland is selling the land to the developer. It will be unaffected.

Please feel free to call EBASE with any question regarding this response at 893-7106.

Proposed language changes to the Living Wage and Labor Standards At Port-Assisted Businesses Initiative

Proposed below are three changes that limit the scope of the Initiative. They are:

1. Clarifying language that exempts small business with less than 20 employees.
2. A more narrow definition of workers covered by the "Preventing Displacement of Workers" provision.
3. A new provision that provides for a waiver process under special circumstances (the language closely follows the City of Oakland's Living Wage ordinance).

1. Scope and Definitions.

The following definitions shall apply throughout this Section:

A. "Port" means the Port of Oakland.

B. "Port-Assisted Business" or "PAB" means (1) any person receiving in excess of $50,000 worth of financial assistance from the Port, or (2) any Port Contractor **if the person employs more than 20 persons per pay period, unless in the prior 12 pay periods the person has not had more than 20 such employees and will not have more than 20 in the next 12 pay periods. A PAB shall be deemed to employ more than 20 persons if it is part of an "enterprise" as defined under the Fair Labor Standards Act employing more than 20 persons.** "Port Contractor" means any person party to a Port Contract as herein defined.

C. "Port Contract" means:

(1) Any service contract with the Port for work to be performed at the Port under which the Port is expected to pay more than $50,000 over the term of the contract;

(2) Any contract, lease or license from the Port involving payments to the Port expected to exceed $50,000 either (a) over the term of the contract, lease or license, or (b) during the next 5 years if the current term is less than 1 year but may be renewed or extended, either with or without amendment;

(3) any subcontract, sublease, sublicense, management agreement or other transfer or assignment of any right, title or interest received from the Port pursuant to any of the foregoing contracts, leases or licenses.

A contract, lease or license with the Port or any agreement derived therefrom shall not be deemed a Port Contract unless entered into after enactment of this Section, or amended after

enactment of this Section to benefit in any way the party dealing with the Port.

D. "Employee" means any individual employed by a PAB in Port-related employment. ~~if the PAB employs more than 20 persons per pay period, unless in the prior 12 pay periods the PAB has not had more than 20 such employees and will not have more than 20 in the next 12 pay periods. A PAB shall be deemed to employ more than 20 persons if it is part of an "enterprise" as defined under the Fair Labor Standards Act employing more than 20 persons~~.

2. Exemptions from coverage

~~In addition to the above exemption for workforces of fewer than 20 workers, the~~ The following persons shall also be exempt from coverage under this Section:

A. An Employee who is (1) under twenty-one (21) years of age and (2) employed by a nonprofit entity for after-school or summer employment or for training for a period not longer than ninety (90) days, shall be exempt.

B. An Employee who spends less than 25 percent of his work time on Port-related employment.

C. **A person who employs not more than 20 employees per pay period.**

5. Preventing Displacement of Workers

A. Each PAB which is to replace a prior PAB shall offer employment to **the Service Employees** of the prior PAB, if these Employees worked for the prior PAB for at least 90 calendar days. Such Employees may be not be terminated by the new PAB during the first 90 work days except for just cause. The new PAB may operate at lower staffing levels than its predecessor but in such event, shall place the prior Service Employees on a preferential reinstatement list based on seniority. For purposes of this Agreement, a PAB "replaces" another if it (1) assumes all or part of the lease, contract or subcontract of a prior employer or obtains a new lease, contract, or sublease, and (2) offers employment which Service Employees of the prior PAB can perform. In the case of a replacement connected to the new PAB relocating from another location, in staffing decisions the new PAB may recognize seniority from its prior locations in addition to the seniority of the prior PAB's workforce. **"Service Employees" means all employees except managers, supervisors, professionals, paraprofessionals, confidential and office employees.**

B. Notwithstanding Section 902(e) or any other provision of the City Charter, except in

an emergency the Port shall not enter into any private contract for **regular (non-temporary)** work **which is not of a professional, scientific or technical nature and** which was performed by persons employed by the Port as of June 30, 2001, nor for the same class of work, including such work at new or expanded Port facilities.

New Section: Waivers.

A. A PAB who contends it is unable to pay all or part of the living wage must provide a detailed explanation in writing to the Port Executive Director who may recommend a waiver to the Port Board. The explanation must set forth the reasons for its inability to comply, including a complete cost accounting for the proposed work to be performed with the financial assistance sought, including wages and benefits to be paid all employees, as well as an itemization of the wage and benefits paid to the five highest paid individuals employed by the PAB. The PAB must also demonstrate that the waiver will further the public interests in creating training positions which will enable employees to advance into permanent living wage jobs or better and will not be used to replace or displace existing positions or employees or to lower the wages of current employees.

B. The Port Board will grant a waiver only upon a finding and determination that the PAB has demonstrated the necessary economic hardship and that waiver will further the public interests in providing training positions which will enable employees to advance into permanent living wage jobs or better. However, no waiver will be granted if the effect of the waiver is to replace or displace existing positions or employees or to lower the wages of current employees.

C. Such waivers are disfavored, and will be granted only where the balance of competing interests weighs clearly in favor of granting the waiver. If waivers are to be granted, partial waivers are favored over blanket waivers. Moreover, any waiver shall be granted for no more than one year. At the end of the year the PAB may reapply for a new waiver which may be granted subject to the same criteria for granting the initial waiver.

D. Any party who objects to the grant of a waiver by the Port Board may appeal such decision to the City/Port Liaison Committee, who may reject such waiver.

Rev. 12/04/01 Proposal-

The Charter of the City of Oakland is hereby amended to add the following section:

728. LIVING WAGE AND LABOR STANDARDS AT PORT-ASSISTED BUSINESSES

1. Scope and Definitions.

The following definitions shall apply throughout this Section:

A. -"Port" means the Port of Oakland.

B. "Port-Assisted Business" or "PAB" means (1) any person involved in a Port Aviation or Port Maritime Business receiving in excess of $50,000 worth of financial assistance from the Port, or (2) any Port Contractor involved in a Port Aviation or Port Maritime Business if the person employs more than 20 persons per pay period, unless in the prior 12 pay periods the person has not had more than 20 such employees and will not have more than 20 persons in the next 12 pay periods. A PAB shall be deemed to employ more than 20 persons if it is part of an 'enterprise' as defined under the Fair Labor Standards Act employing more than 20 persons. "Port Contractor" means any person party to a Port Contract as herein defined.

C. "Port Contract" means:

(1) Any service contract with the Port for work to be performed at the Port under which the Port is expected to pay more than $50,000 over the term of the contract;

(2) Any contract, lease or license from the Port involving payments to the Port expected to exceed $50,000 either (a) over the term of the contract, lease or license, or (b) during the next 5 years if the current term is less than 1 year but may be renewed or extended, either with or without amendment;

(3) any subcontract, sublease, sublicense, management agreement or other transfer or assignment of any right, title or interest received from the Port pursuant to any of the foregoing contracts, leases or licenses.

A contract, lease or license with the Port or any agreement derived therefrom shall not be deemed a Port Contract unless entered into after enactment of this Section, or amended after enactment of this Section to benefit in any way the party dealing with the Port.

D. "Employee" means any individual employed by a PAB in Port-related employment

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E. "Person" include any natural person, corporation, partnership, limited liability company, joint venture, sole proprietorship, association, trust or any other entity.

F. Valid collective bargaining agreement" as used herein means a collective bargaining agreement entered into between the person and a labor organization lawfully serving as the exclusive collective bargaining representative for such person's employees.

G. "Contract under 29 U.S.C.§185(a)" as used herein means a contract to which 29 U.S.C. §185(a) applies, as that provision has been interpreted by the United States Supreme Court.

H. "Port Aviation or Port Maritime business " means any business that principally provides services related to maritime or aviation business related services or whose business is located in the maritime or aviation division areas as defined by the Port.

2. Exemptions from coverage

In addition to the above exemption for workforces of fewer than 20 workers, the following persons shall also be exempt from coverage under this Section:

A. -An Employee who is (1) under twenty-one (21) years of age and (2) employed by a nonprofit entity for after-school or summer employment or for training for a period not longer than ninety (90) days, shall be exempt.

B. An Employee who spends less than 25 percent of his work time on Port-related employment.

C. A person who employs not more than 20 employees per pay period.

3. Payment of minimum compensation to Employees

Port-Assisted Businesses shall provide compensation to each Employee of at least the following:

A. Minimum Compensation

The ~~initial~~ minimum compensation shall be wages and health benefits totalling at least ~~ten dollars and fifty cents ($10.50) per hour, or if greater,~~ the rate of ~~any~~ the living wage ordinance of the City of Oakland.

B. Credit for Health Benefits

The PAB shall receive a credit against the minimum wage required by this Section for health benefits in the amount provided by and in accordance with the living wage ordinance of the City of Oakland. ~~of up to $1.37 per hour for the amount it spends on average for health benefits for all Employees covered by this Section and their dependents. For example, if an employer spends an average of $1.25 per hour for health insurance, then the employer need only pay each Employee at least $9.25 per hour in wages.~~

4. Notifying Employees of their potential right to the federal earned income credit

Each PAB shall inform each Employee who makes less than twelve dollars ($12.00) per hour of his or her possible right to the federal Earned Income Credit ("EIC") under Section 2 of the Internal Revenue Code of 1954, 26 U.S.C. §32, and shall make available the forms required to secure advance EIC payments from the business. These forms shall be provided to the eligible Employees in English (and other languages spoken by a significant number of such Employees) within thirty (30) days of employment under this Section and as required by the Internal Revenue Code.

~~5.~~ 5. Preventing Displacement of Workers

(A) Each PAB which is to replace a prior PAB shall offer employment to the Service Employees of the prior PAB, if these Employees worked for the prior PAB for at least 90 calendar days. Such Employees may be not be terminated by the new PAB during the first 90 work days except for just cause. The new PAB may operate at lower staffing levels than its predecessor but in such event, shall place the prior Employees on a preferential reinstatement list based on seniority. For purposes of this Section, a PAB "replaces" another if it (1) assumes all or part of the lease, contract or subcontract of a prior employer or obtains a new lease, contract, or sublease, and (2) offers employment which Employees of the prior PAB can perform. In the case of a replacement connected to the new PAB relocating from another location, in staffing decisions the new PAB may recognize seniority from its prior locations in addition to the seniority of the prior PAB's workforce. "Service Employees" means all employees except manager, supervisors, professionals, paraprofessionals, confidential and office employees.

~~(B) Notwithstanding Section 902(c) or any other provision of the City Charter, except in an emergency the Port shall not enter into any private contract for regular (non-temporary) work which is not of a professional, scientific or technical nature and which was performed by persons employed by the Port as of June 30, 2001, nor for the same class of work, including such work at new or expanded Port facilities.~~

~~**6. Agreements required to protect Port's proprietary interests from effects of labor disputes**~~

~~(A) As a condition precedent to any Port Contract in which the Port has a proprietary interest and which is in the Hospitality or Retail Food Industry, each such PAB shall be or become signatory to valid collective bargaining agreements or other contracts under 29 U.S.C. §185(a) with each labor organization representing or seeking to represent any of that PAB's Employees on Port property. Each such agreement or contract must contain a provision limiting the ability of the labor organization and its members (and in the case of a collective bargaining agreement, all employees covered by the agreement) to engage in picketing, work stoppages, boycotts or other economic interference with the Port for the duration of the Port's proprietary interest in such PAB's operation or for 5 years, whichever is less ("No-Strike Pledge"). Each such PAB shall also be required to ensure that any of its contractors, subcontractors, tenants, subtenants, licensees or sublicensees in the Hospitality or Retail Food Industry which are likely to impact the Port's proprietary interest will also be covered by No-Strike Pledges.~~

~~(B) For purposes of this subsection, "Hospitality or Retail Food Industry" includes hotels, motels or similar businesses, or on-site preparation, service or retailing of food, beverage or medication. A "proprietary interest" shall not be deemed to exist without (1) the Port being entitled to receive a percentage of the revenues or income of a business as rents, royalties or other income, and (2) the Port being expected to receive $50,000 or more in such rents, royalties or other income over the duration of the contract, lease or license.~~

~~(C) A PAB shall be relieved of the obligations of this subsection for any period of time during which a third-party neutral agreeable to the Port, the PAB and the Alameda Central Labor Council has found, after notice and hearing, either (a) that the labor organization is placing unreasonable conditions upon its No-Strike Pledge, or (b) that the Port lacks a legally-sufficient proprietary interest in such PAB's operation or the proposed agreement would be otherwise unlawful. If the parties are unable to agree upon a neutral, the PAB may contact the Federal Mediation and Conciliation Service (FMCS) to obtain a list of seven arbitrators affiliated with the National Academy of Arbitrators, from which the parties shall select a neutral by striking off names. At the PAB's request, such proceeding shall be conducted according to the FMCS expedited arbitration procedure. The Port shall bear the neutral's fees.~~

6. Waiver

A. A PAB who contends it is unable to pay all or part of the living wage must provide a detailed explanation in writing to the Port Executive Director who may recommend a waiver to the Port board. The explanation must set for the reasons for its inability to comply, including a complete cost accounting for the proposed work to be performed with the financial assistance sought, including wages and benefits to be paid all employees, as well as an itemization of the wage and benefits paid to the five highest paid individuals employed by the PAB. The PAB must also demonstrate that the waiver will further the public interests in creating

training positions which will enable employees to advance into permanent living wage jobs or better and will not be used to replace or displace existing positions or employees or to lower the wages of current employees.

B. The Port Board will grant a waiver only upon a finding and determination that the PAB has demonstrated the necessary economic hardship and that waiver will further the public interests in providing training positions which will enable employees to advance into permanent living wage jobs or better. However, no waiver will be granted if the effect of the waiver is to replace or displace existing positions or employees or to lower the wages of current employees.

C. Such waivers are disfavored, and will be granted only where the balance of competing interests weighs clearly in favor of granting the waiver. If waivers are to be granted, partial waivers are favored over blanket waivers. Moreover, any waiver shall be granted for no more than one year. At the end of the year the PAB may reapply for a new waiver which may be granted subject to the same criteria for granting the initial waiver.

D. Any party who objects to the grant of a waiver by the Port Board may appeal such decision to the City/Port Liaison Committee, who may reject such waiver.

7. Retaliation and discrimination barred; no waiver of rights.

A. A PAB shall not discharge, reduce the compensation of or otherwise discriminate against any person for making a complaint to the Port, participating in any of its proceedings, using any civil remedies to enforce his or her rights, or otherwise asserting his or her rights under this Section.

B. Any waiver by an individual of any of the provisions of this Section shall be deemed contrary to public policy and shall be void and unenforceable, except that Employees shall not be barred from entering into a written valid collective bargaining agreement waiving a provision of this Section (other than subsection 6) if such waiver is set forth in clear and unambiguous terms. Any request to an individual by a PAB to waive his or her rights under this Section shall constitute a violation of this Section.

8. Enforcement

A. Each PAB shall maintain for each person in Port-related employment a record of his or her name, pay rate and, if the PAB claims credit for health benefits, the sums paid by the PAB for the Employee's health benefits. The PAB shall submit a copy of such records to the Port at least by March 31st, June 30th, September 30th and December 31st of each year, unless the PAB has employed less than 20 persons during the preceding quarter, in which case the PAB need only submit a copy of such records every December 31st. Failure to provide a copy of such

records within five days of the due date will result in a penalty of five hundred dollars ($500.00) per day. Each PAB shall maintain a record of the name, address, job classification, hours worked, and pay and health benefits received of each person employed, and shall preserve them for at least three years.

B. If a PAB provides health benefits to persons in Port-related employment but does not pay for them on a per-hour basis, then upon the PAB's request, the amount of the hourly credit against its wage obligation shall be the Port's reasonable estimate of the PAB's average hourly cost to provide health benefits to its Employees in Port-related employment. The PAB shall support its request with such documentation as is reasonably requested by the Port or any interested party, including labor organizations in such industry.

C. Each PAB shall give written notification to each current Employee, and to each new Employee at time of hire, of his or her rights under this Section. The notification shall be in the form provided by the Port in English, Spanish and other languages spoken by a significant number of the Employees, and shall also be posted prominently in areas at the work site where it will be seen by all Employees.

D. Each PAB shall permit access to work sites and relevant payroll records for authorized Port representatives for the purpose of monitoring compliance with this Section, investigating employee complaints of noncompliance and evaluating the operation and effects of this Section, including the production for inspection and copying of its payroll records for any or all persons employed by the PAB. Each PAB shall permit a representative of the labor organizations in its industry to have access to its workforce at the Port during non-working time and in non-work areas for the purpose of ensuring compliance with this Section.

E. Notwithstanding any provision in Article VI of this Charter to the contrary, the City Manager may develop rules and regulations for the Port's activities in (1) Port review of contract documents to insure that relevant language and information are included in the Port's RFP's, agreements and other relevant documents, (2) Port monitoring of the operations of the contractors, subcontractors and financial assistance recipients to insure compliance including the review, investigation and resolution of specific concerns or complaints about the employment practices of a PAB relative to this section, and (3) provision by the Port of notice and hearing as to alleged violations of this section.

9. Private Rights of Action.

A. Any person claiming a violation of this Section may bring an action against the PAB in the Municipal Court or Superior Court of the State of California, as appropriate, to enforce the provisions of this Section and shall be entitled to all remedies available to remedy any violation of this Section, including but not limited to back pay, reinstatement or injunctive relief. Violations of this Section are declared to irreparably harm the public and covered

employees generally.

B. Any employee proving a violation of this Section shall recover from the PAB treble his or her lost normal daily compensation and fringe benefits, together with interest thereon, and any consequential damages suffered by the employee.

C. The Court shall award reasonable attorney's fees, witness fees and costs to any plaintiff who prevails in an action to enforce this Section.

D. No criminal penalties shall attach for any violation of this Section, nor shall this Section give rise to any cause of action for damages against the Port or the City.

E. No remedy set forth in this Section is intended to be exclusive or a prerequisite for asserting a claim for relief to enforce any rights hereunder in a court of law. This Section shall not be construed to limit an employee's right to bring a common law cause of action for wrongful termination.

10. Severability

If any provision or application of this Section is declared illegal, invalid or inoperative, in whole or in part, by any court of competent jurisdiction, the remaining provisions and portions thereof and applications not declared illegal, invalid or inoperative shall remain in full force or effect. The courts are hereby authorized to reform the provisions of this Section, including limiting the scope of coverage or striking the five-year provision of subsection 6, in order to preserve the maximum permissible effect of each subsection herein. Nothing herein may be construed to impair any contractual obligations of the Port. This Section shall not be applied to the extent it will cause the loss of any federal or state funding of Port activities.

Proposed language changes to the Living Wage and Labor Standards At Port-Assisted Businesses Initiative

Proposed below are three changes that limit the scope of the Initiative. They are:

1. Clarifying language that exempts small business with less than 20 employees.
2. A more narrow definition of workers covered by the "Preventing Displacement of Workers" provision.
3. A new provision that provides for a waiver process under special circumstances (the language closely follows the City of Oakland's Living Wage ordinance).

(1)

1. Scope and Definitions.

The following definitions shall apply throughout this Section:

A. "Port" means the Port of Oakland.

B. "Port-Assisted Business" or "PAB" means (1) any person receiving in excess of $50,000 worth of financial assistance from the Port, or (2) any Port Contractor **if the person employs more than 20 persons per pay period, unless in the prior 12 pay periods the person has not had more than 20 such employees and will not have more than 20 in the next 12 pay periods. A PAB shall be deemed to employ more than 20 persons if it is part of an "enterprise" as defined under the Fair Labor Standards Act employing more than 20 persons.** "Port Contractor" means any person party to a Port Contract as herein defined.

C. "Port Contract" means:

(1) Any service contract with the Port for work to be performed at the Port under which the Port is expected to pay more than $50,000 over the term of the contract;

(2) Any contract, lease or license from the Port involving payments to the Port expected to exceed $50,000 either (a) over the term of the contract, lease or license, or (b) during the next 5 years if the current term is less than 1 year but may be renewed or extended, either with or without amendment;

(3) any subcontract, sublease, sublicense, management agreement or other transfer or assignment of any right, title or interest received from the Port pursuant to any of the foregoing contracts, leases or licenses.

A contract, lease or license with the Port or any agreement derived therefrom shall not be deemed a Port Contract unless entered into after enactment of this Section, or amended after

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12-4-01

enactment of this Section to benefit in any way the party dealing with the Port.

D. "Employee" means any individual employed by a PAB in Port-related employment. ~~if the PAB employs more than 20 persons per pay period, unless in the prior 12 pay periods the PAB has not had more than 20 such employees and will not have more than 20 in the next 12 pay periods. A PAB shall be deemed to employ more than 20 persons if it is part of an "enterprise" as defined under the Fair Labor Standards Act employing more than 20 persons~~.

2. Exemptions from coverage

~~In addition to the above exemption for workforces of fewer than 20 workers, the~~ The following persons shall also be exempt from coverage under this Section:

A. An Employee who is (1) under twenty-one (21) years of age and (2) employed by a nonprofit entity for after-school or summer employment or for training for a period not longer than ninety (90) days, shall be exempt.

B. An Employee who spends less than 25 percent of his work time on Port-related employment.

C. A person who employs not more than 20 employees per pay period.

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5. Preventing Displacement of Workers

A. Each PAB which is to replace a prior PAB shall offer employment to **the Service Employees** of the prior PAB, if these Employees worked for the prior PAB for at least 90 calendar days. Such Employees may be not be terminated by the new PAB during the first 90 work days except for just cause. The new PAB may operate at lower staffing levels than its predecessor but in such event, shall place the prior Service Employees on a preferential reinstatement list based on seniority. For purposes of this Agreement, a PAB "replaces" another if it (1) assumes all or part of the lease, contract or subcontract of a prior employer or obtains a new lease, contract, or sublease, and (2) offers employment which Service Employees of the prior PAB can perform. In the case of a replacement connected to the new PAB relocating from another location, in staffing decisions the new PAB may recognize seniority from its prior locations in addition to the seniority of the prior PAB's workforce. **"Service Employees" means all employees except managers, supervisors, professionals, paraprofessionals, confidential and office employees.**

B. Notwithstanding Section 902(e) or any other provision of the City Charter, except in

an emergency the Port shall not enter into any private contract for **regular (non-temporary)** work **which is not of a professional, scientific or technical nature and** which was performed by persons employed by the Port as of June 30, 2001, nor for the same class of work, including such work at new or expanded Port facilities.

3

New Section: Waivers.

A. A PAB who contends it is unable to pay all or part of the living wage must provide a detailed explanation in writing to the Port Executive Director who may recommend a waiver to the Port Board. The explanation must set forth the reasons for its inability to comply, including a complete cost accounting for the proposed work to be performed with the financial assistance sought, including wages and benefits to be paid all employees, as well as an itemization of the wage and benefits paid to the five highest paid individuals employed by the PAB. The PAB must also demonstrate that the waiver will further the public interests in creating training positions which will enable employees to advance into permanent living wage jobs or better and will not be used to replace or displace existing positions or employees or to lower the wages of current employees.

B. The Port Board will grant a waiver only upon a finding and determination that the PAB has demonstrated the necessary economic hardship and that waiver will further the public interests in providing training positions which will enable employees to advance into permanent living wage jobs or better. However, no waiver will be granted if the effect of the waiver is to replace or displace existing positions or employees or to lower the wages of current employees.

C. Such waivers are disfavored, and will be granted only where the balance of competing interests weighs clearly in favor of granting the waiver. If waivers are to be granted, partial waivers are favored over blanket waivers. Moreover, any waiver shall be granted for no more than one year. At the end of the year the PAB may reapply for a new waiver which may be granted subject to the same criteria for granting the initial waiver.

D. Any party who objects to the grant of a waiver by the Port Board may appeal such decision to the City/Port Liaison Committee, who may reject such waiver.

OAKLAND CITY COUNCIL
Fire Station 8
December 4, 2001

CITY COUNCIL PACKET FROM OPPOSITION TO CHIEF SIMON'S PLAN & REPORT:

1. COLOR PHOTO: Emergency Calls for Service (Actual Calls), Station 8, YR 2000* (attached in front.)

2. MEMO: To City Manager Robert Bobb from J. Hoeppner-Freitas, Chair, DMV Neighbors Association in opposition to Chief Simon's plan — p. 2

Exhibit A:	Memo to Emeryville City Council from Local 55	— p. 12
Exhibit B:	YR 2000 and 2001 runs dispatched, with notations (Attachment 6 to Fire Department Supplemental Agenda Report)	- p. 13
Exhibit C:	Calls per Firestation in 2000 and Other Quick Facts	— p. 14
Exhibit D:	September 25, 2001, letter from Chief Simon to Chiefs Cutright and Speakman, with attached map (3 pages)	— p. 15
Exhibit E:	Government Code § 850.6	- p. 18
Exhibit F:	Emeryville Emergency Operations: 2001 (2 pages)	- p. 19
Exhibit G:	Local 55 proposal (2 pages)	- p. 21

3. Series of newspaper articles regarding Station 8 p. 23

4. Selected letters from Oakland citizens p. 30

Exhibit H: Agenda Report, Emeryville - p. 35

Exhibit I: Map of possible ladder truck coverage from Emeryville p. 47 (last page)

Submitted by:

Jacqueline Hoeppner-Freitas, Chair, DMV Neighbors Association (DNA)

*Color photo for Councilmembers, Mayor, City Manager, and Fire Chief

COUNCIL 12/4/01 Item 9D

DMV NEIGHBORS ASSOCIATION
5133 Miles Avenue
Oakland, California 94618
(510) 428-2714
Fax (510) 653-9980

TO: Office of the City Manager
ATTN: Robert C. Bobb
FROM: Jacqueline Hoeppner-Freitas, Chair, DNA
DATE: For City Council, December 4, 2001

RE: Response to Supp. Report on Fire Station 8 – Rebuilding Options

UPDATE *UPDATE* UPDATE* UPDATE*UPDATE* UPDATE* UPDATE*

Just prior to printing, we have learned that there is a major discrepancy between what Emeryville is being asked to cover, or what it thinks it's going to cover, and what our Chief Simon's Agenda Report implies Emeryville will cover. What this means is that not all of N. Oakland will have ladder truck service under Chief Simon's plan. Because of the importance of this information, I am inserting at the last minute this information at the front of this document, even though some of my internal page references will be "off." I also attach City of Emeryville Memorandum from Stephen L. Cutright, Fire Chief, Emeryville to Emeryville City Manager John Flores as Exhibit "H" and "Truck Response Coverage (Supplemental Agenda Report, Attachment 5) with my additions as Exhibit "I."

The essence is that Emeryville is being asked to respond with its big ladder truck to a small area of N. Oakland, not all of Station 8's ladder truck territory. Therefore, there will be no ladder truck assigned to a portion of N. Oakland. it's hard to tell how far Emeryville's possible coverage extends, but Chief Simon estimates the Emeryville truck will take 526 non-medical calls [Report, p.4) and Emeryville estimates it will take 266 [Emeryville Report, p. 5] An additional problem is, as I mention below: How are the rest of Station 8's over 1,000 yearly ladder truck calls to be handled? This question is still not answered.

In Cutright's Memo, Cutright leaves the impression that Oakland Truck 5 (which is housed at Station 8) has the same coverage of Oakland Engine 8 (which is also housed at Station 8). Since we have 26 engines and only 7 ladder trucks in Oakland, their respective territories are very different. Engine 8's coverage area is outlined in black on Exhibit "I." It may be, however, that Emeryville will not even handle all of Engine 8's territory (called its "still area" or "first response" area) – only the portion of Engine 8's territory with very light shading that appears on Report, Attachment 5 (see

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my Exhibit "T"). Truck 5 from Station 8 covers N. Oakland from the Emeryville border, into the Oakland hills and up to Moraga.

Please review the following:

1) Emeryville Memo, p. 4: Emeryvill will provide coverage in two ways: 1) "Provide aerial truck company response from Emeryville fire station 2 to the "still district" (or first in district) formerly covered by Oakland Truck 8 before their station closure." There is no "truck 8," so the confusion begins here.

2) Emeryville Memo, p. 5: Emeryville has counted up only a portion of Engine 5's calls, and intends to cover about 266 of them.

3) Confirm the number of Truck 5 yearly calls in YR 2000 by looking at Attachment 6 of Simon's Report. The official figues are actually greater than the figures that the Fire Department gave to me and which I included in my Exhibit "C."

4) Emeryville will only be required to respond to "actual fire incidents," i.e., confirmed fires, unlike the standard applied to Oakland truck companies which have to instantly go out to evaluate the call (see last full paragraph of p. 5).

5) Engine 5 at Station 5 will have to pick up additional calls in Emeryville, although it is No. 4 in call volume in Oakland and although it will have to pick up a portion of Station 8's calls when it is closed. (See #4, p. 6 and elsewhere.)

I. Introduction. This document will serve as our response to Council regarding our research on and evaluation of the Fire Department's Supplemental Report on Fire Station 8 – Rebuilding Options.

The principal problem with Supplemental Report (hereafter, "Report") is that there is no viable, credible plan for fire department emergency coverage of North Oakland, yet the document attempts to make it appear that there is. The Report's assertion, that the response times will be within "acceptable response standards" under Fire Chief Gerald Simon's plan, is belied by the fact that there are no data to support that conclusion.

II. Key deficiencies in Chief Simon's plan.

1. Fifty per cent of District 1's firefighting companies will be shut down for 1-2 years to save citywide operational costs. This is a disproportionate "tax" on N. Oakland. To be done fairly, one firefighter would have to be downsized out of each of the Council districts, rather than just one district.

2. Chief Simon's original plan included Piedmont being assigned to a large area of Oakland. Now there is no mention of this assignment and no explanation for its absence. The presence of Piedmont in the original plan

suggests an inadequacy in the present plan. Emeryville will pick up confirmed structure fires only. (NOTE: Emeryville will pick up a small portion of EMS calls under the plan. This corects an error in my ealier draft.)

3. There is both inaccurate data and missing data concerning response times. Without data, the quality of coverage can not be measured.

4. The quality of contemplated coverage by Emeryville into N. Oakland is compromised by the fact that Emeryville's ladder truck is housed on the Bay side of I-80, on Powell Street. Representative response times into N. Oakland from Emeryville and Station 15 are not provided.

5. The loss of Station 8 firefighters will impact the districts of Councilmembers Spees, Wan and Nadel because their districts' resources will be drawn down and Station 8 will not be available for its usual backup. In addition, Engine 5 in District 3 is expected to pick up Emeryville's medical calls when Emeryville's ladder truck is handling Oakland's calls.

7. Contrary to expectations, Emeryville has provided more mutual aid to Oakland in 2001 than Oakland has provided to Emeryville.

III. Selected Observations.

Page 1, ¶2: Demolition time is not anywhere included in the 10 month rebuild period.

Page 2, ¶1: This paragraph makes clear that the reduction in 8 firefighters did not finance the building of Station 8, but rather is a citywide operational savings. N. Oakland is taking a disproportionate "hit," not because we get a new firehouse (as billed), but because Chief Simon saw the rebuild as a logistical opportunity to reduce personnel.

Page 2, ¶4: After much pressing, on November 3, Chief Simon explained to those of us gathered at Councilmember Brunner's monthly meeting that actually Station 8 personnel would be scattered about the City in overtime slots. He explained that his previous explanation that they would be placed at Stations 7 and 28, was simply the "functional equivalent" of the actual facts. Here, Chief Simon has reverted to his former explanation, which is only the "functional equivalent" of the actual facts. Stations 7 and 28 will experience no change in personnel because of Chief Simon's plan. Therefore, no advantage or disadvantage accrues to these stations under Chief Simon's plan. See further references to Stations 7 and 28, below.

Page 3, ¶2: The City never asked Children's Hospital whether they would swap the land across the street from Station 8 with the land on which the station now stands. On November 29, 2001, James Jackson, Director of

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Environment of Care, Children's Hospital, expressed willingness to discuss such a swap, and confirmed this was the first mention of a swap. Thus, the City did not fully explore options to keep Station 8 open until a new station could be built. Interestingly, Station 8 used to occupy the Children's Hospital site across the street before moving to its present location 50 years ago.

Page 3, ¶6: Response times. The response times mentioned here and laid out in Attachment 2 are not real time. Since no day and time of measurement is mentioned, one must assume the response times were measured on a Sunday, say around 10:00 a.m.

Actual response times vary from Attachment 2. For example, on incident #153546, Tuesday, November 6, Station 8 response time to 1048 62nd Street, one block from 61st and Baker, was 7 minutes from the time the call came in to the time the rig pulled up on the scene, according to the dispatch log (the response time into the house would be longer). Attachment 2 shows a response time of 3 minutes and 44 seconds to 61st and Baker, an unrealistically small amount of time. How much longer will other stations take?

Station 19 at Miles above College is 2.1 miles from 61st and Baker, whereas Station 8 is only 1.65 miles. Recall that at 60 miles per hour it takes 30 seconds to go 1/2 mile, but fire engines don't go that fast through busy city streets. Thus, add approximately 1 minute to Station 8's response time of 7 minutes. Is 8 minutes in response time acceptable? We think not, especially in this area with all its medical responses (see our map with blue pins at locations of medical calls).

Also unrealistic is that Station 19 could beat Station 8 to 61st and Baker. As mentioned above, that location is 1.65 miles from Station 8 and 2.1 miles from Station 19. Yet on Attachment 2, Station 19 is shown as beating Station 8's time, 3:39 min. vs. 3:44 min.

Another example: On incident #129618 to 56th and Telegraph, Station 8 took 4 minutes and 11 seconds according to dispatch logs. It would take a little more to reach 57th. Thus, the time of 2 minutes and 52 seconds on Attachment 2 is unrealistic.

The most glaring glitch on Attachment 2 is the claim that it takes 1 minute and 35 seconds less to go 8 more blocks to 61st and Baker, which is 8 blocks further away from Station 19 than 60th and Whitney is (5 minutes

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and 14 seconds to 60th and Whitney but 3 minutes and 39 seconds to go to the more distant location of 61st and Baker).

In general, it must be remembered that east and west routes between Alcatraz Avenue and 40th Street are very difficult to negotiate quickly. There are no direct routes. In addition, many of those streets now have speed bumps on them.

Although Station 15 at 27th and Telegraph has now for the first time been brought into Chief Simon's plan (see p. 4, ¶2 [Attachments 4 and 5], and p. 4 ¶4 [last sentence]) -- now that there is pressure to address the lack of a ladder truck in N. Oakland -- there is only one piece of data on response times for the ladder truck from Station 15 into North Oakland, and the time is unacceptable at 8 minutes and 11 seconds. However, to make matters worse, that time is unrealistically short. How do we know? Take a look at the recent Fenton's Ice Creamery fire as an example.

Fenton's is on Piedmont Avenue (4226 Piedmont), far closer to 27th and Telegraph than the example in Attachment 2 of 60th Street and Whitney Avenue (8:11 min.).

Yet, from time of dispatch, Station 15 at 27th and Telegraph took 7 minutes and 28 seconds, a full 3 minutes and 22 seconds slower than Station 8, which made it in 4 minutes and 6 seconds. This is scary, because Fenton's is on the 27th and Telegraph side of Station 8. What would it be for parts further away – upper Rockridge, North Hills, Montclair? Could it be that we have a lack of realistic response times for Station 15 going into N. Oakland because they would be unacceptable by City standards? How can the assertions that all response times will be within acceptable levels be credible, **when there is no data?** (There is also no data for Emeryville; see below.)

Such misleading and absent data does not aid Councilmembers in making difficult choices.

Page 4, ¶1 to page 5, ¶1: <u>Temporary Coverage</u>: There is no viable coverage under Chief Simon's plan. Even if Emeryville were to agree to cover most of Station 8's territory, Station 8's territory is large, extending over all of N. Oakland to Tunnel Road and to Moraga. In addition, Station 8's ladder truck provides coverage further on into the hills.

Do Emeryville firefighters think that Chief Simon's plan is viable? Not according to Jim Phipps, Emeryville firefighter and Vice President,

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IAFF Local 55 in a memo to Emeryville City Council (see Exhibit A, memo to Emeryville City Council dated December 4, 2001). Phipps suggests that the plan is not in the best interest of either Oakland or Emeryville citizens because of many logistical problems enumerated in the memo.

To supplement Emeryville's potential coverage, Station 15 at 27th and Telegraph "will respond to a limited amount of Station 8's response area during this interim rebuilding period." (P. 4, ¶4.) With Emeryville responding to approximately 526 non-medical calls (p. 4, ¶4), who is going to cover the other 500-600 yearly calls the Station 8 ladder truck receives (1,011 in 2000; a likely 1,192 in 2001)? (See Exhibit "B," which is Attachment 6 to Report, with extrapolating calculations.) Not Station 15, by the terms of the Report alone, no doubt because Station 15 ladder truck took 1,159 calls in 2000 (see Exhibit "C," Calls per Firestation in 2000 and other Quick Facts). Thus, <u>even with Emeryville's help</u>, which we don't have yet, there is no reasonable attempt to cover N. Oakland (see information above about response times from Station 15).

Chief Simon originally requested that Piedmont cover a wide swath of Oakland from 68th Street down to 37th Street (see lavender and magenta areas of map, Exhibit "D"). Now, because Piedmont has obviously refused, we see in the Report that no coverage is required (p. 5, ¶1).

Problems with Emeryville coverage if Emeryville agrees to participate:

1) Emeryville's ladder truck is not tillered, i.e., it doesn't have independent rear steering, so it cannot navigate the narrow hill streets. Do we know which streets the Emeryville ladder truck can navigate and which ones it cannot? Or do we find that out when first Emeryville responds to a hill call?

2) <u>Response times, Emeryville</u>: Emeryville's response times into some of the areas originally designated for coverage by Chief Simon (the red and green portions of the map attached as Exhibit "D") were estimated by a veteran Emeryville firefighter to be 10 to 15 minutes. This is because Station 1, the station from which the ladder truck would respond, is on the Bay side of I80, on Powell Street. The station indicated on Chief Simon's maps is Station 2 (see Exhibit "D"). Even if Emeryville moves its ladder truck to their Station 2, it will not solve response time problems for those areas further from Emeryville.

At an Emeryville Public Safety Committee meeting on November 1, Fire Chief Cutright said he thought response times into certain of the Oakland areas would be closer to 9 minutes rather than 10 to 14, but if it were 10 or more, that would be "Oakland's problem."

It appears that Emeryville is being asked to cover all of N. Oakland, minus a small portion covered by Station 15, possibly designated by the arrow depicted on Attachments 4 and 5. **There are no response time data for Emeryville responding further than 8 blocks past its border.** The only response time available is to 61st and Genoa (runs parallel to Market one block east) at 5 minutes and 30 seconds. How long would it take Emeryville to get to Children's Hospital, Station 8 on 51st near Telegraph, the Claremont Hotel and Tunnel Road? We don't know, but suspect it may be 15-30 minutes or more, depending on time of day and amount of traffic. However, lack of data does not prevent Chief Simon from claiming that Chief Simon's plan maintains "acceptable response standards" (see p. 10, ¶3).

3) Emeryville firefighters do not have the experience of Oakland firefighters. They do not know our streets, our structures, our citizens. Their pay is the lowest in Alameda County. This is not what our tax dollars are paying for. Mutual aid is one thing, but using Emeryville firefighters as replacement for our exceptional firefighters is another thing.

4) We question whether under Government Code section 850.6 Emeryville loses its immunity as to "any injury for which liability is imposed by statute caused by its act or omission or the act or omission of its employee occurring in the performance of such fire protection or firefighting service," since it would be providing "fire protection or firefighting service outside of the area regularly served and protected." Any indemnification agreement with Oakland places the burden of paying off any Emeryville liability squarely on us Oakland taxpayers. (See Exhibit "E.")

5) Oakland is already in debt to Emeryville for mutual aid (see Exhibit "F," "Emergency Operations," an Emeryville document). It cites that Emeryville provided Oakland with 11 mutual aid requests during 2001 and Oakland provided Emeryville with 3. This suggests that Oakland is not in a position to downsize its fire department. It also suggests that Emeryville is not beholding to Oakland, as Chief Simon asserts.

Page 4, Chart: Any distinction between "actual action responses" and other types of responses is meaningless because a firefighter in Oakland or

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Emeryville can not wait around in the station to see if a call for help will, in the end, require an "actual action response" or not. The firefighter is going to have to hit the road, regardless of how the call turns out. The category seems to be used in an attempt to make it appear that under Chief Simon's plan Emeryville wouldn't be making as many trips to Oakland as it would have to.

Page 5, ¶5: Staffing: This paragraph and chart are misleading and inaccurate. There is a large core group of firefighters at Station 8, every day, every shift. We see them so we know. If even one firefighter from another station is swapping shifts, according to the Report, the house crew falls under the definition of "Out of House Crew from Another Station." This section denigrates the dedication of Station 8 personnel to the area they serve.

Page 6, ¶2: This paragraph is misleading and inaccurate. Under Chief Simon's plan, response times will be greatly impacted because there will be 8 fewer firefighters. Response times tend to be impacted when there are no firefighters nearby who are free to take the call. See Exhibit "C," which indicates the number of emergency calls per station in Chief Simon's plan.

Another factor influencing response times from surrounding stations is whether a station is out on training or not. In Oakland, one company per day is designated for training, and up to six other companies can accept training also. Thus, there is no guarantee that a nearby company will be available at all. Nowhere does the Report address the potential problems associated with multiple companies being out on training.

Page 6, ¶¶3-5: No amount of chronic staffing shortages, difficulty in hiring, etc., can justify taking 8 firefighters out of just one section of the City – Rockridge/Temescal, in this case. If overtime has to be adjusted, it must be adjusted citywide, not just in N. Oakland. Since this has not been done in a fair, systematic way, we doubt the credibility of this section of the Report, particularly when Chief Simon early on accused the firefighters of trying to protect their overtime, implying that it was a precious commodity.

Page 6, ¶4: Regarding staffing below minimum standards, unlike the police department which has 15 minutes of line-up pay for overlap purposes, the fire department releases everyone at 8:00 a.m. Prior practice was to pay a few standbys for unprojected vacancies. Recently, in a cost cutting measure, the department decided not to pay standbys. As a result, when

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there is an occasional unprojected vacancy, there are no standbys to fill those vacancies. Hence, the "problem" with unfilled vacancies. Note that "mandatory overtime" and "vacancies" are mutually exclusive.

Page 7, ¶1: The Report here asserts that Emeryville will be responsible for all of N. Oakland ladder truck responses except for "a small portion of the area" which Station 15 will cover. This contradicts the map attached to the Report, Attachment 3, and is clearly impossible. Station 8's truck related calls require responses up to Tunnel Road, Montclair and beyond, into hills the Emeryville equipment cannot reach (see discussion above). There is no response time data for this proposition (see discussion above.)

More importantly, it's essential to understand that Chief Simon is asking three Oakland companies (No.'s 5, 19 and 10) to pick up two companies' worth of work (Station 8 is a 2 company station). Please note that Station 5 handles 3,134 calls, and it's a one company station. It is as busy as any station in Oakland.

The total calls for Station 8 is 3,789. The total call volume for the other 3 stations is 6,501. Subtracting the 526 that Emeryville might cover and, say, 50 for calls that Station 15 might cover, there is a 50% increase in work for Stations 5, 19, and 10. For Chief Simon to maintain that a 50% increase in emergency calls will not impact response times to the point where they will become unacceptable is simply not credible.

Page 7, ¶2: There is a way to state the information in this paragraph that is <u>not</u> misleading. Chief Simon consistently states it in this misleading fashion. He is not talking about "bodies" on the street. The fact is that there will not be a single extra firefighter on the street under his plan than there is right now. And, for the duration of the rebuild, there will be 8 fewer. It's true there will be new firefighters, but they will take the slots currently covered by firefighters working overtime. Thus, we have 141 per day now; we will have 133 per day during the rebuild; and we will have 141 per day back after the rebuild, under Chief Simon's plan.

Page 7, Option 1 Pros and Cons: Option 1 is not workable because it provides completely inadequate coverage to North Oakland and surrounding areas.

Page 7, Option 2: This is not an option, though building could be delayed.

Page 8, Option 3: It is not proved that bond funding is involved. The firefighters' Local 55 proposal should be fully explored. (See Exhibit "G," Local 55 proposal.)

Page 8, Option 4: If a land swap cannot be managed (see below, "New possible option," this option is the best. Although response times would suffer because Station 8's personnel would be further away from large portions of Station 8's area, at least the equipment would not be placed in storage and our firefighters would be available to respond to our calls.

Page 9, Options 5 & 6: These options do not provide the coverage that is needed.

New possible option: A possible option exists, so far unexplored by the City, to swap the land across the street from Station 8, owned by Children's Hospital, for land on which the station now sits (see p. 2). This option is the best of all because a land swap allows Station 8 to remain open in its current location for the duration of the rebuild. Response times would stay as they are, or slightly increase, because of the increase in calls likely in 2001 (see extrapolations on Exhibit "B.").

IV. Conclusion.

There are no data to support the Report's conclusion that there will be safety for N. Oakland under Chief Simon's plan. Without the data, this Report falls into the realm of wishful thinking. Since you have decided that Chief Simon's proposal carries "acceptable risk," we'd like to know if you have access to data that we don't have, because there is nothing in the Report that can lead to the conclusion that the risk to our lives and property is "acceptable" under Chief Simon's plan.

TO: Emeryville City Council
FROM: Jim Phipps, Vice President IAFF Local 55
DATE: December 4, 2001
SUBJECT: The Closure of Engine 8

Background
The City of Oakland has requested that Emeryville cover Engine 8's and Truck 5's district during the rebuilding of Engine 8's firehouse. Both Engine 8 and Truck 5 are housed together in the firehouse located at 51st Street and Telegraph Avenue. The closing of the firehouse is scheduled for January 2002. The "planned" rebuilding will take 10 months. For the year 2000, Engine 8 ran 2779 calls and Truck 5 ran 1010 calls for a total of 3789 calls. Oakland has requested Emeryville's truck with four firefighters to cover most all of the Truck 5's calls and a Emeryville Engine to cover some of Engine 8's calls. Engine 8's district will be divided between Oakland Engines 19,10,15, 5 and Emeryville.

Question
Would this proposal be of benefit to Emeryville citizens?

Answer
NO. This proposal is not in the best interest of either Oakland or Emeryville citizens for the following reasons:

1. For Emeryville to respond with four firefighters on our Truck we will have to deadline an Engine Company.

2. When Emeryville's Truck responds to Oakland only THREE FIREFIGHTERS and ONE ENGINE will be left in Emeryville.

3. Emeryville will be subsidizing Oakland for about 3.2 million dollars with no return on their investment. This is the savings Oakland generates by reducing their budget by the 32 firefighters needed to operate Engine 8 and Truck 5.

4. Emeryville's Truck is 10 years old and will need to be replaced after running additional calls in Oakland. Truck 5's district is very large. It runs from the Emeryville line to the top of the Oakland hills and from the Berkeley line to downtown Oakland.

5. If Oakland removes Engine 8 and Truck 5 from service, Emeryville will have an increase in Mutual Aid calls to Oakland, because of the added workload placed on the remaining Oakland Companies. The remaining Oakland Engine companies that will respond to Engine 8's district are some of the busiest engine companies in Oakland. Engine 5 ran 3134 calls in the year 2000.

6. Oakland may not be able to respond to Emeryville for Mutual Aid as quickly as they have in the past, because Engine 8 and Truck 5 are the companies that normally would respond.

EXHIBIT "A"

YEAR 2000- RANKING BY NUMBER OF RUNS DISPATCHED						YEAR 2001-RANKING BY NUMBER OF RUNS DISPATCHED					
RANK	ENGINE	TOTAL RUNS		TRUCK	TOTAL RUNS	RANK	ENGINE	OTAL RUNS		TRUCKS	OTAL RUNS
1	2560	3655		2577	1732	1	2560	3454		2576	1559
2	2563	3571		2576	1611	2	2563	3163		2577	1428
3	2558	3209		2571	1572	3	2558	3074		2571	1388
4	2545	3133		2574	1559	4	2555	3016		2574	1263
5	2553	3098		2572	1315	5	2545	2875		2572	1058
6	2541	3087	Station 8	2575 →	1011	6	2541	2829		2575	993 ←
7	2569	2963		2573	891	7	2569	2736		2573	783
8	2556	2956				8	2553	2706			
9	2555	2884				9	2552	2635			
10	2552	2839				10	2556	2594			
11	2548	→ 2794	Station 8			11	2557	2554			
12	2566	2749				12	2548	2422 ←			
13	2557	2535				13	2544	2338			
14	2567	2395				14	2566	2310			
15	2550	2384				15	2567	2206			
16	2544	2373				16	2550	2005			
17	2543	2052				17	2543	1813			
18	2559	985				18	2559	940			
19	2542	969				19	2542	924			
20	2565	920				20	2565	856			
21	2564	666				21	2564	620			
22	2562	517				22	2546	307			
23	2548	335				23	2561	302			
24	2546	335				24	2568	293			
25	2561	325				25	2547	187			
26	2547	201				26	2562	186			

2001

↑ 4% engine
↑ 18% truck

YR 2000

2,794 Engine 2548
+ 1,011 Truck 2575
3,805

YR 2001 (10 mos) FULL YR 2001 (extrapolated)

2,422 → 2,906 (4% increase) Engine
+ 993 → 1,192 (18% increase) Truck
3,415 (5/6 of year) or 4,098 for 2001 (30% extra calls)
.83

8% increase overall

EXHIBIT "B"
p.13

CALLS PER FIRESTATION IN 2000 AND OTHER QUICK FACTS

Station number	Calls (engine/ladder truck)		Chief Simon's unprecedented plan
#8 (2 company station, District 1)			
51st near Telegraph	Engine	2,779	Personnel to be assigned
(8 person station)	Ladder truck	1,010	to slots elsewhere now
4 firefighters/ladder truck	Total:	3,789	covered by overtime. Equipment
4 firefighters/engine	(80% of calls are medical)		to be put in storage. Eight fewer firefighters per shift (141-8= 133).
#19 (1 company station, District 1)			
Miles (near RR BART)	Engine	983	To pick up part of Station 8's
(4 person station)	(no ladder truck)		territory.
#5 (1 company station, not in District 1)			
34th & Market	Engine	3,134	To pick up part of Station 8's
(4 person station)	(no ladder truck)		territory; among the busiest in Oakland.
#10 (1 company station, not in District 1)			
Santa Clara Ave.	Engine	2,384	To pick up part of Station 8's
Near Harrison	(no ladder truck)		territory
(4 person station)			
#15			
(27th & Telegraph)	Engine	2,087	Not included in plan. Will
(9 person)	Ladder Truck	1,159	not pick up part of Station 8's
5 firefighters/ladder truck	Total:	3,246	territory (usual backup only).
4 firefighters/engine			
Emeryville (7 firefighters per shift, 2 stations) Engines carry rescue equipment. Their one ladder truck is "manned" by one firefighter.			Emeryville is undecided whether to participate in plan (vote of City Council required). Chief's plan requires their help.
Piedmont (7 firefighters per shift)			Piedmont has refused the request for Piedmont to cover a portion of Oakland. The original plan required Piedmont's help.

Other facts:

- Station 8 is a first responder in North Oakland for fire, emergency medical services (EMS), rescue and hazardous materials. It is the keystone of N. Oakland's emergency response.
- Station 8's ladder truck is assigned to all of North Oakland. It carries all rescue equipment.
- Station 8 is Emeryville's backup, as well as the backup for all the other above stations.
- Under Chief Simon's plan Oakland would drop from 141 firefighters on duty to 133 (per shift).
- Under Chief Simon's plan one of Oakland's seven ladder trucks and one of Oakland's twenty-five engines would be put in storage. North Oakland would not have a ladder truck.

Information researched by Jacqueline Hoeppner-Freitas and Tony Freitas. (428-2714)

EXHIBIT "C"

CITY OF OAKLAND

ADMINISTRATIVE OFFICES · 150 FRANK H. OGAWA PLAZA · SUITE 3354 · OAKLAND, CALIFORNIA 94612

Fire Department

(510) 238-3856
FAX (510) 238-7924
TDD (510) 238-6884

September 25, 2001

HAND-DELIVERED

Chief Stephen L. Cutright
Emeryville Fire Department
2333 Powell Street
Emeryville, CA 94608

Chief John C. Speakman
Piedmont Fire Department
120 Vista Avenue
Piedmont, CA 94611

Subject: Interim coverage for Fire Station 8 district in Oakland during station reconstruction

Dear Chief Cutright and Chief Speakman:

The intent of this letter is to re-affirm our agreement to have your departments assist the Oakland Fire Department on an interim basis with partial district coverage, while we replace our existing Fire Station 8 on its current site of 461 51st Street.

Attached you will find the current deployment plan that has already been approved by our City Council last May during the public hearing and budget process related to this issue.

For Emeryville, we are requesting your department to:

1) cover the area designated in red for EMS related calls; and,
2) cover the area designated in red and green for truck related responses with four (4) personnel.

We agree to continue 911 dispatch services to Emeryville Fire without an increase as previously contemplated. Oakland Fire will continue the current contract and price that has been in force for the past ten years.

For Piedmont, we are requesting your department to cover all truck related responses in the area designated by lavender and magenta. We appreciate your willingness to step up in our time of need, as we have done for your community in the past.

EXHIBIT "D," p. 1

We anticipate the length of assistance will be no more than one year, and fully expect that the timeframe could actually be about ten months.

After your review, please consider affirming this contemplated interim agreement by signing and returning a copy of this letter to me so that we can begin providing you with accurate data and firm timelines.

On behalf of the Oakland Fire Department, thank you for assisting the Department during this time of critical need.

Sincerely,

GERALD A. SIMON
Fire Chief
Oakland Fire Department

GAS:rk
Attachments

My signature below indicates affirmation of the contemplated agreement as described in this letter.

_____	_____
STEPHEN L. CUTRIGHT	JOHN C. SPEAKMAN
Fire Chief	Fire Chief
Emeryville Fire Department	Piedmont Fire Department
Date _____	Date _____

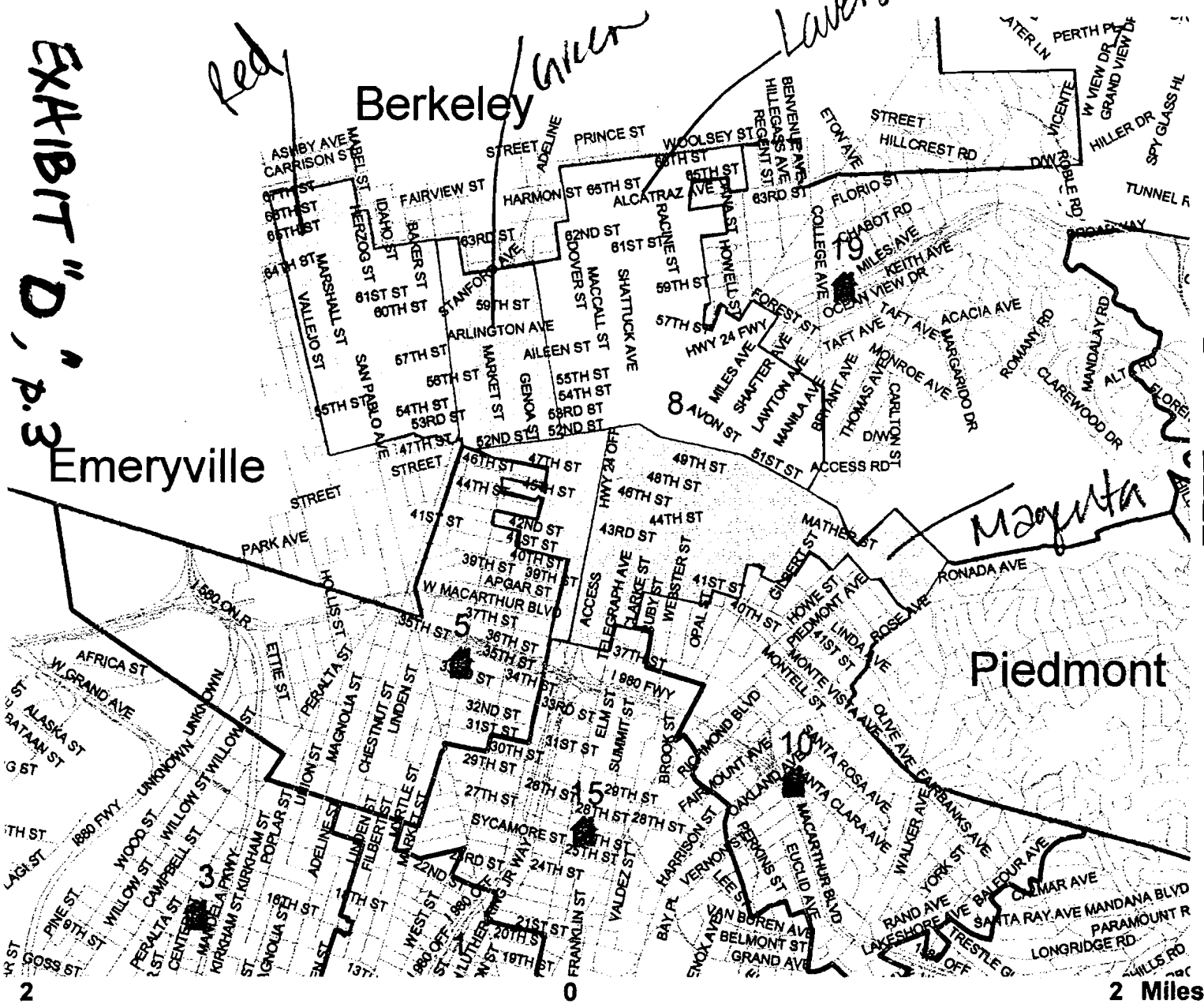
EXHIBIT "D", p. 2

Oakland Fire Department

Station 8 Construction Impact

EXHIBIT "D", p.3

Ray Leon helped us obtain this map. Colors written in by OFD.



City Council
Budget
May 1, 2001

CALIFORNIA CODES
GOVERNMENT CODE
SECTION 850-850.8

850. Neither a public entity nor a public employee is liable for failure to establish a fire department or otherwise to provide fire protection service.

850.2. Neither a public entity that has undertaken to provide fire protection service, nor an employee of such a public entity, is liable for any injury resulting from the failure to provide or maintain sufficient personnel, equipment or other fire protection facilities.

850.4. Neither a public entity, nor a public employee acting in the scope of his employment, is liable for any injury resulting from the condition of fire protection or firefighting equipment or facilities or, except as provided in Article 1 (commencing with Section 17000) of Chapter 1 of Division 9 of the Vehicle Code, for any injury caused in fighting fires.

→ 850.6. Whenever a public entity provides fire protection or firefighting service outside of the area regularly served and protected by the public entity providing such service, the public entity providing such service is liable for any injury for which liability is imposed by statute caused by its act or omission or the act or omission of its employee occurring in the performance of such fire protection or firefighting service. Notwithstanding any other law, the public entity receiving such fire protection or such firefighting service is not liable for any act or omission of the public entity providing the service or for any act or omission of an employee of the public entity providing the service; but the public entity providing such service and the public entity receiving such service may by agreement determine the extent, if any, to which the public entity receiving such service will be required to indemnify the public entity providing the service.

Notwithstanding any other provision of this section, any claims against the state shall be presented to the State Board of Control in accordance with Part 3 (commencing with Section 900) and Part 4 (commencing with Section 940) of Division 3.6 of Title 1 of the Government Code.

850.8. Any member of an organized fire department, fire protection district, or other firefighting unit of either the state or any political subdivision, any employee of the Department of Forestry and

EXHIBIT "E"

EMERGENCY OPERATIONS: 2001

INCIDENT ANALYSIS
Emeryville Fire Department

		JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC	TOTAL
TOTAL INCIDENTS --		150	128	136	155	126	109	131	132	142	125			1334
DUTIES PERFORMED ON CALLS:														
FIRE SUPPRESSION --	Buildings (< $ 5000)	1	1	2	4	2	3	1	1	1	6			22
	Buildings (> $ 5000)			1					1					2
	Vehicles	6	3	1	7	8	3	6	7	1	3			45
	Outside Fires	3	2		6	2	5	5		3	4			30
INVESTIGATIONS --	Smoke				1		1	2	5	1				10
	Odor	6	1	1		1		1		3				13
FALSE ALARMS --	Alarm Companies	37	40	41	27	27	15	26	18	26	32			289
	Other	1		4					1					6
HAZ MATS --	Spill		3	2	1		1	1	2	3				13
	Release		1		1		2		1	2	3			10
	Other		1								2			3
MUTUAL AID --	To Oakland	3	2			5			1					11
	To Berkeley							1						1
	From Oakland		1						1		1			3
	Other	1					1	1		1				4
MEDICAL --	District # 1	33	31	37	36	29	34	43	31	45	30			349
	District # 2	51	35	44	61	45	35	41	54	47	35			448
	Out of City		1				2		1		3			7
RESCUE/EXTR. --		3	1	1	6	3	1	1	3	3	5			27
SERVICE --		5	5	2	5	4	8	2	5	6	3			45
TOTAL DUTIES PERFORMED		150	128	136	155	126	111	131	132	142	127	0	0	1338
RESOURCE COMMITMENTS:														
FREEWAY CALL --	Single Unit Response	6	10	1	1	16	5	4	7	9	4			63
	Multi-Unit Response	15	15	13	20	11	4	18	3	13	7			119
SIMULT. ALARMS --	To Same Medical			2	3			1						6
	To Separate Calls	2	2	3	3	1		2	2	3	1			19
TRUCK RESPONSE --		42	16	56	59	39	24	36	23	14	17			326
TOTAL RESOURCE COMMITMENTS		23	27	19	27	28	9	25	12	25	12	0	0	207

NOTE: The Emergency Operations sheet shows all operations conducted, not the individual responses provided within Emeryville. If multiple operations were conducted on any emergency responses (calls), then the tally for emergency operations will be greater than the actual responses made by Emeryville fire units. If mutual aid calls were made to other jurisdictions, and during these mutual aid responses an Emeryville fire unit responded to emergency calls within that jurisdiction, then the tally for emergency operations will be greater than the actual responses reported within Emeryville's jurisdiction.

EXHIBIT "F", p. 1

p.16

Emergency Responses: 2001

Emeryville Fire Department

TYPE	SUB-TYPE	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC	TOTAL
FIRES --	Buildings (< $ 5000)	1	1	2	4	2	3	1	1	1	6			22
	Buildings (> $ 5000)			1					1					2
	Vehicles	6	3	1	7	8	3	6	7	1	3			45
	Outside Fires	3	2		6	2	5	5		3	4			30
INVESTIGATIONS --	Smoke				1		1	2	5	1				10
	Odor	6	1	1		1		1		3				13
FALSE ALARMS --	Alarm Companies	37	40	41	27	27	15	26	18	26	32			289
	Other	1		4					1		3			9
HAZ MATS --	Spill		3	2	1		1	1	2	3	2			15
	Release		1		1		2		1	2				7
	Other		1											1
MUTUAL AID --	To Oakland	3	2			5			1					11
	From Oakland		1						1		1			3
	Other	1					1	2		1				5
MEDICAL --	District # 1	33	31	37	36	29	34	43	31	45	30			349
	District # 2	51	35	44	61	45	35	41	54	47	35			448
	Out of City		1				2		1		3			7
RESCUE/EXTR. --		3	1	1	6	3	1	1	3	3	5			27
SERVICE --		5	5	2	5	4	8	2	5	6	3			45
MONTHLY TOTAL:		150	128	136	155	126	111	131	132	142	127	0	0	1338
TOTAL YEAR-TO-DATE:		150	278	414	569	695	806	937	1069	1211	1338			
LOSS BY MONTH: ($)		7,500	1,000	205,000	20,000	500	10,000	2,000	20,000	1,000	15,000			$282,000
Prior Year Monthly Total:		112	102	115	125	158	129	127	139	86	110	148	152	1503
Prior Year To Date:		112	214	329	454	612	741	868	1007	1093	1203	1351	1503	

Exhibit "E" p. 2 of 20

INTERNATIONAL ASSOCIATION OF FIREFIGHTERS
LOCAL 55
414-13th Street, Ste. 300
Oakland, CA 94612
(510) 834-9672
FAX (510)834-0812

BY FAX AND EMAIL

Date: November 21, 2001

To: City Manager Robert Bobb

From: Steve Splendorio, President Local 55

Re: Proposal to the City from Local 55

The City's proposal

1. Build new Station 8 at a cost of $4.1 million from the Capital Improvement Fund.
2. Close 2 companies at Station 8 for the 10 months of construction for a cost savings from overtime budget of $2.6 million.
3. On January 1, 2003, add 32 permanent positions to the OFD budget which adds $4.5 million per year to the budget, which in turn reinstates the 8 spots/day at Station 8 that were eliminated.

   Upside: New firehouse by November 2002.

   Downside: 8 fewer firefighters/day in suppression – a reduction from 141/day to 133/day.

   Conclusion: **The downside risk far outweighs the upside potential and is unacceptable to Local 55 and the citizens of Oakland.**

PROBLEM: HOW DOES THE CITY KEEP THE NUMBER OF FIREFIGHTERS ON DUTY AT 141 PER DAY (ADDITIONAL COST OF $2.6 MILLION) AND BUILD A NEW STATION?

Local 55's solution to the downside risk of City's proposal

Goal: Keep the 8 firefighters on duty everyday (funded through the overtime budget).

Cost: An additional $2.6 million from the overtime budget to pay for the 8 firefighters/day (keep our staffing at 141/day) for the 10 months they were to be eliminated.

Solution:

1. Delay building of Station 8 until January 2005 (3 year delay).

EXHIBIT "G," p. 1

2. Borrow $2.6 million from the Capital Improvement Fund (total rebuilding fund $4.1 million) to pay for the 8 firefighters/day for the 10 months they were to be eliminated.

3. Pay back the Capital Improvement Fund by delaying the permanent funding of 32 new budgeted positions from January 2003 to January 2005, saving the cost difference of the 32 permanent new spots -- $4.5 million per year -- versus the cost of overtime -- $3.2 million /year -- for a savings of $1.3 million per year. 1.3 x 2 years = a $2.6 million savings.

Upside: No fewer firefighters on the street.

Downside: New firehouse delayed.

cc: Mayor Jerry Brown
All Councilmembers
Fire Chief Gerald Simon

EXHIBIT "G," p. 2

Selected Articles

The Oakland Tribune

P. Scott McKibben
President and Publisher

Nancy Conway
Vice President, Executive Editor

Michael Lynch
Executive Vice President Advertising/Marketing

Patrick Brown
Executive Vice President Administration

Mario Dianda
Editor

Dennis Miller
Sr. Vice President/Production

Jim Dove
Sr. Vice President/Circulation

Tom Tuttle
ANG Editorial Page Director

Robert Jendusa
Sr. Vice President/Human Resources

OPINION

CONGRESS shall make no laws respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press, or of the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

FIRST AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES, RATIFIED DEC. 15, 1791

Oakland must provide the best fire protection

WE'RE glad to hear a proposal to move the Temescal neighborhood's firefighters to other Oakland stations while the facility is reconstructed is not a "final plan."

Residents and firefighters say they are concerned about the relocation, even though it's supposed to be temporary as the fire station is razed and a new one built over the next 10 months.

The entire city could lose under the proposal, because eight fewer firefighters would be on duty every day and one engine and one ladder truck would be taken off the streets.

OUR OPINION

Although the loss purportedly would be made up by firefighters from Emeryville and Piedmont expected to respond if the Temescal neighborhood needs help, that assumes those firefighters aren't needed in their own cities at the time.

So what options does Oakland have? For one, it could go back to the drawing board and come up with a plan that is acceptable to the Temescal community, one that will provide the protection they deserve as taxpaying residents.

City officials should remember the primary purpose of a municipality is to provide basic services, such as fire and police protection, to the people.

Oakland residents, wherever they live, have the right to the best fire protection possible, and we have seen instances in which the city has changed its course on fire stations after hearing from residents. A couple of examples are the North Hill and the Grass Valley fire stations.

We realize the situation is different in the case of this reconstruction project, but the basic function of the fire department remains the same — it must be at full strength, at all times.

Resident Mary Clegg had it right when she said: "To say we can afford to take these men out to cover the overtime for the rest of the city is to say this is a sacrifice for this community."

Steve Splendorio, a 30-year firefighter and president of International Association of Firefighters Local 55, suggested the city may be exposing residents to danger just to help its bottom line.

We must all remember the East Bay hills firestorm 10 years ago, the largest urban fire in the history of the United States, one in which 25 people died and 3,200 homes were destroyed.

Before this goes any further, city officials must come up with a plan that puts residents' safety at the top of the priority list.

P. 24

THE FIRESTORM OVER FIRE STATION 8 by Jacqueline Hoeppner-Freitas
Chair, DMV Neighbors Association (Submitted to Rockridge News)

By Tuesday, December 4, the fate of Fire Station 8, 463-51st Street just off Telegraph Avenue, the only double fire station in North Oakland, and the keystone of Rockridge's emergency response system, may be known. In the latest development, on Tuesday November 27 the Public Safety Committee of the Oakland City Council voted to send the question of what to do about the rebuilding of the Station #8 firehouse back to the City Manager Robert Bobb and then on to the Council for a review. Bobb was instructed to draw up a report on five different alternatives to the initial plan proposed by Fire Chief Simon and approved in the budget vote in June of this year.

The debate that has been going on subsequent to that vote has centered on the questionable wisdom of reducing fire services during the 10 month or more period of Station 8 construction. North Oaklanders have mounted an opposition to the proposal on the grounds that it would endanger the lives of Oaklanders, especially North Oaklanders, who would experience the removal of half of their man/woman power and the heavy equipment that goes with it.

Bobb is to provide pro and con analyses, recommendations, and potential funding sources for six potential scenarios:
1. Not rebuilding Station 8 at all
2. Fire Chief Simon's original proposal
3. The proposal from Steve Splendorio and Local 55 (delay rebuild, retain current strength, save money, rebuild later)
4. Closing Station 8 and transferring companies to other stations
5. 5. Assuming no cooperation from Emeryville, rebuilding Station 8 now and staffing Station 19 with an additional truck and company
6. Assigning an additional EMS unit to Station 5 while rebuilding Station 8

Brunner prefers option number 4.

She also stated at the Public Safety Committee meeting that she did not know in June that she was voting to downsize the number of firefighters on the street in Oakland by eight per day, from 141 to 133, nor did she know all the cuts were coming in North Oakland. Other Councilmembers were similarly confused, but are now saying that because of the budget crunch, there may be no money to retain Station 8's eight firefighters and their equipment.

That all eight firefighters are to be taken out of North Oakland, "isn't fair", Brunner had earlier stated at a November 20 neighborhood "Meet the Mayor" night, arranged and hosted by Rockridge resident Mike McDonald. The move mothballs North Oakland's only ladder truck(one of seven citywide) and an engine. It also leaves a vacuum: Station 8 handled 3,789 emergency calls in year 2000, 80% of them medical.

Steve Splendorio, an Oakland firefighter and Firefighters' Union president, gave Bobb and Mayor Brown a plan in November in which delaying the rebuild could insure savings currently budgeted and yet maintain 141 firefighters per day, eight in overtime slots. The individuals who would be most impacted are the Station 8 personnel; yet, as one firefighter explained, "We would rather keep this firehouse and keep working overtime than to risk lives in North Oakland."

Note: Some information for this article was contributed by Susan Montauk , Chair, Rockridge Community Planning Council.

Debate rages on over Fire Station 8

■ Safety committee asks City Council to take a second look at the issue

By B. Roscoe
STAFF WRITER

Decisions related to Fire Station 8's controversial rebuilding took a turn Tuesday that pleased some hills residents, as the City Council's Public Safety Committee decided to recommend that the full council take a second look at the issue.

Jackie Hoeppner-Freitas, head of Rockridge's DMV Neighbors Association and a lawyer, said she was encouraged that council members present at the Nov. 27 meeting seemed to admit they didn't realize this past June that they were voting for a reduction in firefighters.

At the time, the council moved forward on a plan to pay for the station's rebuild by assigning its eight firefighter to two other stations and cutting down on the use of overtime at these locations — reducing Oakland's firefighting force in the process.

"We applaud (District 1 Councilwoman Jane Brunner) for coming forward and saying it wasn't clear and that she didn't understand the ramifications," Hoeppner-Freitas said.

The issues at hand have been on the table since City Council members voted in June to approve a strategy to maintain fire safety while the dilapidated fire station at 51st Street and Telegraph Avenue is rebuilt.

In the original plan, devised by Fire Chief Gerald Simon, the firefighters from Station 8 would be temporarily reassigned to different stations to relieve staff working overtime, and the company's engine and ladder truck would be left out of service for the duration of the reconstruction.

The motivation behind Simon's plan was to cover the majority of the station rebuilding cost by saving money through a reduction of staff and equipment for the 10 months of the reconstruction. What was not made clear is how that would be achieved.

Residents such as Susan Montauk, chairwoman of the Rockridge Community Planning Council, claim to have been left in the dark when the budget, including this plan, was approved in June.

Several council members, including Vice Mayor Brunner and Larry Reid of District 7 (who chairs the Public Safety committee) have since explained they had less than a full understanding of the implications of their initial vote.

At the meeting, Brunner said she had reviewed the tape of the June council meeting when Simon made his presentation about how the reconstruction would be funded while maintaining a balanced budget. "We were never told this would create a shortage of eight firefighters," Brunner said.

In the June meeting, Brunner asked Simon, "Are we funding the building of Station 8 by the savings in personnel?" Brunner claimed there was no definitive answer to that question. She also stated that in light of a clearer understanding of what Simon's plan calls for, it is unfair that North Oakland will bear the burden of a balanced budget by sacrificing fire emergency services.

Brunner requested that the Public Safety committee ask City Manager Robert Bobb to provide more analysis, recommendations and possible funding sources associated with six potential scenarios for the rebuild.

Brunner recommended a scenario in which the station would be closed for the duration of its reconstruction, with personnel being transferred to fire stations 58 and 19 — without any resulting reduction in the city's firefighting force. This plan was greeted with applause from supporters in the audience.

Several residents spoke at the meeting, including retired Oakland police officer Tony Freitas, who used a large map with multicolored pins to illustrate the volume of calls received by Station 8 and the large area covered by that station. "Find the money. Find what it takes. Don't take 50 percent of our firefighters away from us," Freitas said.

Hoeppner-Freitas, his wife, reiterated the idea that residents were not informed of the reduction of personnel when the topic was originally introduced in May and used a current event to make her plea. "Station 8 is the reason Fenton's is still standing today," she contended, referring to the fire at the ice cream parlor of Nov. 21. Fire Station 8's response time was quick enough to stop the fire from spreading beyond the rear storage area of the neighborhood establishment, she sai.

Rockridge resident Mike McDonald said that the current condition of Fire Station 8 is "pretty gnarly." But, given the choice of staying in the decrepit station for another two years while the city saves the money to fund the rebuilding or being temporarily reassigned to another house, the firefighters prefer to remain in the existing structure, said McDonald, who took an informal survey of firefighters at the meeting.

Seth Olyer, a firefighter assigned to Station 8 concurred. "If those are my two choices, we're staying. And there's 23 other people who would say the same," said Olyer, referring to the rest of the station's personnel.

Montauk urged the committee to ask the city manager to write a thorough report on the alternate proposals and postpone the Dec. 4City Council vote until members have had time to consider all the options.

There was a brief discussion about moving this agenda item to a later meeting. But Bobb expressed his feelings that the matter should be settled sooner than later and vowed to get a supplemental report to council members in time for the Dec. 4 meeting. "If we need to stay up all night, we'll do what we need to do," said Bobb.

Asked later if she had any concern about the preparation of critical information for the Dec. 4 City Council meeting on Fire Station 8, Hoeppner-Freitas said, "I think it can be done. (City Manager) Robert Bobb seems very committed to getting a ... supplemental report out."

CITYSIDE

City editor
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www.oaklandtribune.com

FRIDAY November 23, 2001

Temescal fire station fray grows

Public hearings on closure to be held Nov. 27, Dec. 4

By Laura Casey
STAFF WRITER

OAKLAND — Opposition to the temporary closure of a Temescal fire station is mounting in North Oakland as a Fire Department plan works its way to the City Council for review.

Signs reading "Don't get Burned" are popping up in storefront windows along College and Telegraph avenues, and there is a growing concern among residents that their safety may be in jeopardy if emergency response times grow during the station's demolition and rebuilding.

"It's going to be bad," said Clarke Street resident Marcel Lewis, whose home is kitty-corner to Fire Station 8 on 51st Street and Telegraph Avenue. Not too long ago, she relied on the nearby fire station's quick response to care for her ill mother-in-law.

"There's a lot of elderly people in this neighborhood, and they need 911 right there," she said, pointing to the single-story beige station. "We need them."

Station 8, a two-company truck and ladder station, was supposed to be closed and rebuilt years ago. There was never any money in the budget to fund the $4.1 station until this year, when Fire Chief Gerald Simon developed a plan that would pay for the station by saving the city $2.8 million in fire staff overtime.

His plan not only finds money to build the station, but also attempts to patch the department's overtime problem.

Simon said the department is having a hard time filling overtime slots in stations around the city. Some of that trouble comes from a budget decision to staff two hills fire stations on an overtime-only basis.

The city approved the year-round staffing of Grass Valley Fire Station No. 28, and the North Hills Fire Station No. 7 in 1999. This decision costs $2.8

Please see **Cost**, LOCAL-2

p.27

Cost: Not enough firefighters for overtime, official says

Continued from LOCAL-1

million annually and takes 24 firefighters out of the overtime relief pool.

The result is stations work without enough firefighters on some shifts because the department is unable to find firefighters to work mandatory overtime. Simon expects the problem will exacerbate in 2002 as nearly 50 firefighters leave the department through attrition and retirement.

"We're covering another need for the department, a need for people to fill (overtime) slots," Simon said. "The whole thing has to be a balance."

The overtime problem will be partly solved by putting the 32 Station 8 firefighters in a citywide overtime relief pool. But it will mean eight fewer firefighters on Oakland streets for nearly a year and no firefighters specifically assigned to the North Oakland Rockridge and Temescal neighborhoods in 2002.

Steve Splendorio, president of the Oakland firefighter's union Local 55, said Simon's plan is putting people in North Oakland and the city at risk.

"Somehow or another, he doesn't want to face the issue. Yes, we're going to have eight fewer firefighters, and yes, we're increasing the risk to the citizens for that period of time," Splendorio said.

Critics of the plan say Simon is asking North Oakland to make up for a citywide staffing problem.

"It's not fair," said Vice Mayor Jane Brunner, who received hundreds of responses from a flier she sent to her constituents in mid-October about the Station 8 closure. "Instead of having a budget problem and fixing it citywide, we're fixing it in North Oakland."

Many residents said they are confused and concerned about their safety while the station is being rebuilt. On one side, Simon and City Manager Robert Bobb insist the plan provides adequate response from neighboring stations and city of Emeryville firefighters. On the other side, fire experts from the union are telling residents that response times to fire and medical calls will lag.

On medical calls, minutes can often mean the difference between life or death, medical experts contend.

There's an 80 percent chance a heart attack victim will survive if help arrives within six minutes. If help arrives in eight minutes, chances of survival plunge to 5 percent.

Adding to the confusion, the comprehensive emergency response plan has not been finalized. Chief Simon assured the council in April that it would be easy to carve the neighborhood into pieces and have neighboring Oakland and Emeryville stations cover calls.

In a staff report Simon prepared for Public Safety Committee review at its Nov. 27 meeting, he said Emeryville fire officials are poised to sign an agreement dedicating its truck and four firefighters — more than half of the small city's daily firefighting staff — to respond to Station 8's 426 annual ladder truck calls. Emeryville Vice Mayor Nora Davis said this is not true.

"I was a little taken aback by the statement that there was going to be a signed agreement," she said. "From my perspective, there is not going to be a done deal of any means unless the council looks at this more closely."

Simon said the agreement is still being worked out.

"This is still a fluid process. Since it is not imminent, it's not happening tomorrow, we're still trying to finalize the actual mutual aid plan," he said.

In the meantime, area residents are prepared to wage a war of words at the Nov. 27 Public Safety Committee meeting and the following City Council hearing Dec. 4.

Jacqueline Hoeppner-Freitas, a lawyer who has made a full-time job out of researching the issue and presenting her findings to the community, is floored by the notion that fire officials are content with reducing Oakland's daily staffing for 10 months.

"This is a dubious honor Oakland will have, being probably the only city that is working on cutting its firefighting force in the wake of Sept. 11, and its own disastrous history," Hoeppner-Freitas said.

She already bent Bobb's and Mayor Jerry Brown's ears at a house meeting Wednesday night. Brown has yet to take a public position on the plan.

The $4.1 million station will be paid for out of the city's Capital Improvement Program Budget, part of the two-year budget the council approved in June.

After the station is built, the city will add 32 firefighters to its 492-person force, bringing daily staffing levels back up to 141.

If the council decides to keep the firefighters on the streets through 2002, then it will be at the expense of other resources, Bobb said. The city is facing a $14 million to $27 million budget deficit and it cannot build the new station, maintain the fire department's current daily staffing levels and balance the budget.

"I personally and professionally don't think (temporarily closing Station 8) is a lot to ask when we are going to have a better improvement at the end of the day," Bobb said.

Splendorio said his firefighters are prepared to live in the old station for another two years while the city saves money to build the station. Bobb said he will consider that proposal.

The Public Safety Committee will hear Simon's report at 3 p.m. Tuesday in City Hall Hearing Room 1.

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MONTCLARION, p. A4
11/9/01

Station No. 8 — the heat is on, and rising!

GARY TURCHIN
There There

Fire and the works were on display at Jane Brunner's community meeting last Saturday at Peralta School. Fire Chief Gerald Simon, City Manager Robert Bobb, a whole gaggle of firemen and a lot concerned citizens were there to discuss the one-year closing of North Oakland's Fire Station No. 8 for its rebuilding.

The fire station issue is, simply put, one of dollars versus sense. The dollars are about $4 million and change; the sense is our public safety.

The city has arranged one of those crafty "creative financing" deals that involves closing the firehouse and financing the new one on the backs of wages saved by having eight less firefighters on the streets for the next year. The savings in wages would net the city $3.2 million of the $4.1 million needed to build a new firehouse.

Nifty idea, and I can see why it was tempting. It's almost like a free firehouse! Hey, let's close 'em all and build all new ones!

But nothing is free. There would, of course, be eight less firefighters on the streets of Oakland at any given moment — 133 instead of the current 141. (Eight of the 141 are overtimers, but that's another issue). North Oakland will lose something in its response time as well, and response time is the lynch pin of public safety. (How long can you hold your breath? That's how fast you need help.) The area will have to rely more on Piedmont, Emeryville and other Oakland firehouses for coverage. Deals with Piedmont and Emeryville are in the works but are in no way finalized.

Finally, there will also be two trucks basically mothballed for the year, including one of Oakland's seven ladder trucks (for math freaks that's 14 percent of the fleet). So the price is pretty steep: less coverage, loooonger response times, fewer personnel and less equipment ready to roll.

For the sake of full disclosure, let me remind you that my home is in Station No. 8's district. They are my guys, and if my heart ticker goes walla-walla-bing-bang, it's probably them that will provide the EMS — 80 percent of firehouse calls

See TURCHIN, Page A5

Turchin

FROM PAGE A4

are for emergency medical services. Frankly, my heart's fine, but I've burned out three whistling teapots in the last year alone, so I'm a guy that takes comfort from my local firehouse. But I'm making light of a life-and-death issue.

Jane Brunner is wisely making the City Council take another look at this project. There will be a Public Safety Commission meeting on Nov. 27 to study it. Apparently she was under the impression that the funding was from the city's capital improvement program (CIP) when she voted for it. No clue, she claims, that the CIP money came from cutting the fire department.

Hard to believe, but I spoke to Councilman Larry Reid, and he pretty much pleaded ignorance, too. It was "never explained" that way, he told me. So that's two council members who didn't seem to know what engine was driving the truck when they voted. Councilman Dick Spees concurred to some degree. "It was probably not made abundantly clear," he told me, "or maybe we didn't ask the right questions." Either way, it leaves a thick scull like me to conclude that either the City Manager's office and the Oakland Fire Department were playing three-card-Monty with the council, or the council wasn't, as Spees suggested, doing its homework. Neither scenario, of course, speaks too highly of our "process."

To Brunner and the council's defense, I will say that Chief Simon, who Spees called "very straight and very good," looked like Bill Walsh on steroids when he did the X's and O's of the deal at the Peralta meeting. "They're moving this guy to No. 23, and that overtime guy to No. 15," and filling this slot with a Jell-O mold . . . yadda yadda, yadda. It had to be explained three times before it sunk into my head. But the gist remains what I said at the beginning — eight less firefighters per shift, while North Oakland burns, er closes.

A number of current and former firefighters were there to reiterate the obvious. Don Mathews, former Station No. 8 chief, said that fire protection in North Oakland will go "down, down, down." "All I can say," he said sardonically, "is good luck."

The 800-pound gorilla that nobody mentioned at the meeting was Sept. 11 (and anthrax, and the governor's bridge warning just days before). Prior to 9/11, I could see taking a swing at this deal, keeping our fingers crossed and hoping no one gets burned. Now, firefighters may be our front lines if anything goes down in the terror war. This seems an odd and inappropriate time to cut services for any reason, don't cha think? And keep in mind, the reduction is city-wide. North Oakland is only the canary in the coal mine. We are all miners here.

Steve Splendorio, the Oakland firefighters' union rep, was adamant. "The community deserves protection, " he said. "Station 8 should stay open one way or another." He added, "It's a political issue. If enough heat is applied, they'll find the money."

Neighbors, apply your heat to City Council. It will take five votes to change it. And an additional $4 million. Is your life worth four mil'? Your kids'?

Mr. Bobb — is your life worth it?

■ ■ ■

Selected Letters

p. 30

Downs Memorial United Methodist Church
6026 Idaho Street
Oakland, California 94608
Church: (510) 654-5858
Fax: (510) 654-6156

November 20, 2001

KELVIN SAULS
Minister

Vice-Mayor Jane Brunner
One Frank Ogawa Plaza
Oakland, CA 94612

Dear Vice-Mayor Brunner:

We are writing this letter to ask you to do everything in your power to reverse the City Council vote of this past June regarding the method of financing most of the costs of rebuilding Fire Station 8 on 51st Street above Telegraph Avenue.

We understand and wholeheartedly support the much needed replacement of Fire Station 8, but we have learned that the financing plan will result in cutting eight firefighters from the city's available emergency response personnel and putting their engine and ladder truck (the only one in North Oakland) in storage for the rebuilding period, estimated to last a year or more, This loss of critical aid at potentially difficult times poses a grave danger for the entire city and especially for my parish, which is now covered by Station 8.

The reason we are especially impacted by the current plan is, to put it bluntly, that we may have more need than most for Station 8's presence when calamities occur. The parish is home to a predominance of elderly people, many of them no in the best of health and many living in wooden structures.

Station 8 knows our area and, of crucial importance, knows how to get to us fast. Moreover, our degree of alarm rises exponentially at the thought that their engine, the equipment most essential for emergency medical response, will be in storage somewhere when it might be most needed.

In sum, our entire parish population is becoming extremely concerned at this danger to their safety. We urge you to find another way to finance the new Station 8 rather than by endangering the well being of citizens who may find it hard to fight for their right to safety, but who are citizens nonetheless.

Thank you for your consideration.

Sincerely,

Rev. Kelvin Sauls
Pastor

JOAN E. ETTLINGER
481 Alcatraz Avenue Apt. C
Oakland, California 94609
(510) 658-0572

November 25, 2001

Public Safety Committee
Councilmembers Larry Reid, Henry Chang,
Danny Wan, Moses Mayne
Oakland City Hall
Frank Ogawa Plaza
Oakland, California 94612

Re: Firestation #8

Dear Public Safety Committee Councilmembers:

I am supporting the firefighters at Firestation 8 in their efforts to remain in North Oakland while the new firestation is under construction.

The proposal by the Fire Chief to take 8 firefighters and two pieces of firefighting apparatus off the street in order to fund the construction of a modern firehouse through savings in the City's overtime budget is scary. The Fire Department is understaffed now -- this plan only exacerbates the situation. The Chief's proposal could better be referred to as the "Wing and a Prayer Plan" since it seems like North Oakland residents are being asked to "wing it" and pray nothing catastrophic, like another hills fire or an earthquake or a terrorist attack, takes place during construction.

In order to modernize one stationhouse, the Chief is proposing to further understaff and underequip the Department through a plan that is so circuitous and confusing it has literally taken more than a couple hours for the community to understand but essentially relies on using overtime, the relief pool and taking two pieces of firefighting equipment out of service during construction.

I have seen the firestation. To say it is decrepit, would be a compliment. However, the firefighters who work there want to remain as a unit in North Oakland and are willing to continue living in deplorable conditions if the Committee and Council will accept their proposal which will be presented at the Public Safety Committee.

If the firefighters are willing to continue living in these appalling conditions in order to stay together, then I think the Committee and Council should support them. It will mean a higher level of emergency medical service and fire protection in North Oakland than the Chief's plan. It will keep two pieces of firefighting apparatus in use. And, it will be a morale booster to people who are already forced to work mandatory overtime because of chronic understaffing and must be there for us 24/7 to save our lives in a medical emergency or put their lives on the line in a fire.

Sincerely,

Joan E. Ettlinger

cc: Jackie Hoeppner-Freitas, DMV Neighbors

RCPC ROCKRIDGE COMMUNITY PLANNING COUNCIL

■ 5856 COLLEGE AVENUE PMB 130 ■ OAKLAND, CALIFORNIA 94618 ■ 510 • 814-6060 ■ www.rockridge.org

Council Member Larry Reid
One Frank Ogawa Plaza
Oakland, CA 94612

November 19, 2001

Dear Council Member Reid:

The Rockridge Community Planning Council urges you and the other members of the Public Safety Committee to reconsider the City Council's June budget vote to support Fire Chief Simon's plan for personnel reassignment/reduction and warehousing of equipment during the Fire Station 8 rebuild. We believe this proposal would result in the unnecessary loss of property and lives in North Oakland. We also believe that at the May 1st Budget Session Chief Simon did not made clear his intentions to reduce fire fighting capacity. We ask you, therefore, to recommend a new discussion and a revote of this proposal at the City Council.

It is apparent to RCPC that the response time to both fires and medical emergencies would be severely compromised with a reduction of firefighting postitions and equipment. RCPC is also greatly concerned that no formal agreements have been reached for backup support with the Piedmont or Emeryville departments. In light of the November 8 residential fire in Temescal that required two ladder trucks and 8 engines, how could it be argued that the City can guarantee the safety of its citizens without the heavy equipment from Station 8 in use?

The construction of the new fire station has been estimated to take 10 months. If all goes well and construction proceeds on time this retrenchment of available firefighters and equipment will extend into and through the most hazardous time of the year, the dry season. At this 10th anniversary year of the most disastrous residential fire in United States history the City Council should be especially mindful of its obligation to ensure that Oakland residents never experience such a devastating loss again. RCPC strongly urges the City Council to give more careful consideration to the potentially calamitous ramifications of reducing fire protection in our city.

Respectfully,

Susan Montauk
RCPC Chair

cc: Council Members: Jane Brunner, Danny Wan, Nancy Nadel, Dick Spees, Ignacio de la Fuente, Moses Mayne, Jr., Henry Wang,
Mayor Jerry Brown

Ruth Finnerty

From: "Ruth Finnerty" <ruthfinn@earthlink.net>
To: <jbrunner@oaklandnet.com>; <dwan@oaklandnet.com>; <nnadel@oaklandnet.com>; <idelafuente@oaklandnet.com>; <mmayne@oaklandnet.com>; <lreid@oaklandnet.com>; <cityochang@aol.com>; <district.4@oaklandnet.com>
Cc: <officeofthemayor@oaklandnet.com>; <citymanager@oaklandnet.com>
Sent: Tuesday, November 20, 2001 11:11 AM
Subject: Fire station 8

Dear Public Safety Committee members and/or all City Councilmembers:

I am writing to ask that you do everything in your power to ensure that the City Council rescinds its vote of this past June regarding the method of financing the rebuilding of Fire Station 8 on 51st Street above Telegraph Avenue.

I am completely in favor of the much needed replacement of Fire Station 8, but I have learned that the financing plan as approved in June will result in cutting eight firefighters from the city's available emergency response personnel and putting their engine and ladder truck (the only one in North Oakland) in storage for the rebuilding period, estimated to last a year or more. This loss of critical aid at potentially difficult times poses a grave danger not just for the area I live in, but indeed for the entire city and its neighboring communities, areas that Station 8 has itself historically been on call for.

Furthermore, the aid agreement with Piedmont and Emeryville that helped lead to the Council's vote has still not come to pass. Fire Chief Gerald Simon presented it as a settled arrangement both to the Council in May and to community meetings at the Temescal Library on September 27 and at Peralta Elementary School on November 3, Councilmember Jane Brunner's community advisory meeting. At the November 3 meeting, City Manager Robert Bobb contradicted Chief Simon, pointing out that he had told the Chief previously that the agreement had to be in writing, but there was nothing in writing yet.

Indeed, recently we were told that Oakland's request to Piedmont for help has been withdrawn. And now, with the City Council scheduled to meet on December 4 to reconsider its June vote, Chief Simon's Agenda Report tells us that Emeryville will make the agreement final on December 7, three days AFTER the Council's vote. We have heard, however, that the Emeryville city government knows nothing of this.

I urge you to investigate independently to determine whether the situation is as the Agenda Report claims. The lives of the people of Oakland depend on the viability of Chief Simon's plan, a plan that was supposed to exist on May 1, 2001, and still does not exist.

In any event, Emeryville is an unlikely candidate to help with replacements for Station 8. The number of calls that Station 8 receives--nearly 4000 in the year 2000, 1,010 for the ladder truck alone--would overwhelm Emeryville's ladder truck capabilities, and the necessarily longer response time could place citizens in serious jeopardy. (**NOTE:** The 426 figure of "actual action" responses on pages 3 and 4 of the Agenda Report is misleading because the truck has to respond as soon as each call comes in without waiting around the station to see whether the call is "actual" or not.)

Please find a way to finance the new Station 8 that will keep us all, including our firefighters, as safe as possible.

Thank you.

Ruth Finnerty

MEMORANDUM

City of Emeryville

December 4, 2001

TO: John Flores, City Manager

FROM: Stephen L. Cutright, Fire Chief

SUBJECT: **Approval of an Interim Enhanced Mutual Aid Fire Department Response Agreement with the City of Oakland during the reconstruction of Oakland's Fire Station 8**

RECOMMENDATION

Staff recommends that the City Council authorize the fire chief to enter into an agreement with the Oakland fire chief to provide interim enhanced mutual aid fire department response to designated areas of Oakland during the reconstruction of Oakland's Fire Station 8.

BACKGROUND

The City of Oakland is proposing a temporary enhancement of our mutual aid relationship. There are two elements of their proposal. First, they are asking Emeryville to provide temporary coverage with our Truck 2471 on all structure fires occurring within a section of their city affected by the anticipated closure and reconstruction of their aging and inadequate fire station 8 located at 463 -51st Street (near 51st and Telegraph Avenue). Second, the fire station 8 reconstruction will reduce Oakland resources available for emergency medical service (EMS) calls within a portion of their city adjacent to Emeryville's northeastern boundary, and they are asking Emeryville to provide interim EMS coverage there. Oakland expects the interim coverage to be needed for 10 to 12 months, when they once again will fully staff fire station 8 and provide it with modern equipment and apparatus. Oakland is seeking help to fill an anticipated temporary gap in their fire protection and medical service coverage.

An enhanced mutual aid agreement will benefit Emeryville in several ways both short-term and long-term. Emeryville will be assured of prompt and continuous emergency coverage, even when both fire units are busy on calls. Oakland will continue to provide low-cost dispatch services. Emeryville fire personnel will gain valuable experience in a wider scope of emergency calls and in working closely and more frequently with the larger operational teams in Oakland. An interim enhanced mutual aid system will carry forward into joint training and multi-company drills with Oakland, and the refinement of common professional standards covering emergency scene operations. This will mean developing a closer and more effective working relationship with Oakland, giving enhanced fire and medical service to the citizens of both cities. Eventually, when fire station 8 is replaced Emeryville will be able to utilize better fire protection resources available for us from that fire station.

VII.A EXHIBIT "H"

The section below covering the analysis of the proposed agreement will consider in depth its merits and impacts upon Emeryville. Before that discussion, however, a review the general mutual aid system will place the current proposal in historical context. The existing mutual aid system, after all, has worked reasonably well for many years. Unfortunately the system as it now exists has some shortfalls and gaps in providing effective fire and medical protection. Indeed, part of the appeal of the current proposal to enhance the mutual aid system between our two jurisdictions is its value as a 'first step' toward a more comprehensive automatic aid system.

Mutual Aid:
Dating back to at least the early 1970's when California experienced a series of catastrophic urban conflagrations, the mutual aid system among fire and law enforcement agencies is by now a time-tested and solidly proven method of interagency cooperation, mutual support, and group protection. The concept of mutual aid is based on the much older principle of "collective security," where no individual is deemed secure unless all members are secure. Specifically in the case of the California fire service, local, state and federal agencies have agreed to pool their fire response resources so that each agency would receive emergency help according to its need, and in turn each agency would give emergency help to others according to its reasonable capacity to do so. Resources are lent between jurisdictions; except on very few and specialized circumstances no money is exchanged for mutual aid services. Above all, mutual aid is a system of protection which pools the resources of many to cover the eventuality that on occasion a member agency will need to ask for help. Single fire departments, and especially small ones, do not stand alone to protect their citizens against all emergencies, large and small. Instead they can rely upon a wider system of support, held together by common professional standards, to provide for their protection

Of course, as with any collective security system, mutual aid requires giving as well as receiving. How much and how often one gives and takes largely depends upon the circumstances of individual fire departments. In our case, as a small fire department, Emeryville is fortunate to have a relatively low emergency call volume, but on the other hand has limited resources and cannot adequately handle larger emergency incidents with only two companies on duty (and seven firefighters at a minimum). This means that Emeryville is in a position to lend mutual aid support to its neighbors (mainly Berkeley and Oakland) by sending a single company more frequently.

Oakland, on the other hand, is a large city with vast resources but also a significantly higher emergency call volume than Emeryville. Oakland is in a better position to lend occasional massive support to its neighbors in response to a large scale incident. Also, because of the extensive breadth of resources available to a large fire department, Oakland is able to provide Emeryville with specialized resources unavailable to any small fire department. Under the existing mutual aid arrangement between Oakland and Emeryville Oakland gives the kind of support to Emeryville that a small city cannot get any other way and in such a short time. On the other hand, Emeryville

VII. A

gives Oakland the kind of support it needs most: single unit responses to cover their districts when their units are busy on one of their own emergencies.

The mutual aid system upon which Emeryville relies is based upon three (3) underlying elements.

1. California has established a cooperative State Fire and Rescue Mutual Aid System under the authority of the Governor's Office of Emergency Services (OES). Although participation is completely voluntary for local jurisdictions, the system has the full participation of every fire agency in the state.

2. California OES has augmented the State Fire and Rescue Mutual Aid System by administering a mutual aid system which encompasses agencies of the federal government: the Forest Service, Bureau of Land Management, and the National Park Service. This agreement is called the Cooperative Agreement for Local Government Fire Suppression, shortened to the "Five-Party Agreement" and provides for federal and state reimbursement of mutual aid costs incurred by local government fire agencies when responding to fires on state or federal lands.

3. The cities, special districts, Alameda County, CDF, the University of California, and the United States Army and Navy have established an Agreement for Mutual Fire Assistance within Alameda County. This agreement, to which Emeryville is a signatory, was entered into on October 28, 1993 and provides for mutual reciprocal assistance, mutual indemnification from liability and an agreement to hold each of the other parties harmless from claims for damages. From this county-wide agreement, the fire chiefs have developed an "Alameda County Mutual Aid Plan" which specifies the way mutual aid for fire and medical resources will be organized. The County Mutual Aid Plan and its underlying agreement is the backbone of the existing mutual aid relationship between Emeryville and Oakland.

After the October 1991 East Bay Hills Fire, the mutual aid system was further modified, this time to create Mutual Response Areas (MRA) between Emeryville, Oakland and Berkeley. Although the MRA concept was never actually implemented for Emeryville (Oakland and Berkeley in fact developed an MRA for the hills area), the Emeryville City Council on June 17, 1997 adopted Resolution 97-117 authorizing the City Manager to enter into MRA agreements with Berkeley and Oakland. The MRA mutual aid concept provided for fire units from each of the parties to respond directly to emergencies within the designated MRA's on an immediate basis, without waiting for a formal mutual aid request. The MRA agreements were the first time that the cities of Oakland, Berkeley and Emeryville contemplated an arrangement known as "automatic aid" where fire and medical operations were conducted on the basis of the nearest fire unit went immediately to the emergency regardless of jurisdictional boundaries.

VII.A

During the past several years, the Alameda County Fire Chiefs Association has recognized that although the MRA mutual aid concept failed to be implemented broadly in the county, the concept of automatic aid should be incorporated into an updated Alameda County Mutual Aid Plan. From a variety of perspectives and circumstances the county fire chiefs recognized that the existing mutual plan was slow and poorly responsive to the immediate emergency needs which often arise in each jurisdiction. A better system is currently under plan development, a system which involves coordinated communications dispatching, boundary drops, nearest unit response, joint training, common operational standards, and a uniform approach to providing acceptable levels of coverage and response to all participating jurisdictions. The vision now entertained by the county fire chiefs is that mutual aid needs to go to the next step: toward an eventual functional integration of emergency operations.

Interim Agreement:
The proposed interim agreement with Oakland for enhanced mutual aid needs to be considered within this historical context. The agreement is not just about Emeryville covering Oakland fire station 8's still district with a truck company. It is about strengthening the ties between Oakland and Emeryville in the joint delivery of fire and medical services. It is about ensuring that Emeryville gives resources it has the capacity to give in exchange for getting resources it doesn't have in a large emergency or when both of its units are busy. It is about starting to craft a regional system of fire protection and not just relying upon our small fire department for all of our protection. The enhanced mutual aid agreement is a first step, a carefully limited step, a step which can help us move toward a more encompassing system of collective security.

The proposed interim agreement would have Emeryville provide coverage in two ways:

1. Provide aerial truck company response from Emeryville fire station 2 to the "still district" (or first in district) formerly covered by Oakland Truck 8 before their station closure;
2. Provide EMS coverage to an area of Oakland immediately adjacent to the northeast boundary of Emeryville, from Vallejo Street on the west, 53rd Street on the south, Lowell and Sacramento Streets on the east, and the Berkeley border on the north. From Emeryville's east border, fire units would respond up to six blocks east into Oakland for EMS coverage

In exchange, Oakland agrees to provide coverage for Emeryville in the event we deplete our resources on the basis of the closest available unit. For medical calls, the engine out of Oakland's fire station 5 located at 934 34th Street will be responding with a paramedic assigned to that unit. Further, during a significant mutual aid event Oakland will provide coverage to Emeryville during periods of exhausted resources. The 9-1-1 dispatch services to Emeryville will continue without any increase to the $ 30,000 per year cost. The indemnification and hold harmless provisions of

VII A

the Alameda County Mutual Aid Agreement also apply to this enhanced mutual aid agreement. Finally, Emeryville and Oakland will develop joint training, joint recruit academy and multi-company drills.

ANALYSIS/DISCUSSION

The proposed interim agreement for enhanced mutual aid with Oakland raises several issues which need to be addressed.

1. What is the expected response activity for Emeryville in responding to Oakland? Please refer to the analysis sheet attached to this report entitled "Proposed Oakland Fire Station 8 Coverage: Emeryville Fire Mutual Aid." The spreadsheet is divided vertically into four sections; direct your attention to the left section of the spreadsheet.

   Taking calendar year 2000 emergency call statistics from the Oakland Fire Dispatch Center, we were able to determine the number of calls fire station 8 actually responded to within the Oakland district Emeryville is being asked to cover. During the public debate over this issue an Oakland resident developed figures for emergency calls from fire station 8 which are significantly at odds with the figures we have obtained from the dispatch center. We sorted the station 8 calls by geographic area to determine only those calls within their "still district." The engine and truck units out of fire station 8 responded to areas of Oakland outside that still district, and this accounts for the higher figures promulgated by the Oakland resident.

   Our estimate, corroborated by Oakland fire officers responsible for analyzing their plan, shows that for 2002 Emeryville would be expected to respond under the interim agreement to 704 calls: 266 truck responses and 438 EMS responses. As the starred column (***) in the left section of the spreadsheet shows, this will amount to a total of slightly under two emergency calls per 24-hour day by the Emeryville Fire Department into Oakland. EMS responses would account for 63% of the added call volume. Oakland fire officers have noted that although the Emeryville truck company might be dispatched to 0.73 fire calls per day, based upon their actual fire incidents they estimate Emeryville will only have to work on actual structure fires 1.5 times a week. This report seems consistent with our experience with cancellations for fire calls due to false alarms and cases where only minor fires are found which do not require a truck at the scene.

2. What is the expected impact on the Emeryville Fire Department's emergency response load? Again, please refer to the analysis sheet attached to this report entitled "Proposed Oakland Fire Station 8 Coverage: Emeryville Fire Mutual Aid." The right three sections of the spreadsheet analyze the impact of adding Oakland's requested emergency responses

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under the interim agreement for enhanced mutual aid. Like a glass either half full or half empty of water, it is possible to look at the fire station 8 impacts upon Emeryville as either very minor or very large. The facts strongly point to a very minor impact.

In the 2002 calendar year we expect under the interim agreement that the Emeryville Fire Department's emergency call volume will jump from around 1,600 calls to 2,300 calls, about a 44% increase. While it is tempting to regard this increase as a significant change, in fact it has very little impact upon the 24-hour daily work load of the fire department because the Emeryville calls without Oakland responses are so low to begin with. At only 4.35 calls per 24-hour day from two fire stations, Emeryville fire crews would be asked under the interim agreement to add 1.92 calls per shift to their work load, for a department total of 6.28 calls per 24-hour day. This increase is hardly significant even for one fire company, let alone for two operational companies. When you consider that one of Oakland's busier fire companies responded during the 2000 calendar year to over 8.5 calls per day, the impact upon only one Emeryville fire company is indeed minor.

3. Will Emeryville residents suffer when the paramedic engine from Fire Station 2 cannot respond to an Emeryville medical call because that company is away on a fire in Oakland? The concern is that a Triangle resident might get a delayed response from Station 1's engine (from the Peninsula) or that Oakland wouldn't be capable of providing paramedic level EMS service.

Under the principle that the nearest unit responds, Oakland's engine 5 would respond to a Triangle EMS call. Oakland has recently staffed Engine 5 with a full-time paramedic firefighter, so unless they are busy on another call, Engine 5 will be able to cover the Triangle and eastern section of Emeryville with paramedic-level EMS service. In the event engine 5 cannot respond from Oakland, Emeryville will respond as it always has, from Station 1. The response times within Emeryville are historically well within the six-minute standard, even from across town.

4. Will Oakland provide for back coverage for Emeryville in the event both Emeryville fire units are on emergency calls? This is one of the best features of the proposed enhanced mutual aid arrangement with Oakland. Emeryville will obtain coverage from Oakland whenever Emeryville's resources are depleted. In the past, Oakland has covered Emeryville whenever both Emeryville fire units were engaged on emergency calls within our jurisdiction, or 'on request' whenever an emergency incident was larger than our two fire companies could handle. Oakland will continue as before, only now they will commit this coverage in writing to Emeryville and monitor Emeryville's fire coverage so that Emeryville will not need to request separately mutual aid before Oakland coverage begins. If Oakland cannot handle a timely response from one of their units (because that unit is out

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of position or on another emergency call) then Oakland will assume the responsibility of calling Berkeley for a mutual aid response. Like a true joint operations or automatic aid system, Oakland's dispatch will be the guarantor of Emeryville's fire protection coverage. They already do this for Oakland, now they'll include Emeryville.

5. Will there be operational continuity when the two separate fire departments are working an emergency scene together? Under the existing mutual aid system, there already is a fundamental degree of operational continuity. Under an enhanced mutual aid relationship, there will need to be better continuity on the fire ground. We will attain this continuity by training, multi-company drills, developing common operational standards, and by regular interdepartmental consultations and discussions designed to deal with little problems before they become large problems.

6. Is this interim agreement just a way for Emeryville covering Oakland so that they don't have to pay overtime to their firefighters? The public debate has certainly cast the proposed fire station 8 coverage plan in this light. Another statement of the issue is that one area of Oakland is suffering from poorer fire protection because of the City of Oakland's problem in affording overtime salaries. The problem is actually much more complicated than a reluctance to pay overtime to firefighters and keep the same number of firefighters on duty.

The Oakland Fire Department is having a difficult time staffing their fire companies. The impact of change in the retirement system, the move to firefighter/paramedics shrinking the labor market, and historical staffing short-falls have combined to create a significant staffing shortfall. As a result, Oakland has for the past month been unable to fill all of their minimum firefighter positions on weekends, even when they have ordered mandatory overtime for personnel. The Union (Local 55) is responsible for scheduling overtime and they have been unable to fill engine companies at some stations. This situation will only get worse with added retirements in the December 2001 to February 2002 period.

If Oakland is in this kind of staffing crisis, Emeryville's addition of truck coverage for fire station 8 is not going to take away overtime work opportunities for Oakland firefighters so much as it will ensure that sections of Oakland in fact remain adequately covered. If the Union cannot fill the positions minimally required to be filled on a daily basis, then it is not reasonable to accuse Oakland of merely trying to save money by asking Emeryville to help. Our help is directly related to ensuring that our neighbors in fact maintain their fire protection coverage. This is, after all, a core concept of mutual aid.

7. Is Emeryville providing greater value in services to Oakland than it is getting in return? This question also cuts to the heart of the mutual aid concept. Each party in a mutual aid

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relationship gives according to what it can give, and receives according to its needs. Mutual aid is like an insurance risk pool. Emeryville has very few simultaneous alarms where both fire units are out of service at the same time. With Emeryville's relatively low call volume, there is excess emergency response capacity to provide single fire unit assistance regularly. Emeryville "pays" every day in single fire unit "premiums." When Emeryville must make a claim for resources from the mutual aid risk pool, however, it has the assurance of knowing that the risk pool will provide the resources needed in a timely manner. Oakland has the resources to provide massive response to cover Emeryville when an emergency outstrips Emeryville's capabilities. The attached "Comparison of Aid Provided" speaks directly to relative benefits of our relationship for 2001 to date.

More than this, however, Oakland has a myriad of resources which Emeryville with its small fire department simply cannot afford. The attached resource list from the Oakland Fire Department clearly shows the depth of their ability to assist Emeryville both on an emergency and on a non-emergency basis. Many times over the past years, Oakland has assisted Emeryville with routine emergency services and non-emergency services. The point is that we must look at the mutual aid relationship on the basis of whether our needs are being met, or alternatively whether we can meet them more efficiently some other way The historical record supports the assertion that mutual aid is both cheap and reliable insurance for Emeryville.

8. Doesn't the existing mutual aid system work just fine? Why do we need to change it? Given Emeryville's considerable target hazards (e.g., the Watergate Complex) and the high rise buildings, the Emeryville Fire Department is seriously short on resources to handle even moderate-level emergency situations alone. Mutual aid does work, but it doesn't work well enough to cover certain of our fire protection needs.

Fires grow exponentially, given available fuel. This means that rapid and resource-intensive responses are what is needed to control and extinguish small but fast growing fires before they get to be big fires. In order to meet the requirements implied under NFPA 1710 (or avoid the liability), in order to assemble sufficient resources at an emergency scene before sending personnel into a fire building, we need to have a full structure fire response from initial dispatch. The current mutual aid system has too many loose ends, involving too much time delay, to be good for Emeryville over the long term. Either we make the mutual aid system meet our objective needs, or we need to re-evaluate our resource posture for covering larger-scale emergencies.

Managing the Agreement:
There is much that needs to be managed and supervised with an interim enhanced mutual aid agreement with Oakland. A significant labor disagreement exists between Local 55 and the City of

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Oakland over this agreement. The dispatch system is critical to the effective working of the enhanced mutual aid elements, and dispatch performance must be monitored. Training must be adequate to cover operational needs and it is only through effective multi-company training that we can hope to coordinate the operational standards of both fire departments. If the call volume for Emeryville turns out to be significantly more than expected, we have to be prepared to scale back in planned ways. Oakland clearly has set a priority on the truck coverage from Emeryville, and so if the call volume is excessive it is likely that the Emeryville EMS response would be the first to be scaled back. Moreover, we will have to carefully monitor the way the Oakland Fire Dispatch provides coverage for Emeryville when both our fire units are out of service. We expect them to do well on this, since they provide continual coverage for Oakland already. But we must remain vigilant. The same is true with our emergency response times; we cannot afford to see a marked deterioration in these after an interim agreement is in force.

We are in a good position to monitor the execution of an enhanced mutual aid agreement. We have benchmark data on response times and call volumes, we have adequate reporting systems which will allow us to spot problems early and track trends, and we have open lines of communication between the command officers of both fire departments. Undoubtedly we will need to meet and confer with our Union over the impacts of such an agreement. We must monitor the actual service delivery into Oakland, remaining accountable both to the Oakland residents of the "DMV neighborhood" and our own citizens and City Council. Above all, we must be prepared to take aggressive action to correct problems, and if we can't correct those problems, we must admit failure and try other ways to assure fire and medical safety for both cities.

Finalization Process.
The authorization requested in the attached resolution and the attached letter of agreement contemplates the two fire chiefs refining the operational details of an enhanced mutual aid relationship before beginning actual coverage. The prior County Mutual Aid Agreement and the draft MRA Agreement give us a structure upon which to build the program's operational plan.

FISCAL IMPACT

The proposed enhanced mutual aid agreement will involve no direct cash outlay for the City, nor will Emeryville be compensated directly from Oakland for providing emergency services the them. There may be certain minor indirect savings realized and costs incurred, however. The emergency dispatch services provided by Oakland would not increase in cost from the current level of $30,000 per year and this would represent a kind of savings. On the other hand, there would be an incremental increase in the wear and maintenance costs associated with our apparatus (one engine and the aerial truck) and some of the equipment. Since we are still talking about only a minor impact upon the Emeryville Fire Department in terms of total call volume and emergency service activity, the incremental cost increase is likely to be minor, if it is noticeable at all.

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SUBMITTED BY:

Stephen L. Cutright, Fire Chief

APPROVED AND FORWARDED TO THE CITY COUNCIL:

John A. Flores, City Manager

Attachments: Comparison of Aid Provided: Emeryville and Oakland
Letter of Intent, November 8, 2001
Five-Party Agreement
Alameda County Mutual Aid Agreement
Resolution 97-117
Proposed Oakland Fire Station 8 Coverage:
Emeryville Fire Mutual Aid
Calls Per Firestation in 2000 and Other Quick Facts
(Jacqueline Hoeppner-Freitas, Oakland resident)
Oakland Fire Department Emergency Resource List
Map of Coverage

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COMPARISON OF AID PROVIDED
Emeryville and Oakland
2001

Emeryville Gets From Oakland	Oakland Gets From Emeryville
• Mutual aid coverage when when both EFD units are busy (3 fire units sent)	• Mutual aid coverage when OFD units in west-Oakland are busy (9 fire units sent)
• Mutual aid fire units for confirmed structure fires (2 fires @ 3 units each = 6 fire units sent)	• Mutual aid fire units for confirmed structure fires at multiple alarms (2 fires @ 1 unit each = 2 fire units sent)
• Mutual aid fire command staff on confirmed structure fires (2 fires @ 1 Battalion Chief each)	• Not requested, occasionally respond voluntarily; no command staff available after-hours
• Use of Fire Training Facility for Recruit Physical Agility Testing (One 8-Hour Day)	• None
• Participation in Specialized Training Programs – Weapons of Mass Destruction Drill – Medical Response Training–WMD – Recruit Academy	• Invited to multi-departmental High Rise Drills and Inspections (hosted in Emeryville)
• Specialized Emergency Resources: – Heavy Rescue Unit – Fire Boat – Air Supply Unit (SCBA refilling) – Foam Unit – Hazardous Materials Unit – Power Unit (large generator) – Command Unit (large emergencies) – Salvage Unit – Trauma Diffusing/Debrief Team – Fire Investigator	• None
• Staff Assistance (Testing)	• Staff Assistance (Testing)

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RESOLUTION NO.

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF EMERYVILLE AUTHORIZING THE FIRE CHIEF TO ENTER INTO AN AGREEMENT WITH THE OAKLAND FIRE CHIEF TO PROVIDE INTERIM ENHANCED MUTUAL AID FIRE DEPARTMENT RESPONSE TO OAKLAND DURING THE RECONSTRUCTION OF OAKLAND'S FIRE STATION 8

WHEREAS, mutual aid is a system of collective security by which fire departments may obtain additional resources for responding to emergencies within their individual communities; and

WHEREAS, the Emeryville Fire Department requires prompt back up coverage by other cities, including the City of Oakland, to ensure availability of adequate emergency response personnel; and

WHEREAS, the City of Emeryville and the City of Oakland are parties to the Alameda County Mutual Aid Agreement initiated on October 28, 1983, and to the Alameda County Mutual Aid Plan; and

WHEREAS, the City of Oakland desires to reconstruct an old and marginally functional fire station, Station 8 at 463 - 51st Street, and the Oakland is requesting Emeryville's assistance on a interim basis until reconstruction is completed to provide certain specific emergency aerial truck and fire engine coverage into areas now covered by the fire units housed at Fire Station 8; and

WHEREAS, the City of Oakland will provide to Emeryville certain backup emergency coverage when Emeryville's resources are depleted, and will provide such services in the quantity and quality acceptable to Emeryville in meeting its emergency fire and medical service requirements; and

WHEREAS, the City of Oakland and Emeryville contemplate further cooperation in developing joint training, multi-company drills, joint recruit academy training and development of common professional standards for their emergency operations;

THEREFORE, BE IT RESOLVED that the City Council of the City of Emeryville authorizes the Fire Chief to enter into an agreement with the Oakland Fire Chief to provide interim enhanced mutual aid fire department response to Oakland during the reconstruction of Oakland's Fire Station 8.

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ADOPTED by the City Council of the City of Emeryville at a regular meeting held on December 4, 2001.

AYES:_____

NOES:_____ **ABSENT:**_____

EXCUSED:_____ **ABSTAINED:**_____

_____
MAYOR

ATTEST:

_____
CITY CLERK

APPROVED AS TO FORM:

Michael G. Biddle
CITY ATTORNEY

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Truck 5's territory is all of N. Oakland. It's housed at Station 8.

Truck Response Coverage

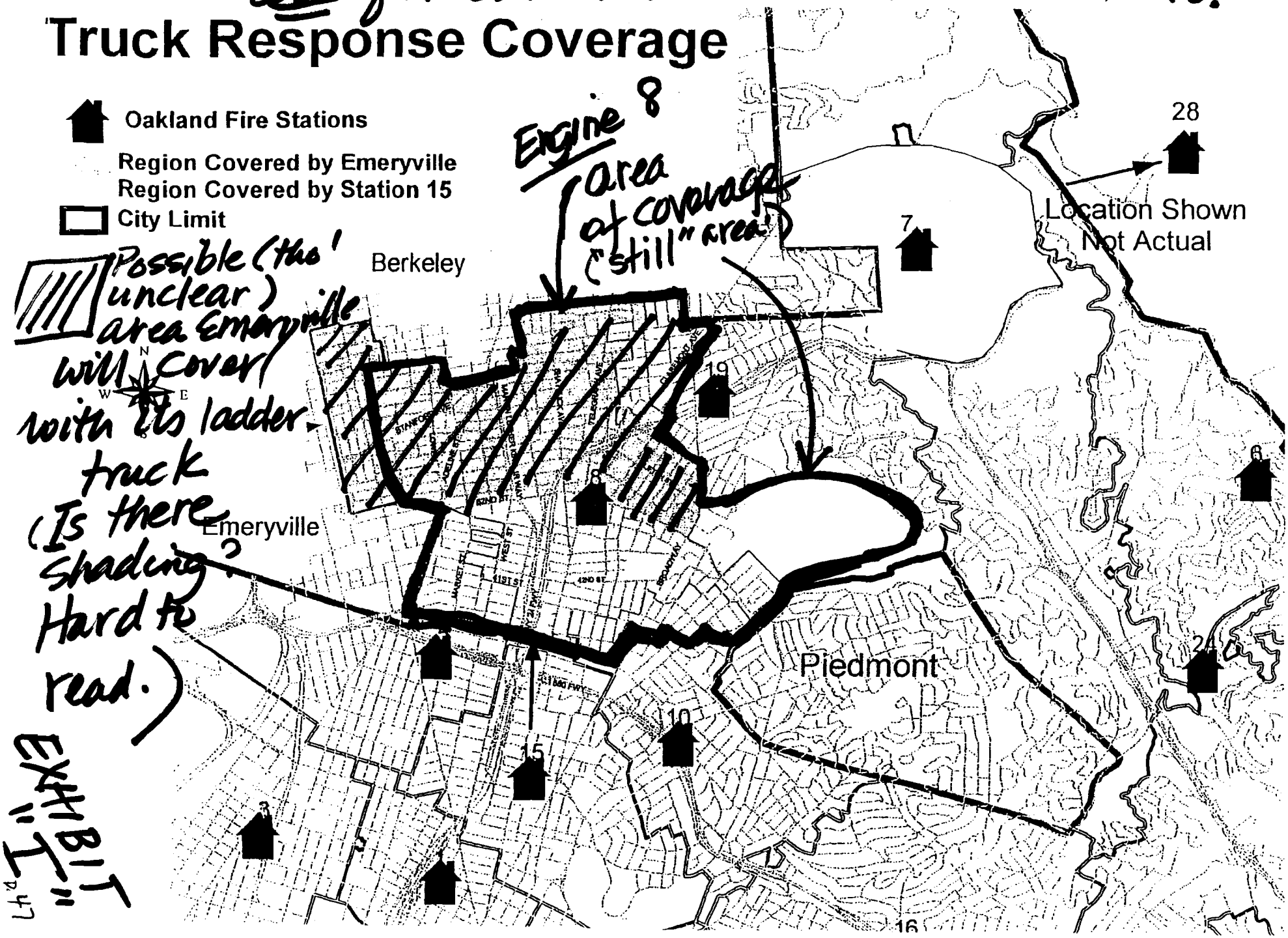

EXHIBIT "I"

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EMERGENCY CALLS FOR SERVICE (ACTUAL CALLS)

Station 8, Year 2000

Located at: 463 51st Street, Oakland, CA

BLUE	medical	All medical with apparatus arriving on scene.
RED	structure fires	Any working fire, visible smoke/flames. Engine and/or ladder truck.
ORANGE	all other fires	Examples: outside fires, pot on the stove, electrical and random smoke investigation.
YELLOW	utility	Examples: ringing alarms, lock-in, wires down and gas leaks.
GREEN	hazmat	Hazardous materials and/or chemicals, and all other unidentified.
LARGE PUSHPIN = 10 calls		
EXTRA LARGE PUSHPIN = 100 calls		
RED FLAG	fatality	
FIREHOUSE LOCATIONS		

9 D
12/04/01

CITY OF OAKLAND

CITY HALL • ONE FRANK H. OGAWA PLAZA • OAKLAND, CALIFORNIA 94612

Dick Spees
Councilmember
District 4

(510) 238-3266
FAX (510) 238-6129

Spees - Mtn

December 4, 2001

To: President Ignacio de la Fuente and City Councilmembers
From: Councilmember Dick Spees
Re: Item 12, Federal and State Legislative Agendas

After consulting with our federal and state advocates, I would like to propose the following motion. The effect of this motion is to allow the advocates to identify potential sponsors and/or funding sources for all the items on the Council's agenda, and to return with a follow up report in January.

MOTION:

1. **Direct the Federal Lobbyist to seek funding opportunities for all budget requests on the list through appropriations, grants or legislation and to identify potential legislative advocates (sponsors) along with a detailed political strategy for ~~these~~ Oakland-specific items ~~with the best chance of success in FY 2002.~~** all and analyze the chance of success.

2. **Direct the Federal Lobbyist to advocate passage of all legislative and administrative items, particularly where there is demonstrable positive impact for Oakland.**

3. **On State Budget Requests, direct the Office of Intergovernmental Affairs to:**

   (A) Pursue funding for the following state budget requests through general fund, grant funding, state park bond (Proposition 12), water bond funds (Proposition 13), library bond funds (Proposition 14), Proposition 42 - transportation funding initiative on March ballot, Proposition 40 - park bond on March ballot, and all other state potential funding;

   - Oakland Airport Connector
   - Local Street and Road Rehabilitation
   - California Museum Collections Facility
   - Museum Hands-on Ecology Center
   - Studio One
   - African American Museum & Library
   - Oakland Zoo Wild California
   - Union Point Park

this funding will complete

Item 12
Dec. 4, 2001

- Neighborhood Law Corps
- Oakland Military Institute
- After School Programs
- Storm Drainage System
- MacArthur Transit Village
- Channel Connection
- Waterfront Pathway/Shoreline Access
- Lake Merritt Retaining Wall and Walkway Repair
- International Blvd. Pedestrian Safety Improvements
- Martin Luther King Freedom Center

(B) further research and prepare the following items for potential funding;

- Caldecott Park Project
- San Pablo Pedestrian Safety Improvements
- Open Space

(C) and focus on projects that can be completed within the funding categories and/or funding levels available if Member's budget requests are solicited.

4. **On State Legislative Items, direct the Office of Intergovernmental Affairs to:**

(A) pursue sponsorship for the following legislative items:

- 311 Response
- Victims of Sexual Assault
- Probation/Parole Programs
- AB 381 – transit village development
- Vehicle Impoundment Program
- Housing Elements

(B) research and prepare the following Items for sponsorship when appropriate;

- Oakland Army Base Public Trust exchange
- Costa-Hawkins Amendments to exclude inclusionary zoning units from rent regulation
- Inclusionary Zoning
- Reimbursement for Local Clean up of Cal Trans Properties
- Increase criminal penalties for illegal dumping
- Establish clear stringent standards for liquor license revocation

(C) monitor legislation under General Matters and advocate for positions as directed by the City Council.

Redlined Version of Charter Amendment re Elections to Fill Mayoral Vacancies – Allows Vice Mayor to serve for unexpired terms of less than one year.

Section 303. Vacancy, Filling of. Upon the declaration of vacancy in the office of the Mayor, the office of the Mayor shall be filled by the Vice-Mayor of the Council. Except as otherwise provided in this Section, w~~W W~~hen the Vice-Mayor of the Council assumes the office of Mayor upon declaration of a vacancy, she/he shall serve for the unexpired term if such term is less than one year; otherwise she/he shall serve until the vacancy is filled ~~by the Council~~ as provided herein.~~..~~..~~until the vacancy is filled by the Council as provided herein~~. Whenever, the period of vacancy in a Mayor's term of office equals or exceeds 120 days but is less than one year, the vacancy may be filled by appointment through a majority vote of the remaining Councilmembers, provided the appointee shall not be a candidate for the next full term of the Office of Mayor. If at the time of a ~~Any~~ vacancy declaration the unexpired term is at least one year, the vacancy occurring in the office of Mayor shall be filled by ~~appointment by the majority vote of the remaining members of the Council; provided, that if two or less members remain, the appointment of Mayor shall be made by the majority vote of a body consisting of the remaining members and the members of the Alameda County Board of Supervisors representing districts including apart of the City. In the event such body is unable to or fails within a period of five days to take such action, appointment shall be made by the Governor of California~~. special election within 120 days of such vacancy. An extension of up to 60 days may be allowed for the express purpose of consolidating the special election with the next Municipal Election. If no candidate receives the majority of the votes cast in the special election, then a run-off election shall be held for the two candidates who received the highest number of votes no later than 60 days after the date of the special election; provided that all persons receiving a number of votes equal to the highest number of votes received by any candidate shall also be candidates at such run-off election. The candidate receiving the highest number of votes cast for all candidates for the office at the run-off election shall be declared elected. The candidate elected to fill the vacancy ~~An appointee to the office of Mayor for the balance of an unexpired term~~ shall hold office for the balance of the unexpired term~~until the next general municipal election~~... Notwithstanding any other provision of this section or the Charter, the Council shall have the authority to provide for preferential voting procedures by ordinance as an alternative to a run-off election. Alternative legal voting procedures shall be used to the greatest extent feasible to increase voter participation in special elections including but not limited to mail ballot voting, electronic voting, and extended voting period.

Items
5-19-
5-20

East Bay Alliance for a Sustainable Economy

548 20th St., Oakland, CA 94612
Phone: (510) 893-7106 Fax: (510) 893-5362

OFFICE OF THE CITY CLERK
OAKLAND
01 DEC -4 PM 12: 34

Fax Cover Sheet

To:	Fax Number: 238-6699
Company : Office of the City Clerk	Date : 12/4/01

From : Amaha Kassa	Pages including cover page: 12
Company : EBASE	Fax Number : (510) 893-5362

Subject :

Comments:

Please find attached three items sent to City Councilmembers December 3rd, 2001.

1. An EBASE brief responding to the CEDA staff report on the Living Wage Initiative that was submitted to the November 29th Rules Committee.

2. An EBASE response to Councilmembers Spee's questions that he raised at the Rules Committee meeting.

3. Proposed changes to the Initiative that narrows the scope of who is covered and affected by the anti-displacement provision and that creates a waiver process similar to the City's Living Wage Ordinance.

If you have any questions abuot these materials, please feel free to call our Director of Research, Howard Greenwich, at 893-7106 ext 17.

Thank you.

Amaha Kassa
Co-Director

S-4
CC
12.4.01

East Bay Alliance for a Sustainable Economy
548 20TH STREET, OAKLAND, CA 94612 • TEL: (510) 893-7106, FAX (510) 893-5362

Response to Concerns Raised by the CEDA Staff Report on the Port Living Wage

December 3, 2001

SUMMARY

This report responds to concerns raised about the *Living Wage and Labor Standards at Port-Assisted Businesses Initiative* by CEDA staff in a report to City Council dated November 29th, 2001. Some of the CEDA report's conclusions go unreasonably beyond the evidence and should be considered speculation. Other conclusions appropriately point out vague language in the Initiative to which clarifying language is proposed and explained in this response. Overall, we conclude that the costs of the living wage are affordable and will be outweighed by the benefits.

BACKGROUND

Whether the Port of Oakland should adopt a living wage policy has been debated and publicized for over two years at more than 20 public events. Several studies and reports have attempted to answer questions about the impact and it is useful here to briefly review their timeline. These reports include:

- *Living Wages at the Port of Oakland*, a study conducted by the U.C. Berkley Center for Labor Education and Research (CLRE) at the request of State Senator Don Perata and published in December of 1999.
- A Port staff report submitted to the Port Commissioners in January 2000 that assessed the economic impact to the Port of a living wage that covered contractors only.
- A Port staff report submitted in June 2000 that assessed impacts of the living wage on Port tenants. It relied on a partial survey of Port tenants.

CEDA'S OVERALL CONCLUSIONS

The CEDA staff report makes sweeping claims that the Initiative's costs to the public outweigh the benefits, but neither provides solid evidence for the costs, nor attempts to estimate the benefits. For example, the report asserts, "While data does not exist regarding the specific impact of this provision [worker retention], it will likely provide a severe disincentive to businesses currently doing business or considering doing business with the Port of Oakland."[1] The authors provide no negative evidence from other cities or airports with worker retention laws or similar labor standards. Instead, the report simply speculates about employer behavior under

[1] Page 7.

the requirements. The report makes no attempt to either balance the speculation by exploring the benefits of the provision or clarify that the conclusions are based mostly on conjecture.

Furthermore, CEDA relies primarily on evidence from a poorly implemented Port survey of tenants while ignoring the conclusions of a more empirically reliable survey conducted by U.C. Berkeley. The Port survey was hastily conducted in the Spring of 2000 with few resources granted to Port staff. Because Port staff were unable to follow-up with phone calls, the overall response rate was a low 29%.[2] In contrast, the U.C. Berkeley survey was conducted over the course of half a year by six researchers and obtained a response rate of 68%.[3] While the CEDA staff report uses determinations of costs from the U.C. Berkeley study, the University's conclusions about the affordability of the living wage are not reflected in CEDA's conclusions.

The most speculative conclusion of the CEDA staff report is the following statement:

> *City and Port staff have written reports during the process of adopting the existing living wage ordinances that indicated that, while there would be some increased costs to the City/Port and the effected businesses, the public interest outweighed these impacts. The same cannot be said of the ballot measure before the City Council.*

Considering that the report did not adequately explore the initiative's benefits to workers and employers, it seems unreasonable to make a conclusion about weighing costs and benefits. In fact, the Initiative will provide enormous benefit to the public through increased income, benefits and job security to 3,000 low-wage workers who are primarily Oakland residents (65%).[4] Growing economic inequality in the East Bay and the U.S. has created a crisis of low-wage poverty that local governments across the U.S. have responded to with living wage and labor standard policies.[5] Furthermore, Port businesses will pass on, at the most, 66 cents per visit to Jack London Square and 59 cents per ticket for passengers at the Oakland Airport.[6] These seem reasonable costs for the public benefit.

---

[2] *Port of Oakland Tenant Responses to Proposed Living Wage Ordinance*, Port of Oakland, June 6, 2000, pg 2.
[3] Zabin, Carol, Michael Reich, Peter Hall, Melanie McCutchan, Christopher Niedt and Egon Terplan, *Living Wages at the Port of Oakland*, U.C. Berkeley Center for Labor Research and Education, December 1999. (www.http://violet.berkeley.edu/~iir/files/portoak.PDF)
[4] Ibid, pg 49.
[5] For evidence of growing inequality, see Greenwich, Howard and Christopher Niedt, *Decade of Divide: Working, Wages and Inequality in the East Bay*, East Bay Alliance for a Sustainable Economy, September 2001 and Bernstein, et.al., *State of Working America 2000/2001*, Economic Policy Institute, 2001.
[6] Ibid, pg 3. Figures are in 1999 dollars.

CEDA'S PRIMARY CONCERNS

The body of CEDA's staff report focuses on three areas of concern with the Initiative. They are:

1. Several of the Initiative's provisions will reduce tenancy in Port facilities and consequently reduce Port and City revenues.
2. The requirement that the Port use public employees for existing and future services will increase the costs of obtaining technical and professional services.
3. The application of the worker displacement provisions to highly paid professional workers goes beyond other cities' laws by applying to highly-paid professionals.

Changes to Preventing Displacement of Workers Clause Eliminates CEDA Concerns

The second and third concerns raised by CEDA staff are effectively eliminated by language changes that have been presented to City Council by the City Attorney in the supplemental agenda packet. The section of concern here is number five, "Preventing Displacement of Workers."

CEDA believed that the broad definition of work under the requirement to not contract out public services would hinder the Port's capacity to expand. The new language would define "work" as non-temporary and not of a professional, scientific or technical nature. This brings the Initiative's scope of services in line with existing City Charter provisions.

CEDA also raised concerns that the worker retention provisions were phrased broadly and would cover professional employees not in need of protection. The new language narrows the scope of the provision to apply to "Service Employees" only, defined as all workers except managers, supervisors, professionals, paraprofessionals, confidential and office employees. The new language exempts professional service contractors as well as office tenants of the Port and any professional firm leasing space or land. Firms covered will include parking attendants at the Port and Jack London Square, shuttlebus drivers at the Airport and non-Port employed security workers. The narrower scope of this provision brings the Initiative more in line with worker retention laws in Philadelphia and Washington D.C., both of which cover all employers in their respective cities.

No Real Disincentives for New Tenants

The CEDA staff report raises three possibilities where prospective tenants would be dissuaded from locating on Port land. They are discussed in turn, below.

1. *Concern: Small businesses and start-ups will be unable to pay the living wage costs and will choose to not rent from the Port.*

The Initiative clearly exempts businesses with 20 or fewer workers. Several small gift shops at Jack London Square and the See's Candy carts at the Airport are examples of exempt businesses.

2. *Concern: Living wage costs will be a disincentive for tenants to locate at the Port.*

CEDA emphasizes two points under this concern. First is that tenants may refuse to do business with the Port as a response to the Initiative's requirements The second is that businesses facing the highest costs are those already facing hardship during the recession and after 9/11, e.g., hospitality, aviation and entertainment.

The question foremost in many public officials' minds regarding this issue is, how will the stores, restaurants and hotels on Port land respond to the living wage requirements? Will existing tenants leave and will new ones go elsewhere?

- The U.C. Berkeley study determined that Port of Oakland restaurants and hotels were already charging more than nearby businesses for the proximity to the waterfront and would be able to pass additional costs on to consumers as well.[7] Cities such as Emeryville and San Leandro, frequently mentioned as competitors to Oakland, do not have facilities on the same scale as the Port from which Commercial Real Estate (CRE) tenants can benefit.

- Nearly all major hotels in Oakland are already under union contract and have higher wage and benefits standards, including the Airport Hilton on Port land. Some smaller hotels on Port land will be affected, including Motel 6, Executive Inn and the Waterfront Plaza Hotel. These businesses have very long-term ground leases, benefit from proximity to the waterfront and would lose considerable money in facility investment if they left.

- Nearly all airport retail and restaurant tenants already operate under a collective bargaining agreements and have higher wage and benefits standards. What modest costs are incurred will likely be passed on to consumers, who represent a captive market. The U.C. Berkeley study estimates that the total cost of the living wage at the airport, including concessionaires, would be 59 cents per ticket if the costs were passed through to passengers. Compare with this with the over $2 per ticket costs imposed by new security requirements. Futhermore, living wage requirements at SFO and LAX have not driven away concessionaires.

- Businesses that employ low-wage workers will likely experience a cost savings from reduced turnover and increased worker productivity. The U.C. Berkeley study showed that higher wages and benefits resulted in lower quit rates, in turn saving employers re-training costs. The study estimated that, on average, 4% of labor costs will be saved, or about 1.1% of gross revenue. The rate is higher for firms with more low-wage workers. A more recent study of a living wage and labor standards program at San Francisco Airport showed that in one year, turn-over reduced by up to 80%, with the greater reduction occurring in low-wage firms.[8] One-third of all SFO employers, together accounting for over half of all employees, reported improved overall job performance among workers covered by the new standards program, while the rest reported no deterioration.

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[7] Zabin, et.al., pg 24.
[8] Reich, Michael, Peter Hall and Ken Jacobs, *Living Wages and Airport Security Preliminary Report*, U.C. Berkeley Institute for Labor and Employment, September 2001 with "Additional Tables."

In a Port of Oakland survey of tenants, 63% of employers responded that they would experience lower turn-over and 58% said it would be easier to attract new employees. This is an example where the CEDA report emphasized the negative responses from the tenant survey and ignored positive responses.

- CEDA staff pointed out that CRE tenants, including Jack London Square and the Embarcadero, would experience higher percentage costs than airport tenants, including 12 employers that would pay over 10% of gross revenues.[9] These firms, which are mostly restaurants, hotels and stores, face nearby competition and are more limited than airport tenants in passing costs on to consumers. Given their circumstances, it is likely that they will seek a reduction in rent for the amount not saved or absorbed otherwise. Even if the Port reduces rent for CRE tenants, the overall revenue generated by the CRE is only 11% of total Port revenues.

  Increases by a cluster of Port tenants in Jack London Square or Embarcadero will also push up wages and benefits for surrounding businesses as they compete for quality labor. This partially addresses the issue of tenants having to compete with businesses that are not on Port land but are near by.

- The likely scenario for restaurants and retail on Port land is that tenants will absorb the costs in a myriad of ways that will spread it out among their owners, consumers and the Port. Some tenants may decide not to move to Port property, but others will take their place. The Port may experience a modest loss in revenues, but this is weighed against the enormous benefits of the Initiative on the City of Oakland and the region.

  It is useful to compare the cost of the Port's donation of land to other governments, including East Bay Regional Parks and Amtrak. These annual donations cost the Port $33 million a year, a price for a public benefit far in excess to the price of a Port living wage.

3. *Concern: Worker retention may expose Port tenants to employee litigation and dissuade location on Port property.*

The CEDA report conjectures that prospective tenants would find the worker retention provision onerous and choose not to lease from the Port. Of primary concern is twofold: 1) employers with pre-existing staff would have to hire a second set of workers and 2) employers may be more vulnerable to wrongful termination litigation.

Extending worker retention to Port leasholders provides considerable public benefit. Port leaseholders are responsible for much of the Port's key operations for which they hire contractors to perform. Baggage handlers, in-flight catering, fuel handlers and rental car "hikers" are examples of operators that contract not with the Port but Port tenants. The existing workforce could, for any reason, be replaced overnight if the tenants who contract these services change contractors. Basic port operations could lose experienced workers who have decades of experience, are trusted employees and provide high-quality service. Furthermore, it seems

[9] These numbers are also from Zabin, et.al..

unreasonable that workers with years of experience could be dismissed overnight because a contract changes hands. The worker retention provision protects both the Port and Port-related workers. Worker retention laws in both San Francisco and Los Angeles cover airport tenants for the same reasons cited here. Additionally, the Los Angeles worker retention law covers concessionaires at the airport.

Cases where the retention of workers creates a burden on leaseholders seem rare. First, a large number of tenants will be excluded under the small business exemption and the proposed, narrower definition of employees affected by worker retention. Insurance brokers, software engineers, small gift shop employees and aviation instructors would not be affected. Second, new tenants would only have to offer work "which employees of the prior PAB can perform." A firm would need to be in a nearly identical industry and specialization to trigger the requirement.

Furthermore, it is hard to imagine a scenario where workers of one tenant would not follow their current employer and instead seek employment with the new tenant. Why would a worker risk leaving a current employer only to be let go from the new one after 90 days? It may occur in the case where a tenant is going out of business or is being bought by another firm. But unless the new firm begins operating within 90 days, the workers will not have an opportunity to start working with the new firm. Most restaurants and retail stores need several months to remodel. If the tenant *is* being bought out and operation of the facility will continue as before, it seems reasonable that the new tenant could actually use the former tenant's workers for an interim period and the workers would be well served to keep what is essentially the same job. In all of these scenarios, the likelihood of a former tenant's employee suing a new tenant seems remote. Finally, we could not verify any lawsuits pending against worker retention laws in other cities.

CONCLUSION

The *Living Wage and Labor Standards at Port-Assisted Businesses Initiative* will provide enormous public benefit relative to the costs, which can be absorbed without disruption of the Port's mission and operations. Costs, born by the Port, businesses and consumers will be affordable and not cause a major disincentive to potential Port tenants. In response to the CEDA staff report, we make the following points:

- The CEDA staff report's overall critique relies heavily on conjecture without seriously trying to weigh the costs with the benefits.
- Specific critiques about the anti-displacement provisions are solved by simple language changes that narrows the scope of workers covered.
- Small businesses with 20 or less employees are categorically exempt from the Initiative.
- Many of the Port's largest tenants, including Airport concessionaires and two hotels, are already under union agreement.
- Evidence suggests that living wage costs will be absorbed by reduced turnover and higher worker productivity.
- Worker retention coverage of Port tenants will greatly benefit the Port and Port-related workers.
- The worker retention provision is highly unlikely to cause undue litigation for Port tenants.

East Bay Alliance for a Sustainable Economy
548 20TH STREET, OAKLAND, CA 94612 • TEL: (510) 893-7106, FAX (510) 893-5362

Answers to Eight Questions Raised in Rules and Legislation Committee On the Port Living Wage and Labor Standards Initiative

December 3, 2001

Following are eight specific concerns raised by Councilmember Spees at the November 29th Rules and Legislation Committee meeting regarding the Port Living Wage and Labor Standards Initiative. We respond to each in turn.

1. Should these provisions be placed in the Charter or passed in an ordinance?

The Port Commissioners have had the living wage issue before them for over two years. They have refused to consider passing a living wage ordinance that affects all 3,000 low-wage workers at the Port. Because the City Charter sets up the Port as an independent agency, neither Oakland City Council nor Oakland voters can impose legislation on the Port in the form of an ordinance. If City Council finds the proposed legislation important, the only option is to place a charter change on the ballot for the voters to decide.

2. What does Port-assisted business mean precisely and how does it relate to market rate tenants?

A Port-assisted business includes a) contractors of the Port b) businesses subsidized by the Port and c) business holding a lease or license agreement with the Port. We believe that the Port will on occasion subsidize tenants by allowing them to pay sub-market rate rents as inducements for leasing with the Port. However, we consider all lease and license holders Port-assisted businesses as they are benefiting from the use of public resources and from the massive public investment in Port infrastructure.

3. Does the Initiative contain a credit for tipped workers?

Under California law, tips are considered the property of the employee and it is illegal to credit tips towards wages owed workers. We believe that prohibiting tip credit is legally necessary, easier to implement and fair to workers. Allowing a tip credit creates more problems than it solves, primarily because workers are tipped at widely varying rates. For example, airport skycaps regularly receive substantially more in gratuities than airport wheelchair attendants. Furthermore, within each job the amount any worker receives can vary greatly over time. Therefore to implement a tip credit requires taking measures that can result in losses to workers. This includes either estimating tipped income in advance, perhaps inaccurately, or withholding some wages owed workers until the end of the year when they report total tipped income. Finally, a poll of Oakland residents shows that 69% of voters support having a provision in the initiative, which, like State law, does not credit tips towards wages.

4. Why is the youth worker exemption in the Initiative inconsistent with the City of Oakland's living wage exemption for youth workers?

The Initiative's exemption for youth worker is identical to the City's Living Wage Ordinance—workers under 21 that are working for a non-profit or are training for less than 90 days are exempt. The CEDA staff report dated November 29th was in error on this point.

5. Should there be a waiver process for Port businesses as there is in the City's ordinance?

There may be rare and extenuating circumstances where a Port-assisted business faces undue hardship under the Initiative. If the waiver process was as rigorous and accountable as in the City's ordinance, the living wage coalition would be willing to amend the Initiative. The City's waiver process requires a report from the City Manager, a set of criteria that must be met by the businesses seeking a waiver and a vote by City Council. We would not accept a process set forth in the Port's existing living wage ordinance which allows the Port Executive Director to issue waivers without requiring businesses to meet any criteria and without any public process. We have enclosed and sent to the City Attorney proposed waiver language to which we could agree.

6. The coverage of highly-paid professionals by the worker retention and anti-displacement provision, as pointed out by CEDA, needs to be addressed.

We have proposed simple language changes that narrow the scope of work covered by these provisions. Port contracts for non-temporary work of a technical or professional nature would not be included. Likewise, only tenants that employ "service employees" are affected by worker retention. "Service Employees" means all employees except managers, supervisors, professionals, paraprofessionals, confidential and office employees. This effectively eliminates most of CEDAs concerns.

7. Won't the Initiative be vulnerable to legal challenges?

The legal report prepared by the City Attorney's Office explored the legal issues regarding the Initiative thoroughly and comprehensively. It concluded that while some provisions of the initiative may draw suit, that the City was likely to prevail against any legal challenge. Whenever elected officials create social policy, particularly legislation as important as this initiative, they run the risk that those being regulated will take legal action against them. A case in point is Oakland's anti-predatory lending ordinance, which lenders challenged in court and which the City has successfully defended. The City Attorney's assurance that the City is on firm legal ground is as close to a guarantee as the City is likely to get.

8. How will this affect the Metroport development at Hegenberger and I-880?

The Port of Oakland is selling the land to the developer. It will be unaffected.

Please feel free to call EBASE with any question regarding this response at 893-7106.

Proposed language changes to the Living Wage and Labor Standards At Port-Assisted Businesses Initiative

Proposed below are three changes that limit the scope of the Initiative. They are:

1. Clarifying language that exempts small business with less than 20 employees.
2. A more narrow definition of workers covered by the "Preventing Displacement of Workers" provision.
3. A new provision that provides for a waiver process under special circumstances (the language closely follows the City of Oakland's Living Wage ordinance).

1. Scope and Definitions.

The following definitions shall apply throughout this Section:

A. "Port" means the Port of Oakland.

B. "Port-Assisted Business" or "PAB" means (1) any person receiving in excess of $50,000 worth of financial assistance from the Port, or (2) any Port Contractor **if the person employs more than 20 persons per pay period, unless in the prior 12 pay periods the person has not had more than 20 such employees and will not have more than 20 in the next 12 pay periods. A PAB shall be deemed to employ more than 20 persons if it is part of an "enterprise" as defined under the Fair Labor Standards Act employing more than 20 persons.** "Port Contractor" means any person party to a Port Contract as herein defined.

C. "Port Contract" means:

(1) Any service contract with the Port for work to be performed at the Port under which the Port is expected to pay more than $50,000 over the term of the contract;

(2) Any contract, lease or license from the Port involving payments to the Port expected to exceed $50,000 either (a) over the term of the contract, lease or license, or (b) during the next 5 years if the current term is less than 1 year but may be renewed or extended, either with or without amendment;

(3) any subcontract, sublease, sublicense, management agreement or other transfer or assignment of any right, title or interest received from the Port pursuant to any of the foregoing contracts, leases or licenses.

A contract, lease or license with the Port or any agreement derived therefrom shall not be deemed a Port Contract unless entered into after enactment of this Section, or amended after

enactment of this Section to benefit in any way the party dealing with the Port.

D. "Employee" means any individual employed by a PAB in Port-related employment. ~~if the PAB employs more than 20 persons per pay period, unless in the prior 12 pay periods the PAB has not had more than 20 such employees and will not have more than 20 in the next 12 pay periods. A PAB shall be deemed to employ more than 20 persons if it is part of an "enterprise" as defined under the Fair Labor Standards Act employing more than 20 persons~~.

2. Exemptions from coverage

~~In addition to the above exemption for workforces of fewer than 20 workers, the~~ The following persons shall also be exempt from coverage under this Section:

A. An Employee who is (1) under twenty-one (21) years of age and (2) employed by a nonprofit entity for after-school or summer employment or for training for a period not longer than ninety (90) days, shall be exempt.

B. An Employee who spends less than 25 percent of his work time on Port-related employment.

C. A person who employs not more than 20 employees per pay period.

5. Preventing Displacement of Workers

A. Each PAB which is to replace a prior PAB shall offer employment to **the Service Employees** of the prior PAB, if these Employees worked for the prior PAB for at least 90 calendar days. Such Employees may be not be terminated by the new PAB during the first 90 work days except for just cause. The new PAB may operate at lower staffing levels than its predecessor but in such event, shall place the prior Service Employees on a preferential reinstatement list based on seniority. For purposes of this Agreement, a PAB "replaces" another if it (1) assumes all or part of the lease, contract or subcontract of a prior employer or obtains a new lease, contract, or sublease, and (2) offers employment which Service Employees of the prior PAB can perform. In the case of a replacement connected to the new PAB relocating from another location, in staffing decisions the new PAB may recognize seniority from its prior locations in addition to the seniority of the prior PAB's workforce. **"Service Employees" means all employees except managers, supervisors, professionals, paraprofessionals, confidential and office employees.**

B. Notwithstanding Section 902(e) or any other provision of the City Charter, except in

an emergency the Port shall not enter into any private contract for **regular (non-temporary)** work **which is not of a professional, scientific or technical nature and** which was performed by persons employed by the Port as of June 30, 2001, nor for the same class of work, including such work at new or expanded Port facilities.

New Section: Waivers.

A. A PAB who contends it is unable to pay all or part of the living wage must provide a detailed explanation in writing to the Port Executive Director who may recommend a waiver to the Port Board. The explanation must set forth the reasons for its inability to comply, including a complete cost accounting for the proposed work to be performed with the financial assistance sought, including wages and benefits to be paid all employees, as well as an itemization of the wage and benefits paid to the five highest paid individuals employed by the PAB. The PAB must also demonstrate that the waiver will further the public interests in creating training positions which will enable employees to advance into permanent living wage jobs or better and will not be used to replace or displace existing positions or employees or to lower the wages of current employees.

B. The Port Board will grant a waiver only upon a finding and determination that the PAB has demonstrated the necessary economic hardship and that waiver will further the public interests in providing training positions which will enable employees to advance into permanent living wage jobs or better. However, no waiver will be granted if the effect of the waiver is to replace or displace existing positions or employees or to lower the wages of current employees.

C. Such waivers are disfavored, and will be granted only where the balance of competing interests weighs clearly in favor of granting the waiver. If waivers are to be granted, partial waivers are favored over blanket waivers. Moreover, any waiver shall be granted for no more than one year. At the end of the year the PAB may reapply for a new waiver which may be granted subject to the same criteria for granting the initial waiver.

D. Any party who objects to the grant of a waiver by the Port Board may appeal such decision to the City/Port Liaison Committee, who may reject such waiver.

Rev. 12/04/01 Proposal-

The Charter of the City of Oakland is hereby amended to add the following section:

728. LIVING WAGE AND LABOR STANDARDS AT PORT-ASSISTED BUSINESSES

1. Scope and Definitions.

The following definitions shall apply throughout this Section:

A. -"Port" means the Port of Oakland.

B. "Port-Assisted Business" or "PAB" means (1) any person involved in a Port Aviation or Port Maritime Business receiving in excess of $50,000 worth of financial assistance from the Port, or (2) any Port Contractor involved in a Port Aviation or Port Maritime Business if the person employs more than 20 persons per pay period, unless in the prior 12 pay periods the person has not had more than 20 such employees and will not have more than 20 persons in the next 12 pay periods. A PAB shall be deemed to employ more than 20 persons if it is part of an 'enterprise' as defined under the Fair Labor Standards Act employing more than 20 persons. "Port Contractor" means any person party to a Port Contract as herein defined.

C. "Port Contract" means:

(1) Any service contract with the Port for work to be performed at the Port under which the Port is expected to pay more than $50,000 over the term of the contract;

(2) Any contract, lease or license from the Port involving payments to the Port expected to exceed $50,000 either (a) over the term of the contract, lease or license, or (b) during the next 5 years if the current term is less than 1 year but may be renewed or extended, either with or without amendment;

(3) any subcontract, sublease, sublicense, management agreement or other transfer or assignment of any right, title or interest received from the Port pursuant to any of the foregoing contracts, leases or licenses.

A contract, lease or license with the Port or any agreement derived therefrom shall not be deemed a Port Contract unless entered into after enactment of this Section, or amended after enactment of this Section to benefit in any way the party dealing with the Port.

D. "Employee" means any individual employed by a PAB in Port-related employment

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12-04-01

E. "Person" include any natural person, corporation, partnership, limited liability company, joint venture, sole proprietorship, association, trust or any other entity.

F. Valid collective bargaining agreement" as used herein means a collective bargaining agreement entered into between the person and a labor organization lawfully serving as the exclusive collective bargaining representative for such person's employees.

G. "Contract under 29 U.S.C.§185(a)" as used herein means a contract to which 29 U.S.C. §185(a) applies, as that provision has been interpreted by the United States Supreme Court.

H. "Port Aviation or Port Maritime business " means any business that principally provides services related to maritime or aviation business related services or whose business is located in the maritime or aviation division areas as defined by the Port.

2. Exemptions from coverage

In addition to the above exemption for workforces of fewer than 20 workers, the following persons shall also be exempt from coverage under this Section:

A. -An Employee who is (1) under twenty-one (21) years of age and (2) employed by a nonprofit entity for after-school or summer employment or for training for a period not longer than ninety (90) days, shall be exempt.

B. An Employee who spends less than 25 percent of his work time on Port-related employment.

C. A person who employs not more than 20 employees per pay period.

3. Payment of minimum compensation to Employees

Port-Assisted Businesses shall provide compensation to each Employee of at least the following:

A. Minimum Compensation

The ~~initial~~ minimum compensation shall be wages and health benefits totalling at least ~~ten dollars and fifty cents ($10.50) per hour, or if greater,~~ the rate of ~~any~~ the living wage ordinance of the City of Oakland.

B. Credit for Health Benefits

The PAB shall receive a credit against the minimum wage required by this Section for health benefits in the amount provided by and in accordance with the living wage ordinance of the City of Oakland. ~~of up to $1.37 per hour for the amount it spends on average for health benefits for all Employees covered by this Section and their dependents. For example, if an employer spends an average of $1.25 per hour for health insurance, then the employer need only pay each Employee at least $9.25 per hour in wages.~~

4. Notifying Employees of their potential right to the federal earned income credit

Each PAB shall inform each Employee who makes less than twelve dollars ($12.00) per hour of his or her possible right to the federal Earned Income Credit ("EIC") under Section 2 of the Internal Revenue Code of 1954, 26 U.S.C. §32, and shall make available the forms required to secure advance EIC payments from the business. These forms shall be provided to the eligible Employees in English (and other languages spoken by a significant number of such Employees) within thirty (30) days of employment under this Section and as required by the Internal Revenue Code.

~~5.~~ 5. Preventing Displacement of Workers

(A) Each PAB which is to replace a prior PAB shall offer employment to the Service Employees of the prior PAB, if these Employees worked for the prior PAB for at least 90 calendar days. Such Employees may be not be terminated by the new PAB during the first 90 work days except for just cause. The new PAB may operate at lower staffing levels than its predecessor but in such event, shall place the prior Employees on a preferential reinstatement list based on seniority. For purposes of this Section, a PAB "replaces" another if it (1) assumes all or part of the lease, contract or subcontract of a prior employer or obtains a new lease, contract, or sublease, and (2) offers employment which Employees of the prior PAB can perform. In the case of a replacement connected to the new PAB relocating from another location, in staffing decisions the new PAB may recognize seniority from its prior locations in addition to the seniority of the prior PAB's workforce. "Service Employees" means all employees except manager, supervisors, professionals, paraprofessionals, confidential and office employees.

~~(B) Notwithstanding Section 902(c) or any other provision of the City Charter, except in an emergency the Port shall not enter into any private contract for regular (non-temporary) work which is not of a professional, scientific or technical nature and which was performed by persons employed by the Port as of June 30, 2001, nor for the same class of work, including such work at new or expanded Port facilities.~~

~~**6. Agreements required to protect Port's proprietary interests from effects of labor disputes**~~

~~(A) As a condition precedent to any Port Contract in which the Port has a proprietary interest and which is in the Hospitality or Retail Food Industry, each such PAB shall be or become signatory to valid collective bargaining agreements or other contracts under 29 U.S.C. §185(a) with each labor organization representing or seeking to represent any of that PAB's Employees on Port property. Each such agreement or contract must contain a provision limiting the ability of the labor organization and its members (and in the case of a collective bargaining agreement, all employees covered by the agreement) to engage in picketing, work stoppages, boycotts or other economic interference with the Port for the duration of the Port's proprietary interest in such PAB's operation or for 5 years, whichever is less ("No-Strike Pledge"). Each such PAB shall also be required to ensure that any of its contractors, subcontractors, tenants, subtenants, licensees or sublicensees in the Hospitality or Retail Food Industry which are likely to impact the Port's proprietary interest will also be covered by No-Strike Pledges.~~

~~(B) For purposes of this subsection, "Hospitality or Retail Food Industry" includes hotels, motels or similar businesses, or on-site preparation, service or retailing of food, beverage or medication. A "proprietary interest" shall not be deemed to exist without (1) the Port being entitled to receive a percentage of the revenues or income of a business as rents, royalties or other income, and (2) the Port being expected to receive $50,000 or more in such rents, royalties or other income over the duration of the contract, lease or license.~~

~~(C) A PAB shall be relieved of the obligations of this subsection for any period of time during which a third-party neutral agreeable to the Port, the PAB and the Alameda Central Labor Council has found, after notice and hearing, either (a) that the labor organization is placing unreasonable conditions upon its No-Strike Pledge, or (b) that the Port lacks a legally-sufficient proprietary interest in such PAB's operation or the proposed agreement would be otherwise unlawful. If the parties are unable to agree upon a neutral, the PAB may contact the Federal Mediation and Conciliation Service (FMCS) to obtain a list of seven arbitrators affiliated with the National Academy of Arbitrators, from which the parties shall select a neutral by striking off names. At the PAB's request, such proceeding shall be conducted according to the FMCS expedited arbitration procedure. The Port shall bear the neutral's fees.~~

6. Waiver

A. A PAB who contends it is unable to pay all or part of the living wage must provide a detailed explanation in writing to the Port Executive Director who may recommend a waiver to the Port board. The explanation must set for the reasons for its inability to comply, including a complete cost accounting for the proposed work to be performed with the financial assistance sought, including wages and benefits to be paid all employees, as well as an itemization of the wage and benefits paid to the five highest paid individuals employed by the PAB. The PAB must also demonstrate that the waiver will further the public interests in creating

training positions which will enable employees to advance into permanent living wage jobs or better and will not be used to replace or displace existing positions or employees or to lower the wages of current employees.

B. The Port Board will grant a waiver only upon a finding and determination that the PAB has demonstrated the necessary economic hardship and that waiver will further the public interests in providing training positions which will enable employees to advance into permanent living wage jobs or better. However, no waiver will be granted if the effect of the waiver is to replace or displace existing positions or employees or to lower the wages of current employees.

C. Such waivers are disfavored, and will be granted only where the balance of competing interests weighs clearly in favor of granting the waiver. If waivers are to be granted, partial waivers are favored over blanket waivers. Moreover, any waiver shall be granted for no more than one year. At the end of the year the PAB may reapply for a new waiver which may be granted subject to the same criteria for granting the initial waiver.

D. Any party who objects to the grant of a waiver by the Port Board may appeal such decision to the City/Port Liaison Committee, who may reject such waiver.

7. Retaliation and discrimination barred; no waiver of rights.

A. A PAB shall not discharge, reduce the compensation of or otherwise discriminate against any person for making a complaint to the Port, participating in any of its proceedings, using any civil remedies to enforce his or her rights, or otherwise asserting his or her rights under this Section.

B. Any waiver by an individual of any of the provisions of this Section shall be deemed contrary to public policy and shall be void and unenforceable, except that Employees shall not be barred from entering into a written valid collective bargaining agreement waiving a provision of this Section (other than subsection 6) if such waiver is set forth in clear and unambiguous terms. Any request to an individual by a PAB to waive his or her rights under this Section shall constitute a violation of this Section.

8. Enforcement

A. Each PAB shall maintain for each person in Port-related employment a record of his or her name, pay rate and, if the PAB claims credit for health benefits, the sums paid by the PAB for the Employee's health benefits. The PAB shall submit a copy of such records to the Port at least by March 31st, June 30th, September 30th and December 31st of each year, unless the PAB has employed less than 20 persons during the preceding quarter, in which case the PAB need only submit a copy of such records every December 31st. Failure to provide a copy of such

records within five days of the due date will result in a penalty of five hundred dollars ($500.00) per day. Each PAB shall maintain a record of the name, address, job classification, hours worked, and pay and health benefits received of each person employed, and shall preserve them for at least three years.

B. If a PAB provides health benefits to persons in Port-related employment but does not pay for them on a per-hour basis, then upon the PAB's request, the amount of the hourly credit against its wage obligation shall be the Port's reasonable estimate of the PAB's average hourly cost to provide health benefits to its Employees in Port-related employment. The PAB shall support its request with such documentation as is reasonably requested by the Port or any interested party, including labor organizations in such industry.

C. Each PAB shall give written notification to each current Employee, and to each new Employee at time of hire, of his or her rights under this Section. The notification shall be in the form provided by the Port in English, Spanish and other languages spoken by a significant number of the Employees, and shall also be posted prominently in areas at the work site where it will be seen by all Employees.

D. Each PAB shall permit access to work sites and relevant payroll records for authorized Port representatives for the purpose of monitoring compliance with this Section, investigating employee complaints of noncompliance and evaluating the operation and effects of this Section, including the production for inspection and copying of its payroll records for any or all persons employed by the PAB. Each PAB shall permit a representative of the labor organizations in its industry to have access to its workforce at the Port during non-working time and in non-work areas for the purpose of ensuring compliance with this Section.

E. Notwithstanding any provision in Article VI of this Charter to the contrary, the City Manager may develop rules and regulations for the Port's activities in (1) Port review of contract documents to insure that relevant language and information are included in the Port's RFP's, agreements and other relevant documents, (2) Port monitoring of the operations of the contractors, subcontractors and financial assistance recipients to insure compliance including the review, investigation and resolution of specific concerns or complaints about the employment practices of a PAB relative to this section, and (3) provision by the Port of notice and hearing as to alleged violations of this section.

9. Private Rights of Action.

A. Any person claiming a violation of this Section may bring an action against the PAB in the Municipal Court or Superior Court of the State of California, as appropriate, to enforce the provisions of this Section and shall be entitled to all remedies available to remedy any violation of this Section, including but not limited to back pay, reinstatement or injunctive relief. Violations of this Section are declared to irreparably harm the public and covered

employees generally.

B. Any employee proving a violation of this Section shall recover from the PAB treble his or her lost normal daily compensation and fringe benefits, together with interest thereon, and any consequential damages suffered by the employee.

C. The Court shall award reasonable attorney's fees, witness fees and costs to any plaintiff who prevails in an action to enforce this Section.

D. No criminal penalties shall attach for any violation of this Section, nor shall this Section give rise to any cause of action for damages against the Port or the City.

E. No remedy set forth in this Section is intended to be exclusive or a prerequisite for asserting a claim for relief to enforce any rights hereunder in a court of law. This Section shall not be construed to limit an employee's right to bring a common law cause of action for wrongful termination.

10. Severability

If any provision or application of this Section is declared illegal, invalid or inoperative, in whole or in part, by any court of competent jurisdiction, the remaining provisions and portions thereof and applications not declared illegal, invalid or inoperative shall remain in full force or effect. The courts are hereby authorized to reform the provisions of this Section, including limiting the scope of coverage or striking the five-year provision of subsection 6, in order to preserve the maximum permissible effect of each subsection herein. Nothing herein may be construed to impair any contractual obligations of the Port. This Section shall not be applied to the extent it will cause the loss of any federal or state funding of Port activities.

OAKLAND CITY COUNCIL
Fire Station 8
December 4, 2001

CITY COUNCIL PACKET FROM OPPOSITION TO CHIEF SIMON'S PLAN & REPORT:

1. COLOR PHOTO: Emergency Calls for Service (Actual Calls), Station 8, YR 2000* (attached on front.)

2. MEMO: To City Manager Robert Bobb from J. Hoeppner-Freitas, Chair, DMV Neighbors Association in opposition to Chief Simon's plan — p. 2

Exhibit A:	Memo to Emeryville City Council from Local 55	— p. 12
Exhibit B:	YR 2000 and 2001 runs dispatched, with notations (Attachment 6 to Fire Department Supplemental Agenda Report)	- p. 13
Exhibit C:	Calls per Firestation in 2000 and Other Quick Facts	— p. 14
Exhibit D:	September 25, 2001, letter from Chief Simon to Chiefs Cutright and Speakman, with attached map (3 pages)	— p. 15
Exhibit E:	Government Code § 850.6	- p. 18
Exhibit F:	Emeryville Emergency Operations: 2001 (2 pages)	- p. 19
Exhibit G:	Local 55 proposal (2 pages)	- p. 21

3. Series of newspaper articles regarding Station 8 p. 23

4. Selected letters from Oakland citizens p. 30

Exhibit H: Agenda Report, Emeryville - p. 35

Exhibit I: Map of possible ladder truck coverage from Emeryville p. 47 (last page)

9D
CC
12-04-01

Submitted by:

Jacqueline Hoeppner-Freitas, Chair, DMV Neighbors Association (DNA)

COUNCIL
12/4/01
Item 9D

*Color photo for Councilmembers, Mayor, City Manager, and Fire Chief

DMV NEIGHBORS ASSOCIATION
5133 Miles Avenue
Oakland, California 94618
(510) 428-2714
Fax (510) 653-9980

TO: Office of the City Manager
ATTN: Robert C. Bobb
FROM: Jacqueline Hoeppner-Freitas, Chair, DNA
DATE: For City Council, December 4, 2001

RE: Response to Supp. Report on Fire Station 8 – Rebuilding Options

UPDATE *UPDATE* UPDATE* UPDATE*UPDATE* UPDATE* UPDATE*

Just prior to printing, we have learned that there is a major discrepancy between what Emeryville is being asked to cover, or what it thinks it's going to cover, and what our Chief Simon's Agenda Report implies Emeryville will cover. What this means is that not all of N. Oakland will have ladder truck service under Chief Simon's plan. Because of the importance of this information, I am inserting at the last minute this information at the front of this document, even though some of my internal page references will be "off." I also attach City of Emeryville Memorandum from Stephen L. Cutright, Fire Chief, Emeryville to Emeryville City Manager John Flores as Exhibit "H" and "Truck Response Coverage (Supplemental Agenda Report, Attachment 5) with my additions as Exhibit "I."

The essence is that Emeryville is being asked to respond with its big ladder truck to a small area of N. Oakland, not all of Station 8's ladder truck territory. Therefore, there will be no ladder truck assigned to a portion of N. Oakland. it's hard to tell how far Emeryville's possible coverage extends, but Chief Simon estimates the Emeryville truck will take 526 non-medical calls [Report, p.4) and Emeryville estimates it will take 266 [Emeryville Report, p. 5] An additional problem is, as I mention below: How are the rest of Station 8's over 1,000 yearly ladder truck calls to be handled? This question is still not answered.

In Cutright's Memo, Cutright leaves the impression that Oakland Truck 5 (which is housed at Station 8) has the same coverage of Oakland Engine 8 (which is also housed at Station 8). Since we have 26 engines and only 7 ladder trucks in Oakland, their respective territories are very different. Engine 8's coverage area is outlined in black on Exhibit "I." It may be, however, that Emeryville will not even handle all of Engine 8's territory (called its "still area" or "first response" area) -- only the portion of Engine 8's territory with very light shading that appears on Report, Attachment 5 (see

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my Exhibit "T"). Truck 5 from Station 8 covers N. Oakland from the Emeryville border, into the Oakland hills and up to Moraga.

Please review the following:

1) Emeryville Memo, p. 4: Emeryvill will provide coverage in two ways: 1) "Provide aerial truck company response from Emeryville fire station 2 to the "still district" (or first in district) formerly covered by Oakland Truck 8 before their station closure." There is no "truck 8," so the confusion begins here.

2) Emeryville Memo, p. 5: Emeryville has counted up only a portion of Engine 5's calls, and intends to cover about 266 of them.

3) Confirm the number of Truck 5 yearly calls in YR 2000 by looking at Attachment 6 of Simon's Report. The official figues are actually greater than the figures that the Fire Department gave to me and which I included in my Exhibit "C."

4) Emeryville will only be required to respond to "actual fire incidents," i.e., confirmed fires, unlike the standard applied to Oakland truck companies which have to instantly go out to evaluate the call (see last full paragraph of p. 5).

5) Engine 5 at Station 5 will have to pick up additional calls in Emeryville, although it is No. 4 in call volume in Oakland and although it will have to pick up a portion of Station 8's calls when it is closed. (See #4, p. 6 and elsewhere.)

I. Introduction. This document will serve as our response to Council regarding our research on and evaluation of the Fire Department's Supplemental Report on Fire Station 8 – Rebuilding Options.

The principal problem with Supplemental Report (hereafter, "Report") is that there is no viable, credible plan for fire department emergency coverage of North Oakland, yet the document attempts to make it appear that there is. The Report's assertion, that the response times will be within "acceptable response standards" under Fire Chief Gerald Simon's plan, is belied by the fact that there are no data to support that conclusion.

II. Key deficiencies in Chief Simon's plan.

1. Fifty per cent of District 1's firefighting companies will be shut down for 1-2 years to save citywide operational costs. This is a disproportionate "tax" on N. Oakland. To be done fairly, one firefighter would have to be downsized out of each of the Council districts, rather than just one district.

2. Chief Simon's original plan included Piedmont being assigned to a large area of Oakland. Now there is no mention of this assignment and no explanation for its absence. The presence of Piedmont in the original plan

suggests an inadequacy in the present plan. Emeryville will pick up confirmed structure fires only. (NOTE: Emeryville will pick up a small portion of EMS calls under the plan. This corects an error in my ealier draft.)

3. There is both inaccurate data and missing data concerning response times. Without data, the quality of coverage can not be measured.

4. The quality of contemplated coverage by Emeryville into N. Oakland is compromised by the fact that Emeryville's ladder truck is housed on the Bay side of I-80, on Powell Street. Representative response times into N. Oakland from Emeryville and Station 15 are not provided.

5. The loss of Station 8 firefighters will impact the districts of Councilmembers Spees, Wan and Nadel because their districts' resources will be drawn down and Station 8 will not be available for its usual backup. In addition, Engine 5 in District 3 is expected to pick up Emeryville's medical calls when Emeryville's ladder truck is handling Oakland's calls.

7. Contrary to expectations, Emeryville has provided more mutual aid to Oakland in 2001 than Oakland has provided to Emeryville.

III. Selected Observations.

Page 1, ¶2: Demolition time is not anywhere included in the 10 month rebuild period.

Page 2, ¶1: This paragraph makes clear that the reduction in 8 firefighters did not finance the building of Station 8, but rather is a citywide operational savings. N. Oakland is taking a disproportionate "hit," not because we get a new firehouse (as billed), but because Chief Simon saw the rebuild as a logistical opportunity to reduce personnel.

Page 2, ¶4: After much pressing, on November 3, Chief Simon explained to those of us gathered at Councilmember Brunner's monthly meeting that actually Station 8 personnel would be scattered about the City in overtime slots. He explained that his previous explanation that they would be placed at Stations 7 and 28, was simply the "functional equivalent" of the actual facts. Here, Chief Simon has reverted to his former explanation, which is only the "functional equivalent" of the actual facts. Stations 7 and 28 will experience no change in personnel because of Chief Simon's plan. Therefore, no advantage or disadvantage accrues to these stations under Chief Simon's plan. See further references to Stations 7 and 28, below.

Page 3, ¶2: The City never asked Children's Hospital whether they would swap the land across the street from Station 8 with the land on which the station now stands. On November 29, 2001, James Jackson, Director of

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Environment of Care, Children's Hospital, expressed willingness to discuss such a swap, and confirmed this was the first mention of a swap. Thus, the City did not fully explore options to keep Station 8 open until a new station could be built. Interestingly, Station 8 used to occupy the Children's Hospital site across the street before moving to its present location 50 years ago.

Page 3, ¶6: Response times. The response times mentioned here and laid out in Attachment 2 are not real time. Since no day and time of measurement is mentioned, one must assume the response times were measured on a Sunday, say around 10:00 a.m.

Actual response times vary from Attachment 2. For example, on incident #153546, Tuesday, November 6, Station 8 response time to 1048 62nd Street, one block from 61st and Baker, was 7 minutes from the time the call came in to the time the rig pulled up on the scene, according to the dispatch log (the response time into the house would be longer). Attachment 2 shows a response time of 3 minutes and 44 seconds to 61st and Baker, an unrealistically small amount of time. How much longer will other stations take?

Station 19 at Miles above College is 2.1 miles from 61st and Baker, whereas Station 8 is only 1.65 miles. Recall that at 60 miles per hour it takes 30 seconds to go 1/2 mile, but fire engines don't go that fast through busy city streets. Thus, add approximately 1 minute to Station 8's response time of 7 minutes. Is 8 minutes in response time acceptable? We think not, especially in this area with all its medical responses (see our map with blue pins at locations of medical calls).

Also unrealistic is that Station 19 could beat Station 8 to 61st and Baker. As mentioned above, that location is 1.65 miles from Station 8 and 2.1 miles from Station 19. Yet on Attachment 2, Station 19 is shown as beating Station 8's time, 3:39 min. vs. 3:44 min.

Another example: On incident #129618 to 56th and Telegraph, Station 8 took 4 minutes and 11 seconds according to dispatch logs. It would take a little more to reach 57th. Thus, the time of 2 minutes and 52 seconds on Attachment 2 is unrealistic.

The most glaring glitch on Attachment 2 is the claim that it takes 1 minute and 35 seconds less to go 8 more blocks to 61st and Baker, which is 8 blocks further away from Station 19 than 60th and Whitney is (5 minutes

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and 14 seconds to 60th and Whitney but 3 minutes and 39 seconds to go to the more distant location of 61st and Baker).

In general, it must be remembered that east and west routes between Alcatraz Avenue and 40th Street are very difficult to negotiate quickly. There are no direct routes. In addition, many of those streets now have speed bumps on them.

Although Station 15 at 27th and Telegraph has now for the first time been brought into Chief Simon's plan (see p. 4, ¶2 [Attachments 4 and 5], and p. 4 ¶4 [last sentence]) -- now that there is pressure to address the lack of a ladder truck in N. Oakland -- there is only one piece of data on response times for the ladder truck from Station 15 into North Oakland, and the time is unacceptable at 8 minutes and 11 seconds. However, to make matters worse, that time is unrealistically short. How do we know? Take a look at the recent Fenton's Ice Creamery fire as an example.

Fenton's is on Piedmont Avenue (4226 Piedmont), far closer to 27th and Telegraph than the example in Attachment 2 of 60th Street and Whitney Avenue (8:11 min.).

Yet, from time of dispatch, Station 15 at 27th and Telegraph took 7 minutes and 28 seconds, a full 3 minutes and 22 seconds slower than Station 8, which made it in 4 minutes and 6 seconds. This is scary, because Fenton's is on the 27th and Telegraph side of Station 8. What would it be for parts further away – upper Rockridge, North Hills, Montclair? Could it be that we have a lack of realistic response times for Station 15 going into N. Oakland because they would be unacceptable by City standards? How can the assertions that all response times will be within acceptable levels be credible, when there is no data? (There is also no data for Emeryville; see below.)

Such misleading and absent data does not aid Councilmembers in making difficult choices.

Page 4, ¶1 to page 5, ¶1: <u>Temporary Coverage</u>: There is no viable coverage under Chief Simon's plan. Even if Emeryville were to agree to cover most of Station 8's territory, Station 8's territory is large, extending over all of N. Oakland to Tunnel Road and to Moraga. In addition, Station 8's ladder truck provides coverage further on into the hills.

Do Emeryville firefighters think that Chief Simon's plan is viable? Not according to Jim Phipps, Emeryville firefighter and Vice President,

IAFF Local 55 in a memo to Emeryville City Council (see Exhibit A, memo to Emeryville City Council dated December 4, 2001). Phipps suggests that the plan is not in the best interest of either Oakland or Emeryville citizens because of many logistical problems enumerated in the memo.

To supplement Emeryville's potential coverage, Station 15 at 27th and Telegraph "will respond to a limited amount of Station 8's response area during this interim rebuilding period." (P. 4, ¶4.) With Emeryville responding to approximately 526 non-medical calls (p. 4, ¶4), who is going to cover the other 500-600 yearly calls the Station 8 ladder truck receives (1,011 in 2000; a likely 1,192 in 2001)? (See Exhibit "B," which is Attachment 6 to Report, with extrapolating calculations.) Not Station 15, by the terms of the Report alone, no doubt because Station 15 ladder truck took 1,159 calls in 2000 (see Exhibit "C," Calls per Firestation in 2000 and other Quick Facts). Thus, <u>even with Emeryville's help</u>, which we don't have yet, there is no reasonable attempt to cover N. Oakland (see information above about response times from Station 15).

Chief Simon originally requested that Piedmont cover a wide swath of Oakland from 68th Street down to 37th Street (see lavender and magenta areas of map, Exhibit "D"). Now, because Piedmont has obviously refused, we see in the Report that no coverage is required (p. 5, ¶1).

Problems with Emeryville coverage if Emeryville agrees to participate:

1) Emeryville's ladder truck is not tillered, i.e., it doesn't have independent rear steering, so it cannot navigate the narrow hill streets. Do we know which streets the Emeryville ladder truck can navigate and which ones it cannot? Or do we find that out when first Emeryville responds to a hill call?

2) <u>Response times, Emeryville</u>: Emeryville's response times into some of the areas originally designated for coverage by Chief Simon (the red and green portions of the map attached as Exhibit "D") were estimated by a veteran Emeryville firefighter to be 10 to 15 minutes. This is because Station 1, the station from which the ladder truck would respond, is on the Bay side of I80, on Powell Street. The station indicated on Chief Simon's maps is Station 2 (see Exhibit "D"). Even if Emeryville moves its ladder truck to their Station 2, it will not solve response time problems for those areas further from Emeryville.

At an Emeryville Public Safety Committee meeting on November 1, Fire Chief Cutright said he thought response times into certain of the Oakland areas would be closer to 9 minutes rather than 10 to 14, but if it were 10 or more, that would be "Oakland's problem."

It appears that Emeryville is being asked to cover all of N. Oakland, minus a small portion covered by Station 15, possibly designated by the arrow depicted on Attachments 4 and 5. **There are no response time data for Emeryville responding further than 8 blocks past its border.** The only response time available is to 61st and Genoa (runs parallel to Market one block east) at 5 minutes and 30 seconds. How long would it take Emeryville to get to Children's Hospital, Station 8 on 51st near Telegraph, the Claremont Hotel and Tunnel Road? We don't know, but suspect it may be 15-30 minutes or more, depending on time of day and amount of traffic. However, lack of data does not prevent Chief Simon from claiming that Chief Simon's plan maintains "acceptable response standards" (see p. 10, ¶3).

3) Emeryville firefighters do not have the experience of Oakland firefighters. They do not know our streets, our structures, our citizens. Their pay is the lowest in Alameda County. This is not what our tax dollars are paying for. Mutual aid is one thing, but using Emeryville firefighters as replacement for our exceptional firefighters is another thing.

4) We question whether under Government Code section 850.6 Emeryville loses its immunity as to "any injury for which liability is imposed by statute caused by its act or omission or the act or omission of its employee occurring in the performance of such fire protection or firefighting service," since it would be providing "fire protection or firefighting service outside of the area regularly served and protected." Any indemnification agreement with Oakland places the burden of paying off any Emeryville liability squarely on us Oakland taxpayers. (See Exhibit "E.")

5) Oakland is already in debt to Emeryville for mutual aid (see Exhibit "F," "Emergency Operations," an Emeryville document). It cites that Emeryville provided Oakland with 11 mutual aid requests during 2001 and Oakland provided Emeryville with 3. This suggests that Oakland is not in a position to downsize its fire department. It also suggests that Emeryville is not beholding to Oakland, as Chief Simon asserts.

Page 4, Chart: Any distinction between "actual action responses" and other types of responses is meaningless because a firefighter in Oakland or

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Emeryville can not wait around in the station to see if a call for help will, in the end, require an "actual action response" or not. The firefighter is going to have to hit the road, regardless of how the call turns out. The category seems to be used in an attempt to make it appear that under Chief Simon's plan Emeryville wouldn't be making as many trips to Oakland as it would have to.

Page 5, ¶5: Staffing: This paragraph and chart are misleading and inaccurate. There is a large core group of firefighters at Station 8, every day, every shift. We see them so we know. If even one firefighter from another station is swapping shifts, according to the Report, the house crew falls under the definition of "Out of House Crew from Another Station." This section denigrates the dedication of Station 8 personnel to the area they serve.

Page 6, ¶2: This paragraph is misleading and inaccurate. Under Chief Simon's plan, response times will be greatly impacted because there will be 8 fewer firefighters. Response times tend to be impacted when there are no firefighters nearby who are free to take the call. See Exhibit "C," which indicates the number of emergency calls per station in Chief Simon's plan.

Another factor influencing response times from surrounding stations is whether a station is out on training or not. In Oakland, one company per day is designated for training, and up to six other companies can accept training also. Thus, there is no guarantee that a nearby company will be available at all. Nowhere does the Report address the potential problems associated with multiple companies being out on training.

Page 6, ¶¶3-5: No amount of chronic staffing shortages, difficulty in hiring, etc., can justify taking 8 firefighters out of just one section of the City – Rockridge/Temescal, in this case. If overtime has to be adjusted, it must be adjusted citywide, not just in N. Oakland. Since this has not been done in a fair, systematic way, we doubt the credibility of this section of the Report, particularly when Chief Simon early on accused the firefighters of trying to protect their overtime, implying that it was a precious commodity.

Page 6, ¶4: Regarding staffing below minimum standards, unlike the police department which has 15 minutes of line-up pay for overlap purposes, the fire department releases everyone at 8:00 a.m. Prior practice was to pay a few standbys for unprojected vacancies. Recently, in a cost cutting measure, the department decided not to pay standbys. As a result, when

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there is an occasional unprojected vacancy, there are no standbys to fill those vacancies. Hence, the "problem" with unfilled vacancies. Note that "mandatory overtime" and "vacancies" are mutually exclusive.

Page 7, ¶1: The Report here asserts that Emeryville will be responsible for all of N. Oakland ladder truck responses except for "a small portion of the area" which Station 15 will cover. This contradicts the map attached to the Report, Attachment 3, and is clearly impossible. Station 8's truck related calls require responses up to Tunnel Road, Montclair and beyond, into hills the Emeryville equipment cannot reach (see discussion above). There is no response time data for this proposition (see discussion above.)

More importantly, it's essential to understand that Chief Simon is asking three Oakland companies (No.'s 5, 19 and 10) to pick up two companies' worth of work (Station 8 is a 2 company station). Please note that Station 5 handles 3,134 calls, and it's a one company station. It is as busy as any station in Oakland.

The total calls for Station 8 is 3,789. The total call volume for the other 3 stations is 6,501. Subtracting the 526 that Emeryville might cover and, say, 50 for calls that Station 15 might cover, there is a 50% increase in work for Stations 5, 19, and 10. For Chief Simon to maintain that a 50% increase in emergency calls will not impact response times to the point where they will become unacceptable is simply not credible.

Page 7, ¶2: There is a way to state the information in this paragraph that is <u>not</u> misleading. Chief Simon consistently states it in this misleading fashion. He is not talking about "bodies" on the street. The fact is that there will not be a single extra firefighter on the street under his plan than there is right now. And, for the duration of the rebuild, there will be 8 fewer. It's true there will be new firefighters, but they will take the slots currently covered by firefighters working overtime. Thus, we have 141 per day now; we will have 133 per day during the rebuild; and we will have 141 per day back after the rebuild, under Chief Simon's plan.

Page 7, Option 1 Pros and Cons: Option 1 is not workable because it provides completely inadequate coverage to North Oakland and surrounding areas.

Page 7, Option 2: This is not an option, though building could be delayed.

Page 8, Option 3: It is not proved that bond funding is involved. The firefighters' Local 55 proposal should be fully explored. (See Exhibit "G," Local 55 proposal.)

Page 8, Option 4: If a land swap cannot be managed (see below, "New possible option," this option is the best. Although response times would suffer because Station 8's personnel would be further away from large portions of Station 8's area, at least the equipment would not be placed in storage and our firefighters would be available to respond to our calls.

Page 9, Options 5 & 6: These options do not provide the coverage that is needed.

New possible option: A possible option exists, so far unexplored by the City, to swap the land across the street from Station 8, owned by Children's Hospital, for land on which the station now sits (see p. 2). This option is the best of all because a land swap allows Station 8 to remain open in its current location for the duration of the rebuild. Response times would stay as they are, or slightly increase, because of the increase in calls likely in 2001 (see extrapolations on Exhibit "B.").

IV. Conclusion.

There are no data to support the Report's conclusion that there will be safety for N. Oakland under Chief Simon's plan. Without the data, this Report falls into the realm of wishful thinking. Since you have decided that Chief Simon's proposal carries "acceptable risk," we'd like to know if you have access to data that we don't have, because there is nothing in the Report that can lead to the conclusion that the risk to our lives and property is "acceptable" under Chief Simon's plan.

TO: Emeryville City Council
FROM: Jim Phipps, Vice President IAFF Local 55
DATE: December 4, 2001
SUBJECT: The Closure of Engine 8

Background
The City of Oakland has requested that Emeryville cover Engine 8's and Truck 5's district during the rebuilding of Engine 8's firehouse. Both Engine 8 and Truck 5 are housed together in the firehouse located at 51st Street and Telegraph Avenue. The closing of the firehouse is scheduled for January 2002. The "planned" rebuilding will take 10 months. For the year 2000, Engine 8 ran 2779 calls and Truck 5 ran 1010 calls for a total of 3789 calls. Oakland has requested Emeryville's truck with four firefighters to cover most all of the Truck 5's calls and a Emeryville Engine to cover some of Engine 8's calls. Engine 8's district will be divided between Oakland Engines 19,10,15, 5 and Emeryville.

Question
Would this proposal be of benefit to Emeryville citizens?

Answer
NO. This proposal is not in the best interest of either Oakland or Emeryville citizens for the following reasons:

1. For Emeryville to respond with four firefighters on our Truck we will have to deadline an Engine Company.

2. When Emeryville's Truck responds to Oakland only THREE FIREFIGHTERS and ONE ENGINE will be left in Emeryville.

3. Emeryville will be subsidizing Oakland for about 3.2 million dollars with no return on their investment. This is the savings Oakland generates by reducing their budget by the 32 firefighters needed to operate Engine 8 and Truck 5.

4. Emeryville's Truck is 10 years old and will need to be replaced after running additional calls in Oakland. Truck 5's district is very large. It runs from the Emeryville line to the top of the Oakland hills and from the Berkeley line to downtown Oakland.

5. If Oakland removes Engine 8 and Truck 5 from service, Emeryville will have an increase in Mutual Aid calls to Oakland, because of the added workload placed on the remaining Oakland Companies. The remaining Oakland Engine companies that will respond to Engine 8's district are some of the busiest engine companies in Oakland. Engine 5 ran 3134 calls in the year 2000.

6. Oakland may not be able to respond to Emeryville for Mutual Aid as quickly as they have in the past, because Engine 8 and Truck 5 are the companies that normally would respond.

EXHIBIT "A"

YEAR 2000- RANKING BY NUMBER OF RUNS DISPATCHED						YEAR 2001-RANKING BY NUMBER OF RUNS DISPATCHED				
RANK	ENGINE	TOTAL RUNS	TRUCK	TOTAL RUNS		RANK	ENGINE	OTAL RUNS	TRUCKS	OTAL RUNS
1	2560	3655	2577	1732		1	2560	3454	2576	1559
2	2563	3571	2576	1611		2	2563	3163	2577	1428
3	2558	3209	2571	1572		3	2558	3074	2571	1388
4	2545	3133	2574	1559		4	2555	3016	2574	1263
5	2553	3098	2572	1315		5	2545	2875	2572	1058
6	2541	3087	Station 8 2575 →	1011		6	2541	2829	2575	993 ←
7	2569	2963	2573	891		7	2569	2736	2573	783
8	2556	2956				8	2553	2706		
9	2555	2884				9	2552	2635		
10	2552	2839				10	2556	2594		
11	2548	→ 2794 Station 8				11	2557	2554		
12	2566	2749				12	2548	2422 ←		
13	2557	2535				13	2544	2338		
14	2567	2395				14	2566	2310		
15	2550	2384				15	2567	2206		
16	2544	2373				16	2550	2005		
17	2543	2052				17	2543	1813		
18	2559	985				18	2559	940		
19	2542	969				19	2542	924		
20	2565	920				20	2565	856		
21	2564	666				21	2564	620		
22	2562	517				22	2546	307		
23	2548	335				23	2561	302		
24	2546	335				24	2568	293		
25	2561	325				25	2547	187		
26	2547	201				26	2562	186		

2001

↑ 4% engine
↑ 18% truck

YR 2000

2,794 Engine 2548
+ 1,011 Truck 2575
3,805

YR 2001 (10 mos.)
2,422 → 2,906 (4% increase) Engine
+ 993 → 1,192 (18% increase) Truck
3,415 (5/6 of year) or 4,098 for 2001 (30% extra calls)
.83

FULL YR 2001 (extrapolated)

8% increase overall

EXHIBIT "B"

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CALLS PER FIRESTATION IN 2000 AND OTHER QUICK FACTS

Station number	Calls (engine/ladder truck)		Chief Simon's unprecedented plan
#8 (2 company station, District 1)			
51st near Telegraph	Engine	2,779	Personnel to be assigned
(8 person station)	Ladder truck	1,010	to slots elsewhere now
4 firefighters/ladder truck	Total:	3,789	covered by overtime. Equipment
4 firefighters/engine	(80% of calls are medical)		to be put in storage. Eight fewer firefighters per shift (141-8= 133).
#19 (1 company station, District 1)			
Miles (near RR BART)	Engine	983	To pick up part of Station 8's
(4 person station)	(no ladder truck)		territory.
#5 (1 company station, not in District 1)			
34th & Market	Engine	3,134	To pick up part of Station 8's
(4 person station)	(no ladder truck)		territory; among the busiest in Oakland.
#10 (1 company station, not in District 1)			
Santa Clara Ave.	Engine	2,384	To pick up part of Station 8's
Near Harrison	(no ladder truck)		territory
(4 person station)			
#15			
(27th & Telegraph)	Engine	2,087	Not included in plan. Will
(9 person)	Ladder Truck	1,159	not pick up part of Station 8's
5 firefighters/ladder truck	Total:	3,246	territory (usual backup only).
4 firefighters/engine			
Emeryville			Emeryville is undecided
(7 firefighters per shift, 2 stations)			whether to participate in plan
Engines carry rescue equipment.			(vote of City Council required).
Their one ladder truck is "manned" by one firefighter.			Chief's plan requires their help.
Piedmont			Piedmont has refused the request
(7 firefighters per shift)			for Piedmont to cover a portion of Oakland. The original plan required Piedmont's help.

Other facts:

- Station 8 is a first responder in North Oakland for fire, emergency medical services (EMS), rescue and hazardous materials. It is the keystone of N. Oakland's emergency response.
- Station 8's ladder truck is assigned to all of North Oakland. It carries all rescue equipment.
- Station 8 is Emeryville's backup, as well as the backup for all the other above stations.
- Under Chief Simon's plan Oakland would drop from 141 firefighters on duty to 133 (per shift).
- Under Chief Simon's plan one of Oakland's seven ladder trucks and one of Oakland's twenty-five engines would be put in storage. North Oakland would not have a ladder truck.

Information researched by Jacqueline Hoeppner-Freitas and Tony Freitas. (428-2714)

EXHIBIT "C"

CITY OF OAKLAND

ADMINISTRATIVE OFFICES · 150 FRANK H. OGAWA PLAZA · SUITE 3354 · OAKLAND, CALIFORNIA 94612

Fire Department

(510) 238-3856
FAX (510) 238-7924
TDD (510) 238-6884

September 25, 2001

HAND-DELIVERED

Chief Stephen L. Cutright
Emeryville Fire Department
2333 Powell Street
Emeryville, CA 94608

Chief John C. Speakman
Piedmont Fire Department
120 Vista Avenue
Piedmont, CA 94611

Subject: Interim coverage for Fire Station 8 district in Oakland during station reconstruction

Dear Chief Cutright and Chief Speakman:

The intent of this letter is to re-affirm our agreement to have your departments assist the Oakland Fire Department on an interim basis with partial district coverage, while we replace our existing Fire Station 8 on its current site of 461 51st Street.

Attached you will find the current deployment plan that has already been approved by our City Council last May during the public hearing and budget process related to this issue.

For Emeryville, we are requesting your department to:

1) cover the area designated in red for EMS related calls; and,
2) cover the area designated in red and green for truck related responses with four (4) personnel.

We agree to continue 911 dispatch services to Emeryville Fire without an increase as previously contemplated. Oakland Fire will continue the current contract and price that has been in force for the past ten years.

For Piedmont, we are requesting your department to cover all truck related responses in the area designated by lavender and magenta. We appreciate your willingness to step up in our time of need, as we have done for your community in the past.

EXHIBIT "D," P. 1

We anticipate the length of assistance will be no more than one year, and fully expect that the timeframe could actually be about ten months.

After your review, please consider affirming this contemplated interim agreement by signing and returning a copy of this letter to me so that we can begin providing you with accurate data and firm timelines.

On behalf of the Oakland Fire Department, thank you for assisting the Department during this time of critical need.

Sincerely,

GERALD A. SIMON
Fire Chief
Oakland Fire Department

GAS:rk
Attachments

My signature below indicates affirmation of the contemplated agreement as described in this letter.

STEPHEN L. CUTRIGHT
Fire Chief
Emeryville Fire Department
Date _____

JOHN C. SPEAKMAN
Fire Chief
Piedmont Fire Department
Date _____

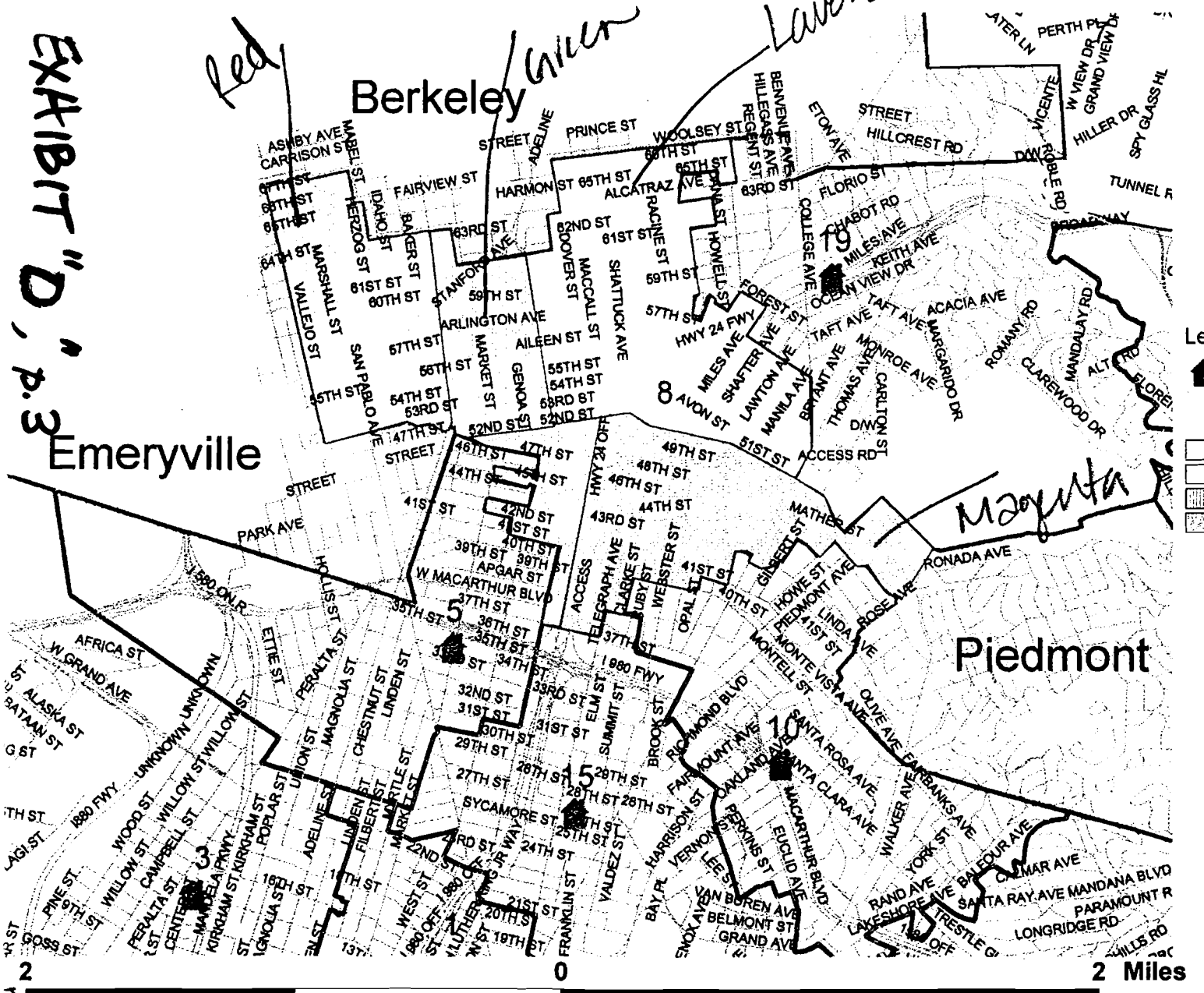
EXHIBIT "D," p. 2

Oakland Fire Department

Station 8 Construction Impact

Ray Leon helped us obtain this map. Colors written in by OFD.

EXHIBIT "D", p.3



City Council
Budget
May 1, 2001

CALIFORNIA CODES
GOVERNMENT CODE
SECTION 850-850.8

850. Neither a public entity nor a public employee is liable for failure to establish a fire department or otherwise to provide fire protection service.

850.2. Neither a public entity that has undertaken to provide fire protection service, nor an employee of such a public entity, is liable for any injury resulting from the failure to provide or maintain sufficient personnel, equipment or other fire protection facilities.

850.4. Neither a public entity, nor a public employee acting in the scope of his employment, is liable for any injury resulting from the condition of fire protection or firefighting equipment or facilities or, except as provided in Article 1 (commencing with Section 17000) of Chapter 1 of Division 9 of the Vehicle Code, for any injury caused in fighting fires.

850.6. Whenever a public entity provides fire protection or firefighting service outside of the area regularly served and protected by the public entity providing such service, the public entity providing such service is liable for any injury for which liability is imposed by statute caused by its act or omission or the act or omission of its employee occurring in the performance of such fire protection or firefighting service. Notwithstanding any other law, the public entity receiving such fire protection or such firefighting service is not liable for any act or omission of the public entity providing the service or for any act or omission of an employee of the public entity providing the service; but the public entity providing such service and the public entity receiving such service may by agreement determine the extent, if any, to which the public entity receiving such service will be required to indemnify the public entity providing the service.

Notwithstanding any other provision of this section, any claims against the state shall be presented to the State Board of Control in accordance with Part 3 (commencing with Section 900) and Part 4 (commencing with Section 940) of Division 3.6 of Title 1 of the Government Code.

850.8. Any member of an organized fire department, fire protection district, or other firefighting unit of either the state or any political subdivision, any employee of the Department of Forestry and

EXHIBIT "E"

EMERGENCY OPERATIONS: 2001

INCIDENT ANALYSIS
Emeryville Fire Department

		JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC	TOTAL
TOTAL INCIDENTS --		150	128	136	155	126	109	131	132	142	125			1334
DUTIES PERFORMED ON CALLS:														
FIRE SUPPRESSION --	Buildings (< $ 5000)	1	1	2	4	2	3	1	1	1	6			22
	Buildings (> $ 5000)			1					1					2
	Vehicles	6	3	1	7	8	3	6	7	1	3			45
	Outside Fires	3	2		6	2	5	5		3	4			30
INVESTIGATIONS --	Smoke				1		1	2	5	1				10
	Odor	6	1	1		1		1		3				13
FALSE ALARMS --	Alarm Companies	37	40	41	27	27	15	26	18	26	32			289
	Other	1		4					1					6
HAZ MATS --	Spill		3	2	1		1	1	2	3				13
	Release		1		1		2		1	2	3			10
	Other		1								2			3
MUTUAL AID --	To Oakland	3	2			5			1					11
	To Berkeley							1						1
	From Oakland		1						1		1			3
	Other	1					1	1		1				4
MEDICAL --	District # 1	33	31	37	36	29	34	43	31	45	30			349
	District # 2	51	35	44	61	45	35	41	54	47	35			448
	Out of City		1				2		1		3			7
RESCUE/EXTR. --		3	1	1	6	3	1	1	3	3	5			27
SERVICE --		5	5	2	5	4	8	2	5	6	3			45
*****TOTAL DUTIES PERFORMED*****		150	128	136	155	126	111	131	132	142	127	0	0	1338
RESOURCE COMMITMENTS:														
FREEWAY CALL --	Single Unit Response	6	10	1	1	16	5	4	7	9	4			63
	Multi-Unit Response	15	15	13	20	11	4	18	3	13	7			119
SIMULT. ALARMS --	To Same Medical			2	3			1						6
	To Separate Calls	2	2	3	3	1		2	2	3	1			19
TRUCK RESPONSE --		42	16	56	59	39	24	36	23	14	17			326
*****TOTAL RESOURCE COMMITMENTS*****		23	27	19	27	28	9	25	12	25	12	0	0	207

NOTE: The Emergency Operations sheet shows all operations conducted, not the individual responses provided within Emeryville. If multiple operations were conducted on any emergency responses (calls), then the tally for emergency operations will be greater than the actual responses made by Emeryville fire units. If mutual aid calls were made to other jurisdictions, and during these mutual aid responses an Emeryville fire unit responded to emergency calls within that jurisdiction, then the tally for emergency operations will be greater than the actual responses reported within Emeryville's jurisdiction.

EXHIBIT "E", p. 1

p. 16

Emergency Responses: 2001

Emeryville Fire Department

TYPE	SUB-TYPE	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC	TOTAL
FIRES --	Buildings (< $ 5000)	1	1	2	4	2	3	1	1	1	6			22
	Buildings (> $ 5000)			1					1					2
	Vehicles	6	3	1	7	8	3	6	7	1	3			45
	Outside Fires	3	2		6	2	5	5		3	4			30
INVESTIGATIONS --	Smoke				1		1	2	5	1				10
	Odor	6	1	1		1		1		3				13
FALSE ALARMS --	Alarm Companies	37	40	41	27	27	15	26	18	26	32			289
	Other	1		4					1		3			9
HAZ MATS --	Spill		3	2	1		1	1	2	3	2			15
	Release		1		1		2		1	2				7
	Other		1											1
MUTUAL AID --	To Oakland	3	2			5			1					11
	From Oakland		1						1		1			3
	Other	1					1	2		1				5
MEDICAL --	District # 1	33	31	37	36	29	34	43	31	45	30			349
	District # 2	51	35	44	61	45	35	41	54	47	35			448
	Out of City		1				2		1		3			7
RESCUE/EXTR. --		3	1	1	6	3	1	1	3	3	5			27
SERVICE --		5	5	2	5	4	8	2	5	6	3			45
MONTHLY TOTAL:		150	128	136	155	126	111	131	132	142	127	0	0	1338
TOTAL YEAR-TO-DATE:		150	278	414	569	695	806	937	1069	1211	1338			
LOSS BY MONTH: ($)		7,500	1,000	205,000	20,000	500	10,000	2,000	20,000	1,000	15,000			$282,000
Prior Year Monthly Total:		112	102	115	125	158	129	127	139	86	110	148	152	1503
Prior Year To Date:		112	214	329	454	612	741	868	1007	1093	1203	1351	1503	

EXHIBIT "F" p. 2

p. 2

INTERNATIONAL ASSOCIATION OF FIREFIGHTERS
LOCAL 55
414-13th Street, Ste. 300
Oakland, CA 94612
(510) 834-9672
FAX (510)834-0812

BY FAX AND EMAIL

Date: November 21, 2001

To: City Manager Robert Bobb

From: Steve Splendorio, President Local 55

Re: Proposal to the City from Local 55

The City's proposal

1. Build new Station 8 at a cost of $4.1 million from the Capital Improvement Fund.

2. Close 2 companies at Station 8 for the 10 months of construction for a cost savings from overtime budget of $2.6 million.

3. On January 1, 2003, add 32 permanent positions to the OFD budget which adds $4.5 million per year to the budget, which in turn reinstates the 8 spots/day at Station 8 that were eliminated.

   Upside: New firehouse by November 2002.

   Downside: 8 fewer firefighters/day in suppression – a reduction from 141/day to 133/day.

   Conclusion: **The downside risk far outweighs the upside potential and is unacceptable to Local 55 and the citizens of Oakland.**

PROBLEM: HOW DOES THE CITY KEEP THE NUMBER OF FIREFIGHTERS ON DUTY AT 141 PER DAY (ADDITIONAL COST OF $2.6 MILLION) AND BUILD A NEW STATION?

Local 55's solution to the downside risk of City's proposal

Goal: Keep the 8 firefighters on duty everyday (funded through the overtime budget).

Cost: An additional $2.6 million from the overtime budget to pay for the 8 firefighters/day (keep our staffing at 141/day) for the 10 months they were to be eliminated.

Solution:

1. Delay building of Station 8 until January 2005 (3 year delay).

EXHIBIT "G," p. 1

2. Borrow $2.6 million from the Capital Improvement Fund (total rebuilding fund $4.1 million) to pay for the 8 firefighters/day for the 10 months they were to be eliminated.

3. Pay back the Capital Improvement Fund by delaying the permanent funding of 32 new budgeted positions from January 2003 to January 2005, saving the cost difference of the 32 permanent new spots -- $4.5 million per year -- versus the cost of overtime -- $3.2 million /year -- for a savings of $1.3 million per year. 1.3 x 2 years = a $2.6 million savings.

Upside: No fewer firefighters on the street.

Downside: New firehouse delayed.

cc: Mayor Jerry Brown
All Councilmembers
Fire Chief Gerald Simon

EXHIBIT "G," p. 2

Selected Articles

The Oakland Tribune

P. Scott McKibben
President and Publisher

Nancy Conway
Vice President, Executive Editor

Mario Dianda
Editor

Tom Tuttle
ANG Editorial Page Director

Michael Lynch
Executive Vice President Advertising/Marketing

Dennis Miller
Sr Vice President/Production

Robert Jendusa
Sr. Vice President/Human Resources

Patrick Brown
Executive Vice President Administration

Jim Dove
Sr Vice President/Circulation

OPINION

CONGRESS shall make no laws respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press, or of the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

FIRST AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES, RATIFIED DEC. 15, 1791

Oakland must provide the best fire protection

OUR OPINION

WE'RE glad to hear a proposal to move the Temescal neighborhood's firefighters to other Oakland stations while the facility is reconstructed is not a "final plan."

Residents and firefighters say they are concerned about the relocation, even though it's supposed to be temporary as the fire station is razed and a new one built over the next 10 months.

The entire city could lose under the proposal, because eight fewer firefighters would be on duty every day and one engine and one ladder truck would be taken off the streets.

Although the loss purportedly would be made up by firefighters from Emeryville and Piedmont expected to respond if the Temescal neighborhood needs help, that assumes those firefighters aren't needed in their own cities at the time.

So what options does Oakland have? For one, it could go back to the drawing board and come up with a plan that is acceptable to the Temescal community, one that will provide the protection they deserve as taxpaying residents.

City officials should remember the primary purpose of a municipality is to provide basic services, such as fire and police protection, to the people.

Oakland residents, wherever they live, have the right to the best fire protection possible, and we have seen instances in which the city has changed its course on fire stations after hearing from residents. A couple of examples are the North Hill and the Grass Valley fire stations.

We realize the situation is different in the case of this reconstruction project, but the basic function of the fire department remains the same — it must be at full strength, at all times.

Resident Mary Clegg had it right when she said: "To say we can afford to take these men out to cover the overtime for the rest of the city is to say this is a sacrifice for this community."

Steve Splendorio, a 30-year firefighter and president of International Association of Firefighters Local 55, suggested the city may be exposing residents to danger just to help its bottom line.

We must all remember the East Bay hills firestorm 10 years ago, the largest urban fire in the history of the United States, one in which 25 people died and 3,200 homes were destroyed.

Before this goes any further, city officials must come up with a plan that puts residents' safety at the top of the priority list.

P. 24

THE FIRESTORM OVER FIRE STATION 8 by Jacqueline Hoeppner-Freitas
Chair, DMV Neighbors Association (Submitted to Rockridge News)

By Tuesday, December 4, the fate of Fire Station 8, 463-51st Street just off Telegraph Avenue, the only double fire station in North Oakland, and the keystone of Rockridge's emergency response system, may be known. In the latest development, on Tuesday November 27 the Public Safety Committee of the Oakland City Council voted to send the question of what to do about the rebuilding of the Station #8 firehouse back to the City Manager Robert Bobb and then on to the Council for a review. Bobb was instructed to draw up a report on five different alternatives to the initial plan proposed by Fire Chief Simon and approved in the budget vote in June of this year.

The debate that has been going on subsequent to that vote has centered on the questionable wisdom of reducing fire services during the 10 month or more period of Station 8 construction. North Oaklanders have mounted an opposition to the proposal on the grounds that it would endanger the lives of Oaklanders, especially North Oaklanders, who would experience the removal of half of their man/woman power and the heavy equipment that goes with it.

Bobb is to provide pro and con analyses, recommendations, and potential funding sources for six potential scenarios:
1. Not rebuilding Station 8 at all
2. Fire Chief Simon's original proposal
3. The proposal from Steve Splendorio and Local 55 (delay rebuild, retain current strength, save money, rebuild later)
4. Closing Station 8 and transferring companies to other stations
5. 5. Assuming no cooperation from Emeryville, rebuilding Station 8 now and staffing Station 19 with an additional truck and company
6. Assigning an additional EMS unit to Station 5 while rebuilding Station 8

Brunner prefers option number 4.

She also stated at the Public Safety Committee meeting that she did not know in June that she was voting to downsize the number of firefighters on the street in Oakland by eight per day, from 141 to 133, nor did she know all the cuts were coming in North Oakland. Other Councilmembers were similarly confused, but are now saying that because of the budget crunch, there may be no money to retain Station 8's eight firefighters and their equipment.

That all eight firefighters are to be taken out of North Oakland, "isn't fair", Brunner had earlier stated at a November 20 neighborhood "Meet the Mayor" night, arranged and hosted by Rockridge resident Mike McDonald. The move mothballs North Oakland's only ladder truck(one of seven citywide) and an engine. It also leaves a vacuum: Station 8 handled 3,789 emergency calls in year 2000, 80% of them medical.

Steve Splendorio, an Oakland firefighter and Firefighters' Union president, gave Bobb and Mayor Brown a plan in November in which delaying the rebuild could insure savings currently budgeted and yet maintain 141 firefighters per day, eight in overtime slots. The individuals who would be most impacted are the Station 8 personnel; yet, as one firefighter explained, "We would rather keep this firehouse and keep working overtime than to risk lives in North Oakland."

Note: Some information for this article was contributed by Susan Montauk , Chair, Rockridge Community Planning Council.

Debate rages on over Fire Station 8

■ Safety committee asks City Council to take a second look at the issue

By B. Roscoe
STAFF WRITER

Decisions related to Fire Station 8's controversial rebuilding took a turn Tuesday that pleased some hills residents, as the City Council's Public Safety Committee decided to recommend that the full council take a second look at the issue.

Jackie Hoeppner-Freitas, head of Rockridge's DMV Neighbors Association and a lawyer, said she was encouraged that council members present at the Nov. 27 meeting seemed to admit they didn't realize this past June that they were voting for a reduction in firefighters.

At the time, the council moved forward on a plan to pay for the station's rebuild by assigning its eight firefighter to two other stations and cutting down on the use of overtime at these locations — reducing Oakland's firefighting force in the process.

"We applaud (District 1 Councilwoman Jane Brunner) for coming forward and saying it wasn't clear and that she didn't understand the ramifications," Hoeppner-Freitas said.

The issues at hand have been on the table since City Council members voted in June to approve a strategy to maintain fire safety while the dilapidated fire station at 51st Street and Telegraph Avenue is rebuilt.

In the original plan, devised by Fire Chief Gerald Simon, the firefighters from Station 8 would be temporarily reassigned to different stations to relieve staff working overtime, and the company's engine and ladder truck would be left out of service for the duration of the reconstruction.

The motivation behind Simon's plan was to cover the majority of the station rebuilding cost by saving money through a reduction of staff and equipment for the 10 months of the reconstruction. What was not made clear is how that would be achieved.

Residents such as Susan Montauk, chairwoman of the Rockridge Community Planning Council, claim to have been left in the dark when the budget, including this plan, was approved in June.

Several council members, including Vice Mayor Brunner and Larry Reid of District 7 (who chairs the Public Safety committee) have since explained they had less than a full understanding of the implications of their initial vote.

At the meeting, Brunner said she had reviewed the tape of the June council meeting when Simon made his presentation about how the reconstruction would be funded while maintaining a balanced budget. "We were never told this would create a shortage of eight firefighters," Brunner said.

In the June meeting, Brunner asked Simon, "Are we funding the building of Station 8 by the savings in personnel?" Brunner claimed there was no definitive answer to that question. She also stated that in light of a clearer understanding of what Simon's plan calls for, it is unfair that North Oakland will bear the burden of a balanced budget by sacrificing fire emergency services.

Brunner requested that the Public Safety committee ask City Manager Robert Bobb to provide more analysis, recommendations and possible funding sources associated with six potential scenarios for the rebuild.

Brunner recommended a scenario in which the station would be closed for the duration of its reconstruction, with personnel being transferred to fire stations 5 and 19 — without any resulting reduction in the city's firefighting force. This plan was greeted with applause from supporters in the audience.

Several residents spoke at the meeting, including retired Oakland police officer Tony Freitas, who used a large map with multicolored pins to illustrate the volume of calls received by Station 8 and the large area covered by that station. "Find the money. Find what it takes. Don't take 50 percent of our firefighters away from us," Freitas said.

Hoeppner-Freitas, his wife, reiterated the idea that residents were not informed of the reduction of personnel when the topic was originally introduced in May and used a current event to make her plea. "Station 8 is the reason Fenton's is still standing today," she contended, referring to the fire at the ice cream parlor of Nov. 21. Fire Station 8's response time was quick enough to stop the fire from spreading beyond the rear storage area of the neighborhood establishment, she sai.

Rockridge resident Mike McDonald said that the current condition of Fire Station 8 is "pretty gnarly." But, given the choice of staying in the decrepit station for another two years while the city saves the money to fund the rebuilding or being temporarily reassigned to another house, the firefighters prefer to remain in the existing structure, said McDonald, who took an informal survey of firefighters at the meeting.

Seth Olyer, a firefighter assigned to Station 8 concurred. "If those are my two choices, we're staying. And there's 23 other people who would say the same," said Olyer, referring to the rest of the station's personnel.

Montauk urged the committee to ask the city manager to write a thorough report on the alternate proposals and postpone the Dec. 4City Council vote until members have had time to consider all the options.

There was a brief discussion about moving this agenda item to a later meeting. But Bobb expressed his feelings that the matter should be settled sooner than later and vowed to get a supplemental report to council members in time for the Dec. 4 meeting. "If we need to stay up all night, we'll do what we need to do," said Bobb.

Asked later if she had any concern about the preparation of critical information for the Dec. 4 City Council meeting on Fire Station 8, Hoeppner-Freitas said, "I think it can be done. (City Manager) Robert Bobb seems very committed to getting a ... supplemental report out."

CITYSIDE

City editor
(510) 208-6447

www.oaklandtribune.com

FRIDAY November 23, 2001

Temescal fire station fray grows

Public hearings on closure to be held Nov. 27, Dec. 4

By Laura Casey
STAFF WRITER

OAKLAND — Opposition to the temporary closure of a Temescal fire station is mounting in North Oakland as a Fire Department plan works its way to the City Council for review.

Signs reading "Don't get Burned" are popping up in storefront windows along College and Telegraph avenues, and there is a growing concern among residents that their safety may be in jeopardy if emergency response times grow during the station's demolition and rebuilding.

"It's going to be bad," said Clarke Street resident Marcel Lewis, whose home is kitty-corner to Fire Station 8 on 51st Street and Telegraph Avenue. Not too long ago, she relied on the nearby fire station's quick response to care for her ill mother-in-law.

"There's a lot of elderly people in this neighborhood, and they need 911 right there," she said, pointing to the single-story beige station. "We need them."

Station 8, a two-company truck and ladder station, was supposed to be closed and rebuilt years ago. There was never any money in the budget to fund the $4.1 station until this year, when Fire Chief Gerald Simon developed a plan that would pay for the station by saving the city $2.8 million in fire staff overtime.

His plan not only finds money to build the station, but also attempts to patch the department's overtime problem.

Simon said the department is having a hard time filling overtime slots in stations around the city. Some of that trouble comes from a budget decision to staff two hills fire stations on an overtime-only basis.

The city approved the year-round staffing of Grass Valley Fire Station No. 28, and the North Hills Fire Station No. 7 in 1999. This decision costs $2.8

Please see **Cost**, LOCAL-2

p.27

Cost: Not enough firefighters for overtime, official says

Continued from LOCAL-1

million annually and takes 24 firefighters out of the overtime relief pool.

The result is stations work without enough firefighters on some shifts because the department is unable to find firefighters to work mandatory overtime. Simon expects the problem will exacerbate in 2002 as nearly 50 firefighters leave the department through attrition and retirement.

"We're covering another need for the department, a need for people to fill (overtime) slots," Simon said. "The whole thing has to be a balance."

The overtime problem will be partly solved by putting the 32 Station 8 firefighters in a citywide overtime relief pool. But it will mean eight fewer firefighters on Oakland streets for nearly a year and no firefighters specifically assigned to the North Oakland Rockridge and Temescal neighborhoods in 2002.

Steve Splendorio, president of the Oakland firefighter's union Local 55, said Simon's plan is putting people in North Oakland and the city at risk.

"Somehow or another, he doesn't want to face the issue. Yes, we're going to have eight fewer firefighters, and yes, we're increasing the risk to the citizens for that period of time," Splendorio said.

Critics of the plan say Simon is asking North Oakland to make up for a citywide staffing problem.

"It's not fair," said Vice Mayor Jane Brunner, who received hundreds of responses from a flier she sent to her constituents in mid-October about the Station 8 closure. "Instead of having a budget problem and fixing it citywide, we're fixing it in North Oakland."

Many residents said they are confused and concerned about their safety while the station is being rebuilt. On one side, Simon and City Manager Robert Bobb insist the plan provides adequate response from neighboring stations and city of Emeryville firefighters. On the other side, fire experts from the union are telling residents that response times to fire and medical calls will lag.

On medical calls, minutes can often mean the difference between life or death, medical experts contend.

There's an 80 percent chance a heart attack victim will survive if help arrives within six minutes. If help arrives in eight minutes, chances of survival plunge to 5 percent.

Adding to the confusion, the comprehensive emergency response plan has not been finalized. Chief Simon assured the council in April that it would be easy to carve the neighborhood into pieces and have neighboring Oakland and Emeryville stations cover calls.

In a staff report Simon prepared for Public Safety Committee review at its Nov. 27 meeting, he said Emeryville fire officials are poised to sign an agreement dedicating its truck and four firefighters — more than half of the small city's daily firefighting staff — to respond to Station 8's 426 annual ladder truck calls. Emeryville Vice Mayor Nora Davis said this is not true.

"I was a little taken aback by the statement that there was going to be a signed agreement," she said. "From my perspective, there is not going to be a done deal of any means unless the council looks at this more closely."

Simon said the agreement is still being worked out.

"This is still a fluid process. Since it is not imminent, it's not happening tomorrow, we're still trying to finalize the actual mutual aid plan," he said.

In the meantime, area residents are prepared to wage a war of words at the Nov. 27 Public Safety Committee meeting and the following City Council hearing Dec. 4.

Jacqueline Hoeppner-Freitas, a lawyer who has made a full-time job out of researching the issue and presenting her findings to the community, is floored by the notion that fire officials are content with reducing Oakland's daily staffing for 10 months.

"This is a dubious honor Oakland will have, being probably the only city that is working on cutting its firefighting force in the wake of Sept. 11, and its own disastrous history," Hoeppner-Freitas said.

She already bent Bobb's and Mayor Jerry Brown's ears at a house meeting Wednesday night. Brown has yet to take a public position on the plan.

The $4.1 million station will be paid for out of the city's Capital Improvement Program Budget, part of the two-year budget the council approved in June.

After the station is built, the city will add 32 firefighters to its 492-person force, bringing daily staffing levels back up to 141.

If the council decides to keep the firefighters on the streets through 2002, then it will be at the expense of other resources, Bobb said. The city is facing a $14 million to $27 million budget deficit and it cannot build the new station, maintain the fire department's current daily staffing levels and balance the budget.

"I personally and professionally don't think (temporarily closing Station 8) is a lot to ask when we are going to have a better improvement at the end of the day," Bobb said.

Splendorio said his firefighters are prepared to live in the old station for another two years while the city saves money to build the station. Bobb said he will consider that proposal.

The Public Safety Committee will hear Simon's report at 3 p.m. Tuesday in City Hall Hearing Room 1.

p. 28

MONTCLARION, p. A4
11/9/01

Station No. 8 — the heat is on, and rising!

GARY TURCHIN
There There

Fire and the works were on display at Jane Brunner's community meeting last Saturday at Peralta School. Fire Chief Gerald Simon, City Manager Robert Bobb, a whole gaggle of firemen and a lot concerned citizens were there to discuss the one-year closing of North Oakland's Fire Station No. 8 for its rebuilding.

The fire station issue is, simply put, one of dollars versus sense. The dollars are about $4 million and change; the sense is our public safety.

The city has arranged one of those crafty "creative financing" deals that involves closing the firehouse and financing the new one on the backs of wages saved by having eight less firefighters on the streets for the next year. The savings in wages would net the city $3.2 million of the $4.1 million needed to build a new firehouse.

Nifty idea, and I can see why it was tempting. It's almost like a free firehouse! Hey, let's close 'em all and build all new ones!

But nothing is free. There would, of course, be eight less firefighters on the streets of Oakland at any given moment — 133 instead of the current 141. (Eight of the 141 are overtimers, but that's another issue). North Oakland will lose something in its response time as well, and response time is the lynch pin of public safety. (How long can you hold your breath? That's how fast you need help.) The area will have to rely more on Piedmont, Emeryville and other Oakland firehouses for coverage. Deals with Piedmont and Emeryville are in the works but are in no way finalized.

Finally, there will also be two trucks basically mothballed for the year, including one of Oakland's seven ladder trucks (for math freaks that's 14 percent of the fleet). So the price is pretty steep: less coverage, loooonger response times, fewer personnel and less equipment ready to roll.

For the sake of full disclosure, let me remind you that my home is in Station No. 8's district. They are my guys, and if my heart ticker goes walla-walla-bing-bang, it's probably them that will provide the EMS — 80 percent of firehouse calls

See TURCHIN, Page A5

Turchin

FROM PAGE A4

are for emergency medical services. Frankly, my heart's fine, but I've burned out three whistling teapots in the last year alone, so I'm a guy that takes comfort from my local firehouse. But I'm making light of a life-and-death issue.

Jane Brunner is wisely making the City Council take another look at this project. There will be a Public Safety Commission meeting on Nov. 27 to study it. Apparently she was under the impression that the funding was from the city's capital improvement program (CIP) when she voted for it. No clue, she claims, that the CIP money came from cutting the fire department.

Hard to believe, but I spoke to Councilman Larry Reid, and he pretty much pleaded ignorance, too. It was "never explained" that way, he told me. So that's two council members who didn't seem to know what engine was driving the truck when they voted. Councilman Dick Spees concurred to some degree. "It was probably not made abundantly clear," he told me, "or maybe we didn't ask the right questions." Either way, it leaves a thick scull like me to conclude that either the City Manager's office and the Oakland Fire Department were playing three-card-Monty with the council, or the council wasn't, as Spees suggested, doing its homework. Neither scenario, of course, speaks too highly of our "process."

To Brunner and the council's defense, I will say that Chief Simon, who Spees called "very straight and very good," looked like Bill Walsh on steroids when he did the X's and O's of the deal at the Peralta meeting. "They're moving this guy to No. 23, and that overtime guy to No. 15," and filling this slot with a Jell-O mold . . . yadda yadda, yadda. It had to be explained three times before it sunk into my head. But the gist remains what I said at the beginning — eight less firefighters per shift, while North Oakland burns, er closes.

A number of current and former firefighters were there to reiterate the obvious. Don Mathews, former Station No. 8 chief, said that fire protection in North Oakland will go "down, down, down." "All I can say," he said sardonically, "is good luck."

The 800-pound gorilla that nobody mentioned at the meeting was Sept. 11 (and anthrax, and the governor's bridge warning just days before). Prior to 9/11, I could see taking a swing at this deal, keeping our fingers crossed and hoping no one gets burned. Now, firefighters may be our front lines if anything goes down in the terror war. This seems an odd and inappropriate time to cut services for any reason, don't cha think? And keep in mind, the reduction is city-wide. North Oakland is only the canary in the coal mine. We are all miners here.

Steve Splendorio, the Oakland firefighters' union rep, was adamant. "The community deserves protection, " he said. "Station 8 should stay open one way or another." He added, "It's a political issue. If enough heat is applied, they'll find the money."

Neighbors, apply your heat to City Council. It will take five votes to change it. And an additional $4 million. Is your life worth four mil'? Your kids'?

Mr. Bobb — is your life worth it?

■ ■ ■

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Downs Memorial United Methodist Church
6026 Idaho Street
Oakland, California 94608
Church: (510) 654-5858
Fax: (510) 654-6156

November 20, 2001

KELVIN SAULS
Minister

Vice-Mayor Jane Brunner
One Frank Ogawa Plaza
Oakland, CA 94612

Dear Vice-Mayor Brunner:

We are writing this letter to ask you to do everything in your power to reverse the City Council vote of this past June regarding the method of financing most of the costs of rebuilding Fire Station 8 on 51st Street above Telegraph Avenue.

We understand and wholeheartedly support the much needed replacement of Fire Station 8, but we have learned that the financing plan will result in cutting eight firefighters from the city's available emergency response personnel and putting their engine and ladder truck (the only one in North Oakland) in storage for the rebuilding period, estimated to last a year or more, This loss of critical aid at potentially difficult times poses a grave danger for the entire city and especially for my parish, which is now covered by Station 8.

The reason we are especially impacted by the current plan is, to put it bluntly, that we may have more need than most for Station 8's presence when calamities occur. The parish is home to a predominance of elderly people, many of them no in the best of health and many living in wooden structures.

Station 8 knows our area and, of crucial importance, knows how to get to us fast. Moreover, our degree of alarm rises exponentially at the thought that their engine, the equipment most essential for emergency medical response, will be in storage somewhere when it might be most needed.

In sum, our entire parish population is becoming extremely concerned at this danger to their safety. We urge you to find another way to finance the new Station 8 rather than by endangering the well being of citizens who may find it hard to fight for their right to safety, but who are citizens nonetheless.

Thank you for your consideration.

Sincerely,

Rev. Kelvin Sauls
Pastor

JOAN E. ETTLINGER
481 Alcatraz Avenue Apt. C
Oakland, California 94609
(510) 658-0572

November 25, 2001

Public Safety Committee
Councilmembers Larry Reid, Henry Chang,
Danny Wan, Moses Mayne
Oakland City Hall
Frank Ogawa Plaza
Oakland, California 94612

Re: Firestation #8

Dear Public Safety Committee Councilmembers:

I am supporting the firefighters at Firestation 8 in their efforts to remain in North Oakland while the new firestation is under construction.

The proposal by the Fire Chief to take 8 firefighters and two pieces of firefighting apparatus off the street in order to fund the construction of a modern firehouse through savings in the City's overtime budget is scary. The Fire Department is understaffed now -- this plan only exacerbates the situation. The Chief's proposal could better be referred to as the "Wing and a Prayer Plan" since it seems like North Oakland residents are being asked to "wing it" and pray nothing catastrophic, like another hills fire or an earthquake or a terrorist attack, takes place during construction.

In order to modernize one stationhouse, the Chief is proposing to further understaff and underequip the Department through a plan that is so circuitous and confusing it has literally taken more than a couple hours for the community to understand but essentially relies on using overtime, the relief pool and taking two pieces of firefighting equipment out of service during construction.

I have seen the firestation. To say it is decrepit, would be a compliment. However, the firefighters who work there want to remain as a unit in North Oakland and are willing to continue living in deplorable conditions if the Committee and Council will accept their proposal which will be presented at the Public Safety Committee.

If the firefighters are willing to continue living in these appalling conditions in order to stay together, then I think the Committee and Council should support them. It will mean a higher level of emergency medical service and fire protection in North Oakland than the Chief's plan. It will keep two pieces of firefighting apparatus in use. And, it will be a morale booster to people who are already forced to work mandatory overtime because of chronic understaffing and must be there for us 24/7 to save our lives in a medical emergency or put their lives on the line in a fire.

Sincerely,

Joan E. Ettlinger

cc: Jackie Hoeppner-Freitas, DMV Neighbors

RCPC ROCKRIDGE COMMUNITY PLANNING COUNCIL

■ 5856 COLLEGE AVENUE PMB 130 ■ OAKLAND, CALIFORNIA 94618 ■ 510 • 814-6060 ■ www.rockridge.org

Council Member Larry Reid
One Frank Ogawa Plaza
Oakland, CA 94612

November 19, 2001

Dear Council Member Reid:

The Rockridge Community Planning Council urges you and the other members of the Public Safety Committee to reconsider the City Council's June budget vote to support Fire Chief Simon's plan for personnel reassignment/reduction and warehousing of equipment during the Fire Station 8 rebuild. We believe this proposal would result in the unnecessary loss of property and lives in North Oakland. We also believe that at the May 1st Budget Session Chief Simon did not made clear his intentions to reduce fire fighting capacity. We ask you, therefore, to recommend a new discussion and a revote of this proposal at the City Council.

It is apparent to RCPC that the response time to both fires and medical emergencies would be severely compromised with a reduction of firefighting postitions and equipment. RCPC is also greatly concerned that no formal agreements have been reached for backup support with the Piedmont or Emeryville departments. In light of the November 8 residential fire in Temescal that required two ladder trucks and 8 engines, how could it be argued that the City can guarantee the safety of its citizens without the heavy equipment from Station 8 in use?

The construction of the new fire station has been estimated to take 10 months. If all goes well and construction proceeds on time this retrenchment of available firefighters and equipment will extend into and through the most hazardous time of the year, the dry season. At this 10th anniversary year of the most disastrous residential fire in United States history the City Council should be especially mindful of its obligation to ensure that Oakland residents never experience such a devastating loss again. RCPC strongly urges the City Council to give more careful consideration to the potentially calamitous ramifications of reducing fire protection in our city.

Respectfully,

Susan Montauk
RCPC Chair

cc: Council Members: Jane Brunner, Danny Wan, Nancy Nadel, Dick Spees, Ignacio de la Fuente, Moses Mayne, Jr., Henry Wang,
Mayor Jerry Brown

Ruth Finnerty

From: "Ruth Finnerty" <ruthfinn@earthlink.net>
To: <jbrunner@oaklandnet.com>; <dwan@oaklandnet.com>; <nnadel@oaklandnet.com>; <idelafuente@oaklandnet.com>; <mmayne@oaklandnet.com>; <lreid@oaklandnet.com>; <cityochang@aol.com>; <district.4@oaklandnet.com>
Cc: <officeofthemayor@oaklandnet.com>; <citymanager@oaklandnet.com>
Sent: Tuesday, November 20, 2001 11:11 AM
Subject: Fire station 8

Dear Public Safety Committee members and/or all City Councilmembers:

I am writing to ask that you do everything in your power to ensure that the City Council rescinds its vote of this past June regarding the method of financing the rebuilding of Fire Station 8 on 51st Street above Telegraph Avenue.

I am completely in favor of the much needed replacement of Fire Station 8, but I have learned that the financing plan as approved in June will result in cutting eight firefighters from the city's available emergency response personnel and putting their engine and ladder truck (the only one in North Oakland) in storage for the rebuilding period, estimated to last a year or more. This loss of critical aid at potentially difficult times poses a grave danger not just for the area I live in, but indeed for the entire city and its neighboring communities, areas that Station 8 has itself historically been on call for.

Furthermore, the aid agreement with Piedmont and Emeryville that helped lead to the Council's vote has still not come to pass. Fire Chief Gerald Simon presented it as a settled arrangement both to the Council in May and to community meetings at the Temescal Library on September 27 and at Peralta Elementary School on November 3, Councilmember Jane Brunner's community advisory meeting. At the November 3 meeting, City Manager Robert Bobb contradicted Chief Simon, pointing out that he had told the Chief previously that the agreement had to be in writing, but there was nothing in writing yet.

Indeed, recently we were told that Oakland's request to Piedmont for help has been withdrawn. And now, with the City Council scheduled to meet on December 4 to reconsider its June vote, Chief Simon's Agenda Report tells us that Emeryville will make the agreement final on December 7, three days AFTER the Council's vote. We have heard, however, that the Emeryville city government knows nothing of this.

I urge you to investigate independently to determine whether the situation is as the Agenda Report claims. The lives of the people of Oakland depend on the viability of Chief Simon's plan, a plan that was supposed to exist on May 1, 2001, and still does not exist.

In any event, Emeryville is an unlikely candidate to help with replacements for Station 8. The number of calls that Station 8 receives--nearly 4000 in the year 2000, 1,010 for the ladder truck alone--would overwhelm Emeryville's ladder truck capabilities, and the necessarily longer response time could place citizens in serious jeopardy. (**NOTE:** The 426 figure of "actual action" responses on pages 3 and 4 of the Agenda Report is misleading because the truck has to respond as soon as each call comes in without waiting around the station to see whether the call is "actual" or not.)

Please find a way to finance the new Station 8 that will keep us all, including our firefighters, as safe as possible.

Thank you.

Ruth Finnerty

MEMORANDUM

City of Emeryville

December 4, 2001

TO: John Flores, City Manager

FROM: Stephen L. Cutright, Fire Chief

SUBJECT: **Approval of an Interim Enhanced Mutual Aid Fire Department Response Agreement with the City of Oakland during the reconstruction of Oakland's Fire Station 8**

RECOMMENDATION

Staff recommends that the City Council authorize the fire chief to enter into an agreement with the Oakland fire chief to provide interim enhanced mutual aid fire department response to designated areas of Oakland during the reconstruction of Oakland's Fire Station 8.

BACKGROUND

The City of Oakland is proposing a temporary enhancement of our mutual aid relationship. There are two elements of their proposal. First, they are asking Emeryville to provide temporary coverage with our Truck 2471 on all structure fires occurring within a section of their city affected by the anticipated closure and reconstruction of their aging and inadequate fire station 8 located at 463 -51st Street (near 51st and Telegraph Avenue). Second, the fire station 8 reconstruction will reduce Oakland resources available for emergency medical service (EMS) calls within a portion of their city adjacent to Emeryville's northeastern boundary, and they are asking Emeryville to provide interim EMS coverage there. Oakland expects the interim coverage to be needed for 10 to 12 months, when they once again will fully staff fire station 8 and provide it with modern equipment and apparatus. Oakland is seeking help to fill an anticipated temporary gap in their fire protection and medical service coverage.

An enhanced mutual aid agreement will benefit Emeryville in several ways both short-term and long-term. Emeryville will be assured of prompt and continuous emergency coverage, even when both fire units are busy on calls. Oakland will continue to provide low-cost dispatch services. Emeryville fire personnel will gain valuable experience in a wider scope of emergency calls and in working closely and more frequently with the larger operational teams in Oakland. An interim enhanced mutual aid system will carry forward into joint training and multi-company drills with Oakland, and the refinement of common professional standards covering emergency scene operations. This will mean developing a closer and more effective working relationship with Oakland, giving enhanced fire and medical service to the citizens of both cities. Eventually, when fire station 8 is replaced Emeryville will be able to utilize better fire protection resources available for us from that fire station.

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The section below covering the analysis of the proposed agreement will consider in depth its merits and impacts upon Emeryville. Before that discussion, however, a review the general mutual aid system will place the current proposal in historical context. The existing mutual aid system, after all, has worked reasonably well for many years. Unfortunately the system as it now exists has some shortfalls and gaps in providing effective fire and medical protection. Indeed, part of the appeal of the current proposal to enhance the mutual aid system between our two jurisdictions is its value as a 'first step' toward a more comprehensive automatic aid system.

Mutual Aid:
Dating back to at least the early 1970's when California experienced a series of catastrophic urban conflagrations, the mutual aid system among fire and law enforcement agencies is by now a time-tested and solidly proven method of interagency cooperation, mutual support, and group protection. The concept of mutual aid is based on the much older principle of "collective security," where no individual is deemed secure unless all members are secure. Specifically in the case of the California fire service, local, state and federal agencies have agreed to pool their fire response resources so that each agency would receive emergency help according to its need, and in turn each agency would give emergency help to others according to its reasonable capacity to do so. Resources are lent between jurisdictions; except on very few and specialized circumstances no money is exchanged for mutual aid services. Above all, mutual aid is a system of protection which pools the resources of many to cover the eventuality that on occasion a member agency will need to ask for help. Single fire departments, and especially small ones, do not stand alone to protect their citizens against all emergencies, large and small. Instead they can rely upon a wider system of support, held together by common professional standards, to provide for their protection.

Of course, as with any collective security system, mutual aid requires giving as well as receiving. How much and how often one gives and takes largely depends upon the circumstances of individual fire departments. In our case, as a small fire department, Emeryville is fortunate to have a relatively low emergency call volume, but on the other hand has limited resources and cannot adequately handle larger emergency incidents with only two companies on duty (and seven firefighters at a minimum). This means that Emeryville is in a position to lend mutual aid support to its neighbors (mainly Berkeley and Oakland) by sending a single company more frequently.

Oakland, on the other hand, is a large city with vast resources but also a significantly higher emergency call volume than Emeryville. Oakland is in a better position to lend occasional massive support to its neighbors in response to a large scale incident. Also, because of the extensive breadth of resources available to a large fire department, Oakland is able to provide Emeryville with specialized resources unavailable to any small fire department. Under the existing mutual aid arrangement between Oakland and Emeryville Oakland gives the kind of support to Emeryville that a small city cannot get any other way and in such a short time. On the other hand, Emeryville

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gives Oakland the kind of support it needs most: single unit responses to cover their districts when their units are busy on one of their own emergencies.

The mutual aid system upon which Emeryville relies is based upon three (3) underlying elements.

1. California has established a cooperative State Fire and Rescue Mutual Aid System under the authority of the Governor's Office of Emergency Services (OES). Although participation is completely voluntary for local jurisdictions, the system has the full participation of every fire agency in the state.

2. California OES has augmented the State Fire and Rescue Mutual Aid System by administering a mutual aid system which encompasses agencies of the federal government: the Forest Service, Bureau of Land Management, and the National Park Service. This agreement is called the Cooperative Agreement for Local Government Fire Suppression, shortened to the "Five-Party Agreement" and provides for federal and state reimbursement of mutual aid costs incurred by local government fire agencies when responding to fires on state or federal lands.

3. The cities, special districts, Alameda County, CDF, the University of California, and the United States Army and Navy have established an Agreement for Mutual Fire Assistance within Alameda County. This agreement, to which Emeryville is a signatory, was entered into on October 28, 1993 and provides for mutual reciprocal assistance, mutual indemnification from liability and an agreement to hold each of the other parties harmless from claims for damages. From this county-wide agreement, the fire chiefs have developed an "Alameda County Mutual Aid Plan" which specifies the way mutual aid for fire and medical resources will be organized. The County Mutual Aid Plan and its underlying agreement is the backbone of the existing mutual aid relationship between Emeryville and Oakland.

After the October 1991 East Bay Hills Fire, the mutual aid system was further modified, this time to create Mutual Response Areas (MRA) between Emeryville, Oakland and Berkeley. Although the MRA concept was never actually implemented for Emeryville (Oakland and Berkeley in fact developed an MRA for the hills area), the Emeryville City Council on June 17, 1997 adopted Resolution 97-117 authorizing the City Manager to enter into MRA agreements with Berkeley and Oakland. The MRA mutual aid concept provided for fire units from each of the parties to respond directly to emergencies within the designated MRA's on an immediate basis, without waiting for a formal mutual aid request. The MRA agreements were the first time that the cities of Oakland, Berkeley and Emeryville contemplated an arrangement known as "automatic aid" where fire and medical operations were conducted on the basis of the nearest fire unit went immediately to the emergency regardless of jurisdictional boundaries.

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During the past several years, the Alameda County Fire Chiefs Association has recognized that although the MRA mutual aid concept failed to be implemented broadly in the county, the concept of automatic aid should be incorporated into an updated Alameda County Mutual Aid Plan. From a variety of perspectives and circumstances the county fire chiefs recognized that the existing mutual plan was slow and poorly responsive to the immediate emergency needs which often arise in each jurisdiction. A better system is currently under plan development, a system which involves coordinated communications (dispatching, boundary drops, nearest unit response, joint training, common operational standards, and a uniform approach to providing acceptable levels of coverage and response to all participating jurisdictions. The vision now entertained by the county fire chiefs is that mutual aid needs to go to the next step: toward an eventual functional integration of emergency operations.

Interim Agreement:
The proposed interim agreement with Oakland for enhanced mutual aid needs to be considered within this historical context. The agreement is not just about Emeryville covering Oakland fire station 8's still district with a truck company. It is about strengthening the ties between Oakland and Emeryville in the joint delivery of fire and medical services. It is about ensuring that Emeryville gives resources it has the capacity to give in exchange for getting resources it doesn't have in a large emergency or when both of its units are busy. It is about starting to craft a regional system of fire protection and not just relying upon our small fire department for all of our protection. The enhanced mutual aid agreement is a first step, a carefully limited step, a step which can help us move toward a more encompassing system of collective security.

The proposed interim agreement would have Emeryville provide coverage in two ways:

1. Provide aerial truck company response from Emeryville fire station 2 to the "still district" (or first in district) formerly covered by Oakland Truck 8 before their station closure;
2. Provide EMS coverage to an area of Oakland immediately adjacent to the northeast boundary of Emeryville, from Vallejo Street on the west, 53rd Street on the south, Lowell and Sacramento Streets on the east, and the Berkeley border on the north. From Emeryville's east border, fire units would respond up to six blocks east into Oakland for EMS coverage

In exchange, Oakland agrees to provide coverage for Emeryville in the event we deplete our resources on the basis of the closest available unit. For medical calls, the engine out of Oakland's fire station 5 located at 934 34th Street will be responding with a paramedic assigned to that unit. Further, during a significant mutual aid event Oakland will provide coverage to Emeryville during periods of exhausted resources. The 9-1-1 dispatch services to Emeryville will continue without any increase to the $ 30,000 per year cost. The indemnification and hold harmless provisions of

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the Alameda County Mutual Aid Agreement also apply to this enhanced mutual aid agreement. Finally, Emeryville and Oakland will develop joint training, joint recruit academy and multi-company drills.

ANALYSIS/DISCUSSION

The proposed interim agreement for enhanced mutual aid with Oakland raises several issues which need to be addressed.

1. What is the expected response activity for Emeryville in responding to Oakland? Please refer to the analysis sheet attached to this report entitled "Proposed Oakland Fire Station 8 Coverage: Emeryville Fire Mutual Aid." The spreadsheet is divided vertically into four sections; direct your attention to the left section of the spreadsheet.

   Taking calendar year 2000 emergency call statistics from the Oakland Fire Dispatch Center, we were able to determine the number of calls fire station 8 actually responded to within the Oakland district Emeryville is being asked to cover. During the public debate over this issue an Oakland resident developed figures for emergency calls from fire station 8 which are significantly at odds with the figures we have obtained from the dispatch center. We sorted the station 8 calls by geographic area to determine only those calls within their "still district." The engine and truck units out of fire station 8 responded to areas of Oakland outside that still district, and this accounts for the higher figures promulgated by the Oakland resident.

   Our estimate, corroborated by Oakland fire officers responsible for analyzing their plan, shows that for 2002 Emeryville would be expected to respond under the interim agreement to 704 calls: 266 truck responses and 438 EMS responses. As the starred column (***) in the left section of the spreadsheet shows, this will amount to a total of slightly under two emergency calls per 24-hour day by the Emeryville Fire Department into Oakland. EMS responses would account for 63% of the added call volume. Oakland fire officers have noted that although the Emeryville truck company might be dispatched to 0.73 fire calls per day, based upon their actual fire incidents they estimate Emeryville will only have to work on actual structure fires 1.5 times a week. This report seems consistent with our experience with cancellations for fire calls due to false alarms and cases where only minor fires are found which do not require a truck at the scene.

2. What is the expected impact on the Emeryville Fire Department's emergency response load? Again, please refer to the analysis sheet attached to this report entitled "Proposed Oakland Fire Station 8 Coverage: Emeryville Fire Mutual Aid." The right three sections of the spreadsheet analyze the impact of adding Oakland's requested emergency responses

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under the interim agreement for enhanced mutual aid. Like a glass either half full or half empty of water, it is possible to look at the fire station 8 impacts upon Emeryville as either very minor or very large. The facts strongly point to a very minor impact.

In the 2002 calendar year we expect under the interim agreement that the Emeryville Fire Department's emergency call volume will jump from around 1,600 calls to 2,300 calls, about a 44% increase. While it is tempting to regard this increase as a significant change, in fact it has very little impact upon the 24-hour daily work load of the fire department because the Emeryville calls without Oakland responses are so low to begin with. At only 4.35 calls per 24-hour day from two fire stations, Emeryville fire crews would be asked under the interim agreement to add 1.92 calls per shift to their work load, for a department total of 6.28 calls per 24-hour day. This increase is hardly significant even for one fire company, let alone for two operational companies. When you consider that one of Oakland's busier fire companies responded during the 2000 calendar year to over 8.5 calls per day, the impact upon only one Emeryville fire company is indeed minor.

3. Will Emeryville residents suffer when the paramedic engine from Fire Station 2 cannot respond to an Emeryville medical call because that company is away on a fire in Oakland? The concern is that a Triangle resident might get a delayed response from Station 1's engine (from the Peninsula) or that Oakland wouldn't be capable of providing paramedic level EMS service.

Under the principle that the nearest unit responds, Oakland's engine 5 would respond to a Triangle EMS call. Oakland has recently staffed Engine 5 with a full-time paramedic firefighter, so unless they are busy on another call, Engine 5 will be able to cover the Triangle and eastern section of Emeryville with paramedic-level EMS service. In the event engine 5 cannot respond from Oakland, Emeryville will respond as it always has, from Station 1. The response times within Emeryville are historically well within the six-minute standard, even from across town.

4. Will Oakland provide for back coverage for Emeryville in the event both Emeryville fire units are on emergency calls? This is one of the best features of the proposed enhanced mutual aid arrangement with Oakland. Emeryville will obtain coverage from Oakland whenever Emeryville's resources are depleted. In the past, Oakland has covered Emeryville whenever both Emeryville fire units were engaged on emergency calls within our jurisdiction, or 'on request' whenever an emergency incident was larger than our two fire companies could handle. Oakland will continue as before, only now they will commit this coverage in writing to Emeryville and monitor Emeryville's fire coverage so that Emeryville will not need to request separately mutual aid before Oakland coverage begins. If Oakland cannot handle a timely response from one of their units (because that unit is out

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of position or on another emergency call) then Oakland will assume the responsibility of calling Berkeley for a mutual aid response. Like a true joint operations or automatic aid system, Oakland's dispatch will be the guarantor of Emeryville's fire protection coverage. They already do this for Oakland, now they'll include Emeryville.

5. Will there be operational continuity when the two separate fire departments are working an emergency scene together? Under the existing mutual aid system, there already is a fundamental degree of operational continuity. Under an enhanced mutual aid relationship, there will need to be better continuity on the fire ground. We will attain this continuity by training, multi-company drills, developing common operational standards, and by regular interdepartmental consultations and discussions designed to deal with little problems before they become large problems.

6. Is this interim agreement just a way for Emeryville covering Oakland so that they don't have to pay overtime to their firefighters? The public debate has certainly cast the proposed fire station 8 coverage plan in this light. Another statement of the issue is that one area of Oakland is suffering from poorer fire protection because of the City of Oakland's problem in affording overtime salaries. The problem is actually much more complicated than a reluctance to pay overtime to firefighters and keep the same number of firefighters on duty.

The Oakland Fire Department is having a difficult time staffing their fire companies. The impact of change in the retirement system, the move to firefighter/paramedics shrinking the labor market, and historical staffing short-falls have combined to create a significant staffing shortfall. As a result, Oakland has for the past month been unable to fill all of their minimum firefighter positions on weekends, even when they have ordered mandatory overtime for personnel. The Union (Local 55) is responsible for scheduling overtime and they have been unable to fill engine companies at some stations. This situation will only get worse with added retirements in the December 2001 to February 2002 period.

If Oakland is in this kind of staffing crisis, Emeryville's addition of truck coverage for fire station 8 is not going to take away overtime work opportunities for Oakland firefighters so much as it will ensure that sections of Oakland in fact remain adequately covered. If the Union cannot fill the positions minimally required to be filled on a daily basis, then it is not reasonable to accuse Oakland of merely trying to save money by asking Emeryville to help. Our help is directly related to ensuring that our neighbors in fact maintain their fire protection coverage. This is, after all, a core concept of mutual aid.

7. Is Emeryville providing greater value in services to Oakland than it is getting in return? This question also cuts to the heart of the mutual aid concept. Each party in a mutual aid

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relationship gives according to what it can give, and receives according to its needs. Mutual aid is like an insurance risk pool. Emeryville has very few simultaneous alarms where both fire units are out of service at the same time. With Emeryville's relatively low call volume, there is excess emergency response capacity to provide single fire unit assistance regularly. Emeryville "pays" every day in single fire unit "premiums." When Emeryville must make a claim for resources from the mutual aid risk pool, however, it has the assurance of knowing that the risk pool will provide the resources needed in a timely manner. Oakland has the resources to provide massive response to cover Emeryville when an emergency outstrips Emeryville's capabilities. The attached "Comparison of Aid Provided" speaks directly to relative benefits of our relationship for 2001 to date.

More than this, however, Oakland has a myriad of resources which Emeryville with its small fire department simply cannot afford. The attached resource list from the Oakland Fire Department clearly shows the depth of their ability to assist Emeryville both on an emergency and on a non-emergency basis. Many times over the past years, Oakland has assisted Emeryville with routine emergency services and non-emergency services. The point is that we must look at the mutual aid relationship on the basis of whether our needs are being met, or alternatively whether we can meet them more efficiently some other way The historical record supports the assertion that mutual aid is both cheap and reliable insurance for Emeryville.

8. Doesn't the existing mutual aid system work just fine? Why do we need to change it? Given Emeryville's considerable target hazards (e.g., the Watergate Complex) and the high rise buildings, the Emeryville Fire Department is seriously short on resources to handle even moderate-level emergency situations alone. Mutual aid does work, but it doesn't work well enough to cover certain of our fire protection needs.

Fires grow exponentially, given available fuel. This means that rapid and resource-intensive responses are what is needed to control and extinguish small but fast growing fires before they get to be big fires. In order to meet the requirements implied under NFPA 1710 (or avoid the liability), in order to assemble sufficient resources at an emergency scene before sending personnel into a fire building, we need to have a full structure fire response from initial dispatch. The current mutual aid system has too many loose ends, involving too much time delay, to be good for Emeryville over the long term. Either we make the mutual aid system meet our objective needs, or we need to re-evaluate our resource posture for covering larger-scale emergencies.

Managing the Agreement:
There is much that needs to be managed and supervised with an interim enhanced mutual aid agreement with Oakland. A significant labor disagreement exists between Local 55 and the City of

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Oakland over this agreement. The dispatch system is critical to the effective working of the enhanced mutual aid elements, and dispatch performance must be monitored. Training must be adequate to cover operational needs and it is only through effective multi-company training that we can hope to coordinate the operational standards of both fire departments. If the call volume for Emeryville turns out to be significantly more than expected, we have to be prepared to scale back in planned ways. Oakland clearly has set a priority on the truck coverage from Emeryville, and so if the call volume is excessive it is likely that the Emeryville EMS response would be the first to be scaled back. Moreover, we will have to carefully monitor the way the Oakland Fire Dispatch provides coverage for Emeryville when both our fire units are out of service. We expect them to do well on this, since they provide continual coverage for Oakland already. But we must remain vigilant. The same is true with our emergency response times; we cannot afford to see a marked deterioration in these after an interim agreement is in force.

We are in a good position to monitor the execution of an enhanced mutual aid agreement. We have benchmark data on response times and call volumes, we have adequate reporting systems which will allow us to spot problems early and track trends, and we have open lines of communication between the command officers of both fire departments. Undoubtedly we will need to meet and confer with our Union over the impacts of such an agreement. We must monitor the actual service delivery into Oakland, remaining accountable both to the Oakland residents of the "DMV neighborhood" and our own citizens and City Council. Above all, we must be prepared to take aggressive action to correct problems, and if we can't correct those problems, we must admit failure and try other ways to assure fire and medical safety for both cities.

Finalization Process:
The authorization requested in the attached resolution and the attached letter of agreement contemplates the two fire chiefs refining the operational details of an enhanced mutual aid relationship before beginning actual coverage. The prior County Mutual Aid Agreement and the draft MRA Agreement give us a structure upon which to build the program's operational plan.

FISCAL IMPACT

The proposed enhanced mutual aid agreement will involve no direct cash outlay for the City, nor will Emeryville be compensated directly from Oakland for providing emergency services the them. There may be certain minor indirect savings realized and costs incurred, however. The emergency dispatch services provided by Oakland would not increase in cost from the current level of $30,000 per year and this would represent a kind of savings. On the other hand, there would be an incremental increase in the wear and maintenance costs associated with our apparatus (one engine and the aerial truck) and some of the equipment. Since we are still talking about only a minor impact upon the Emeryville Fire Department in terms of total call volume and emergency service activity, the incremental cost increase is likely to be minor, if it is noticeable at all.

VII A

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SUBMITTED BY:

Stephen L. Cutright, Fire Chief

APPROVED AND FORWARDED TO THE CITY COUNCIL:

John A. Flores, City Manager

Attachments: Comparison of Aid Provided: Emeryville and Oakland
Letter of Intent, November 8, 2001
Five-Party Agreement
Alameda County Mutual Aid Agreement
Resolution 97-117
Proposed Oakland Fire Station 8 Coverage:
Emeryville Fire Mutual Aid
Calls Per Firestation in 2000 and Other Quick Facts
(Jacqueline Hoeppner-Freitas, Oakland resident)
Oakland Fire Department Emergency Resource List
Map of Coverage

VII.A

COMPARISON OF AID PROVIDED
Emeryville and Oakland
2001

Emeryville Gets From Oakland	Oakland Gets From Emeryville
• Mutual aid coverage when when both EFD units are busy (3 fire units sent)	• Mutual aid coverage when OFD units in west-Oakland are busy (9 fire units sent)
• Mutual aid fire units for confirmed structure fires (2 fires @ 3 units each = 6 fire units sent)	• Mutual aid fire units for confirmed structure fires at multiple alarms (2 fires @ 1 unit each = 2 fire units sent)
• Mutual aid fire command staff on confirmed structure fires (2 fires @ 1 Battalion Chief each)	• Not requested, occasionally respond voluntarily; no command staff available after-hours
• Use of Fire Training Facility for Recruit Physical Agility Testing (One 8-Hour Day)	• None
• Participation in Specialized Training Programs – Weapons of Mass Destruction Drill – Medical Response Training–WMD – Recruit Academy	• Invited to multi-departmental High Rise Drills and Inspections (hosted in Emeryville)
• Specialized Emergency Resources: – Heavy Rescue Unit – Fire Boat – Air Supply Unit (SCBA refilling) – Foam Unit – Hazardous Materials Unit – Power Unit (large generator) – Command Unit (large emergencies) – Salvage Unit – Trauma Diffusing/Debrief Team – Fire Investigator	• None
• Staff Assistance (Testing)	• Staff Assistance (Testing)

VII.A

p.44

RESOLUTION NO.

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF EMERYVILLE AUTHORIZING THE FIRE CHIEF TO ENTER INTO AN AGREEMENT WITH THE OAKLAND FIRE CHIEF TO PROVIDE INTERIM ENHANCED MUTUAL AID FIRE DEPARTMENT RESPONSE TO OAKLAND DURING THE RECONSTRUCTION OF OAKLAND'S FIRE STATION 8

WHEREAS, mutual aid is a system of collective security by which fire departments may obtain additional resources for responding to emergencies within their individual communities; and

WHEREAS, the Emeryville Fire Department requires prompt back up coverage by other cities, including the City of Oakland, to ensure availability of adequate emergency response personnel; and

WHEREAS, the City of Emeryville and the City of Oakland are parties to the Alameda County Mutual Aid Agreement initiated on October 28, 1983, and to the Alameda County Mutual Aid Plan; and

WHEREAS, the City of Oakland desires to reconstruct an old and marginally functional fire station, Station 8 at 463 - 51st Street, and the Oakland is requesting Emeryville's assistance on a interim basis until reconstruction is completed to provide certain specific emergency aerial truck and fire engine coverage into areas now covered by the fire units housed at Fire Station 8; and

WHEREAS, the City of Oakland will provide to Emeryville certain backup emergency coverage when Emeryville's resources are depleted, and will provide such services in the quantity and quality acceptable to Emeryville in meeting its emergency fire and medical service requirements; and

WHEREAS, the City of Oakland and Emeryville contemplate further cooperation in developing joint training, multi-company drills, joint recruit academy training and development of common professional standards for their emergency operations;

THEREFORE, BE IT RESOLVED that the City Council of the City of Emeryville authorizes the Fire Chief to enter into an agreement with the Oakland Fire Chief to provide interim enhanced mutual aid fire department response to Oakland during the reconstruction of Oakland's Fire Station 8.

VII A

ADOPTED by the City Council of the City of Emeryville at a regular meeting held on December 4, 2001.

AYES:_____

NOES:_____ **ABSENT:**_____

EXCUSED:_____ **ABSTAINED:**_____

_____
MAYOR

ATTEST:

_____
CITY CLERK

APPROVED AS TO FORM:

Michael G. Smith
CITY ATTORNEY

VII A

Truck 5's territory is all of N. Oakland. It's housed at Station 8.

Truck Response Coverage

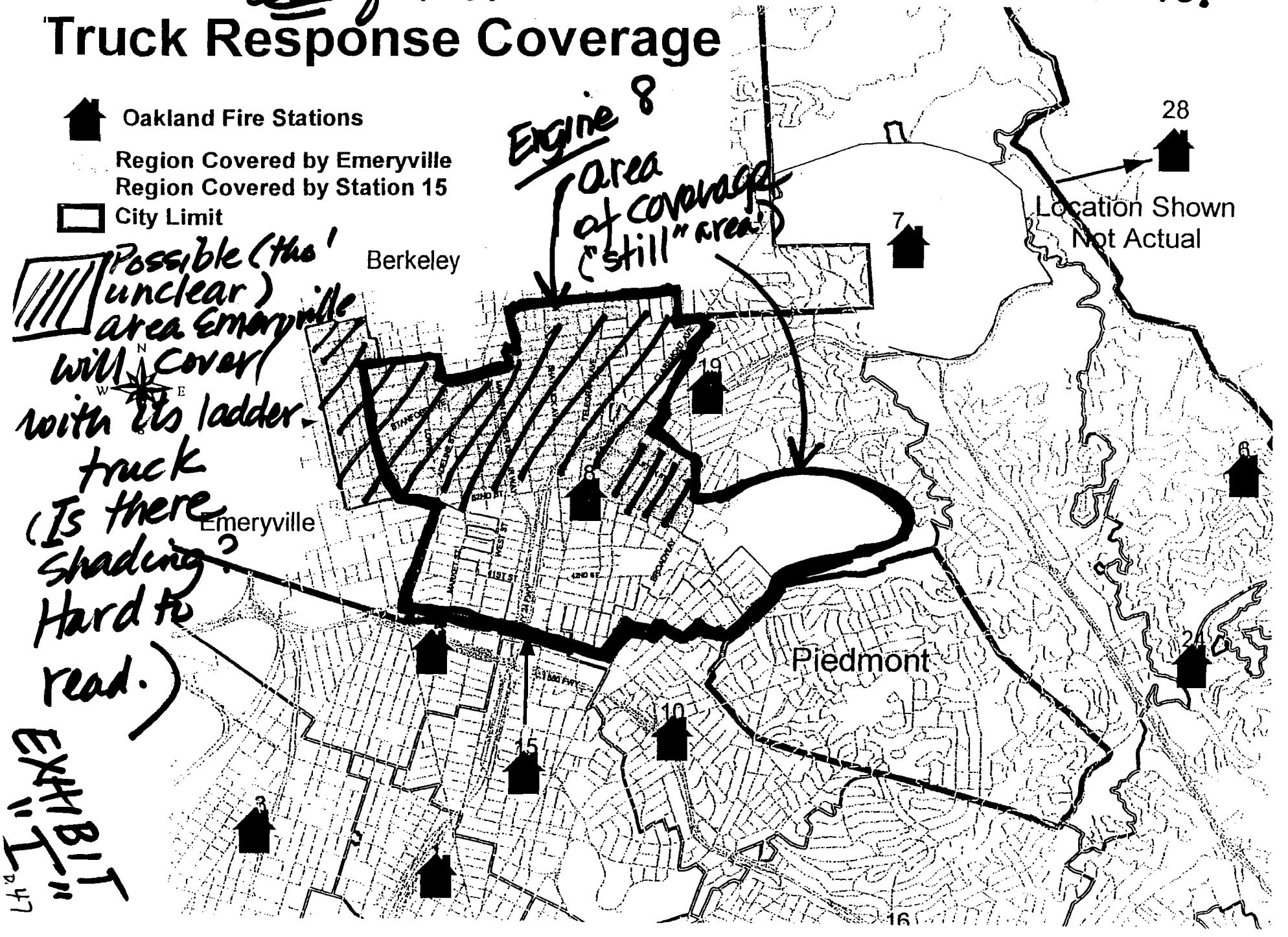

EXHIBIT "I"

Lh

CITY OF OAKLAND

CITY HALL • ONE FRANK H. OGAWA PLAZA • OAKLAND, CALIFORNIA 94612

Dick Spees
Councilmember
District 4

(510) 238-3266
FAX (510) 238-6129

December 4, 2001

To: President Ignacio de la Fuente and City Councilmembers
From: Councilmember Dick Spees
Re: Item 12, Federal and State Legislative Agendas

After consulting with our federal and state advocates, I would like to propose the following motion. The effect of this motion is to allow the advocates to identify potential sponsors and/or funding sources for all the items on the Council's agenda, and to return with a follow up report in January.

MOTION:

1. **Direct the Federal Lobbyist to seek funding opportunities for all budget requests on the list through appropriations, grants or legislation and to identify potential legislative advocates (sponsors) along with a detailed political strategy for those Oakland-specific items with the best chance of success in FY 2002.**

2. **Direct the Federal Lobbyist to advocate passage of all legislative and administrative items, particularly where there is demonstrable positive impact for Oakland.**

3. **On State Budget Requests, direct the Office of Intergovernmental Affairs to:**

   (A) Pursue funding for the following state budget requests through general fund, grant funding, state park bond (Proposition 12), water bond funds (Proposition 13), library bond funds (Proposition 14), Proposition 42 - transportation funding initiative on March ballot, Proposition 40 - park bond on March ballot, and all other state potential funding;

   - Oakland Airport Connector
   - Local Street and Road Rehabilitation
   - California Museum Collections Facility
   - Museum Hands-on Ecology Center
   - Studio One
   - African American Museum & Library
   - Oakland Zoo Wild California
   - Union Point Park

Item 12
Dec. 4, 2001

- Neighborhood Law Corps
- Oakland Military Institute
- After School Programs
- Storm Drainage System
- MacArthur Transit Village
- Channel Connection
- Waterfront Pathway/Shoreline Access
- Lake Merritt Retaining Wall and Walkway Repair
- International Blvd. Pedestrian Safety Improvements
- Martin Luther King Freedom Center

(B) further research and prepare the following items for potential funding;

- Caldecott Park Project
- San Pablo Pedestrian Safety Improvements
- Open Space

(C) and focus on projects that can be completed within the funding categories and/or funding levels available if Member's budget requests are solicited.

4. **On State Legislative Items, direct the Office of Intergovernmental Affairs to:**

(A) pursue sponsorship for the following legislative items:

- 311 Response
- Victims of Sexual Assault
- Probation/Parole Programs
- AB 381 – transit village development
- Vehicle Impoundment Program
- Housing Elements

(B) research and prepare the following Items for sponsorship when appropriate;

- Oakland Army Base Public Trust exchange
- Costa-Hawkins Amendments to exclude inclusionary zoning units from rent regulation
- Inclusionary Zoning
- Reimbursement for Local Clean up of Cal Trans Properties
- Increase criminal penalties for illegal dumping
- Establish clear stringent standards for liquor license revocation

(C) monitor legislation under General Matters and advocate for positions as directed by the City Council.

REVISED 11/20/01

OAKLAND CITY COUNCIL

VOID

RESOLUTION NO. _____ C.M.S.

INTRODUCED BY COUNCILMEMBER_____

RESOLUTION SUBMITTING, ON THE CITY COUNCIL'S OWN MOTION, A PROPOSED CHARTER AMENDMENT, ENTITLED, "LIVING WAGE AND LABOR STANDARDS AT PORT-ASSISTED BUSINESSES", TO BE SUBMITTED TO THE ELECTORS AT THE NOMINATING MUNICIPAL ELECTION ON MARCH 5, 2002; DIRECTING THE CITY CLERK TO FIX THE DATE FOR SUBMISSION OF ARGUMENTS, TO PROVIDE FOR NOTICE AND PUBLICATION IN ACCORDANCE WITH THE STATEWIDE PRIMARY ELECTION, EACH TO BE HELD ON MARCH 5, 2002

WHEREAS, Oakland City Charter Article VII specifies the role and responsibilities of the City's Port Department and created the Board of Port Commissioners; and

WHEREAS, the Board of Port Commissioners oversees the operations of the Port Department which includes the Port of Oakland and the Oakland airport; and

WHEREAS, with certain exceptions the ordinances passed by the Oakland City Council do not apply to the Port Department; and

WHEREAS, due to the Board of Port Commissioners' role and responsibilities under the current City Charter, the City of Oakland's Living Wage Ordinance does not apply to the Port of Oakland; and

WHEREAS, contractors and lease holders receive a substantial benefit from doing business at the Port of Oakland, in part because of the large public investment in infrastructure, such that it is fair to require them to adhere to certain minimum labor standards in dealing with their employees at the Port; and

WHEREAS, the Port has a substantial proprietary interest in certain contracts with employers in the hospitality and retail food industry because the Port will receive a percentage of the revenues or income from the business, and that proprietary interest would be affected by labor

disruptions at the Port; and

WHEREAS, an amendment to the Oakland City Charter adding section 728 to Article VII would:

(1) require payment of a "living wage" of not less than $10.50 without health benefits, which is the same amount the City of Oakland Living Wage ordinance currently requires, by Port tenants and contractors doing more than $50,000 in business with the Port,
(2) require, with certain exceptions, that new Port contractors doing more than $50,000 with the Port, who replace a prior Port contractor; hire the non-management and non-supervisory employees of the prior Port contractor for a period of not less than 90 days and terminate such employees only for just cause during the 90 day period if the employees can perform the new contractor's work; and
(3) prohibit the Port Department from entering into private contracts to perform work that Port employees performed as of June 30, 2001 except in the case of an emergency; and
(4) require that in exchange for a no-strike agreement, future Port contractors in the hospitality (e.g. hotel or motel businesses) or retail food industry, shall be or become signatory to valid collective bargaining agreements or other contract with each labor organization representing or seeking to represent any of that contractor's employees on Port property, if over the term of the Port contract the Port is entitled to receive a percentage of the revenues or income of the contractor's business as rents, royalties or other income equal to at least $50,000; and

WHEREAS, the proposed Charter amendment would provide for a living wage for employees of Port contractor who do significant business with the Port; protect workers from displacement by private contractors by requiring that Port contractors who replace a prior Port contractor assume the non-management and non-supervisory workers of the prior Port contractor and limiting contracting out of work performed by Port employees; and prevent labor disputes from injuring the Port's revenue stream by requiring no strike clauses in the Port contractor's agreements with labor organizations; now, therefore, be it

RESOLVED: That the Oakland City Charter is amended to add the following section which shall read as follows:

"Section 728. LIVING WAGE AND LABOR PEACE AT PORT-ASSISTED BUSINESSES

1. Scope and Definitions.

The following definitions shall apply throughout this Section:

A. "Port" means the Port of Oakland.

B. "Port-Assisted Business" or "PAB" means (1) any person receiving in excess

of $50,000 worth of financial assistance from the Port, or (2) any Port Contractor. "Port Contractor" means any person party to a Port Contract as herein defined.

C. "Port Contract" means:

(1) Any service contract with the Port for work to be performed at the Port under which the Port is expected to pay more than $50,000 over the term of the contract;

(2) Any contract, lease or license from the Port involving payments to the Port expected to exceed $50,000 either (a) over the term of the contract, lease or license, or (b) during the next 5 years if the current term is less than 1 year but may be renewed or extended, either with or without amendment;

(3) any subcontract, sublease, sublicense, management agreement or other transfer or assignment of any right, title or interest received from the Port pursuant to any of the foregoing contracts, leases or licenses.

A contract, lease or license with the Port or any agreement derived therefrom shall not be deemed a Port Contract unless entered into after enactment of this Section, or amended after enactment of this Section to benefit in any way the party dealing with the Port.

D. "Employee" means any individual employed by a PAB in Port-related employment if the PAB employs more than 20 persons per pay period, unless in the prior 12 pay periods the PAB has not had more than 20 such employees and will not have more than 20 in the next 12 pay periods. A PAB shall be deemed to employ more than 20 persons if it is part of an "enterprise" as defined under the Fair Labor Standards Act employing more than 20 persons.

E. "Person" include any natural person, corporation, partnership, limited liability company, joint venture, sole proprietorship, association, trust or any other entity.

F. "Valid collective bargaining agreement" as used herein means a collective bargaining agreement entered into between the person and a labor organization lawfully serving as the exclusive collective bargaining representative for such person's employees.

G. "Contract under 29 U.S.C.§185(a)" as used herein means a contract to which 29 U.S.C. §185(a) applies, as that provision has been interpreted by the United States Supreme Court.

2. Exemptions from coverage

In addition to the above exemption for workforces of fewer than 20 workers, the following persons shall also be exempt from coverage under this Section:

A. An Employee who is (1) under twenty-one (21) years of age and (2) employed by a nonprofit entity for after-school or summer employment or for training for a period not longer than ninety (90) days, shall be exempt.

B. An Employee who spends less than 25 percent of his work time on Port-related employment.

3. Payment of minimum compensation to Employees

Port-Assisted Businesses shall provide compensation to each Employee of at least the following:

A. Minimum Compensation

The initial minimum compensation shall be wages and health benefits totaling at least ten dollars and fifty cents ($10.50) per hour, or if greater, the rate of any living wage ordinance of the City of Oakland.

B. Credit for Health Benefits

The PAB shall receive a credit against the minimum wage required by this Section of up to $1.37 per hour for the amount it spends on average for health benefits for all Employees covered by this Section and their dependents. For example, if an employer spends an average of $1.25 per hour for health insurance, then the employer need only pay each Employee at least $9.25 per hour in wages.

C. Adjustments

Beginning one year after the effective date of this Section, the above rates shall be upwardly adjusted annually, no later than April 1st, in proportion to the increase as of the preceding December 31st over the prior year in the Bay Region's Consumer Price Index as published by the U.S. Bureau of Labor Statistics. Tips or gratuities received by Employees shall not be credited or offset against the rates of compensation required by this Section. The Port shall publish a bulletin by April 1st of each year announcing the adjusted rates, which shall take effect upon such publication. Such bulletin will be distributed to all PABs covered by this and to any other person who has filed with the Port a request to receive such notice. A PAB shall provide written notification of the rate adjustments to each of its Employees and to its covered tenants, contractors and subcontractors, who shall provide written notices to each of their Employees, if any, and make the necessary payroll adjustments by July 1 following the Port's notice of the adjustment.

4. Notifying Employees of their potential right to the federal earned income credit.

Each PAB shall inform each Employee who makes less than twelve dollars ($12.00) per hour of his or her possible right to the federal Earned Income Credit ("EIC") under Section 2 of the Internal Revenue Code of 1954, 26 U.S.C. §32, and shall make available the forms required to secure advance EIC payments from the business. These forms shall be provided to the eligible Employees in English (and other languages spoken by a significant number of such Employees) within thirty (30) days of employment under this Section and as required by the Internal Revenue Code.

5. Preventing Displacement of Workers

(A) Each PAB which is to replace a prior PAB shall offer employment to the nonmanagement and nonsupervisory Employees of the prior PAB, if these Employees worked for the prior PAB for at least 90 calendar days. Such Employees may be not be terminated by the new PAB during the first 90 work days except for just cause. The new PAB may operate at lower staffing levels than its predecessor but in such event, shall place the prior Employees on a preferential reinstatement list based on seniority. For purposes of this Section, a PAB "replaces" another if it (1) assumes all or part of the lease, contract or subcontract of a prior employer or obtains a new lease, contract, or sublease, and (2) offers employment which Employees of the prior PAB can perform. In the case of a replacement connected to the new PAB relocating from another location, in staffing decisions the new PAB may recognize seniority from its prior locations in addition to the seniority of the prior PAB's workforce.

(B) Notwithstanding Section 902(e) or any other provision of the City Charter, except in an emergency the Port shall not enter into any private contract for work which was performed by persons employed by the Port as of June 30, 2001, nor for the same class of work, including such work at new or expanded Port facilities.

6. Agreements required to protect Port's proprietary interests from effects of labor disputes

(A) As a condition precedent to any Port Contract in which the Port has a proprietary interest and which is in the Hospitality or Retail Food Industry, each such PAB shall be or become signatory to valid collective bargaining agreements or other contracts under 29 U.S.C. §185(a) with each labor organization representing or seeking to represent any of that PAB's Employees on Port property. Each such agreement or contract must contain a provision limiting the ability of the labor organization and its members (and in the case of a collective bargaining agreement, all employees covered by the agreement) to engage in picketing, work stoppages, boycotts or other economic interference with the Port for the duration of the Port's proprietary interest in such PAB's operation or for 5 years, whichever is less ("No-Strike Pledge"). Each such PAB shall also be required to ensure that any of its contractors, subcontractors, tenants, subtenants, licensees or sublicensees in the Hospitality or Retail Food Industry which are likely to impact the Port's proprietary interest will also be covered by No-Strike Pledges.

(B) For purposes of this subsection, "Hospitality or Retail Food Industry" includes hotels, motels or similar businesses, or on-site preparation, service or retailing of food, beverage or medication. A "proprietary interest" shall not be deemed to exist without (1) the Port being entitled to receive a percentage of the revenues or income of a business as rents, royalties or other income, and (2) the Port being expected to receive $50,000 or more in such rents, royalties or other income over the duration of the contract, lease or license.

(C) A PAB shall be relieved of the obligations of this subsection for any period of time during which a third-party neutral agreeable to the Port, the PAB and the Alameda Central Labor Council has found, after notice and hearing, either (a) that the labor organization is placing unreasonable conditions upon its No-Strike Pledge, or (b) that the Port lacks a legally-sufficient proprietary interest in such PAB's operation or the proposed agreement would be otherwise unlawful. If the parties are unable to agree upon a neutral, the PAB may contact the Federal Mediation and Conciliation Service (FMCS) to obtain a list of seven arbitrators affiliated with the National Academy of Arbitrators, from which the parties shall select a neutral by striking off names. At the PAB's request, such proceeding shall be conducted according to the FMCS expedited arbitration procedure. The Port shall bear the neutral's fees.

7. Retaliation and discrimination barred; no waiver of rights.

A. A PAB shall not discharge, reduce the compensation of or otherwise discriminate against any person for making a complaint to the Port, participating in any of its proceedings, using any civil remedies to enforce his or her rights, or otherwise asserting his or her rights under this Section.

B. Any waiver by an individual of any of the provisions of this Section shall be deemed contrary to public policy and shall be void and unenforceable, except that Employees shall not be barred from entering into a written valid collective bargaining agreement waiving a provision of this Section (other than subsection 6) if such waiver is set forth in clear and unambiguous terms. Any request to an individual by a PAB to waive his or her rights under this Section shall constitute a violation of this Section.

8. Enforcement

A. Each PAB shall maintain for each person in Port-related employment a record of his or her name, pay rate and, if the PAB claims credit for health benefits, the sums paid by the PAB for the employee's health benefits. The PAB shall submit a copy of such records to the Port at least by March 31st, June 30th, September 30th and December 31st of each year, unless the PAB has employed less than 20 persons during the preceding quarter, in which case

the PAB need only submit a copy of such records every December 31st. Failure to provide a copy of such records within five days of the due date will result in a penalty of five hundred dollars ($500.00) per day. Each PAB shall maintain a record of the name, address, job classification, hours worked, and pay and health benefits received of each person employed, and shall preserve them for at least three years.

B. If a PAB provides health benefits to persons in Port-related employment but does not pay for them on a per-hour basis, then upon the PAB's request, the amount of the hourly credit against its wage obligation shall be the Port's reasonable estimate of the PAB's average hourly cost to provide health benefits to its Employees in Port-related employment. The PAB shall support its request with such documentation as is reasonably requested by the Port or any interested party, including labor organizations in such industry.

C. Each PAB shall give written notification to each current Employee, and to each new Employee at time of hire, of his or her rights under this Section. The notification shall be in the form provided by the Port in English, Spanish and other languages spoken by a significant number of the employees, and shall also be posted prominently in areas at the work site where it will be seen by all Employees.

D. Each PAB shall permit access to work sites and relevant payroll records for authorized Port representatives for the purpose of monitoring compliance with this Section, investigating employee complaints of noncompliance and evaluating the operation and effects of this Section, including the production for inspection and copying of its payroll records for any or all persons employed by the PAB. Each PAB shall permit a representative of the labor organizations in its industry to have access to its workforce at the Port during non-working time and in non-work areas for the purpose of ensuring compliance with this Section.

E. Notwithstanding any provision in Article VI of this Charter to the contrary, the City Manager may develop rules and regulations for the Port's activities in (1) Port review of contract documents to insure that relevant language and information are included in the Port's RFP's, agreements and other relevant documents, (2) Port monitoring of the operations of the contractors, subcontractors and financial assistance recipients to insure compliance including the review, investigation and resolution of specific concerns or complaints about the employment practices of a PAB relative to this section, and (3) provision by the Port of notice and hearing as to alleged violations of this section.

9. Private Rights of Action.

A. Any person claiming a violation of this Section may bring an action against the PAB in the Municipal Court or Superior Court of the State of California, as appropriate, to enforce the provisions of this Section and shall be entitled to all remedies available to remedy any violation of this Section, including but not limited to back pay, reinstatement or injunctive relief. Violations of this Section are declared to irreparably harm the public and covered employees generally.

B. Any employee proving a violation of this Section shall recover from the PAB treble his or her lost normal daily compensation and fringe benefits, together with interest thereon, and any consequential damages suffered by the employee.

C. The Court shall award reasonable attorney's fees, witness fees and costs to any plaintiff who prevails in an action to enforce this Section.

D. No criminal penalties shall attach for any violation of this Section, nor shall this Section give rise to any cause of action for damages against the Port or the City.

E. No remedy set forth in this Section is intended to be exclusive or a prerequisite for asserting a claim for relief to enforce any rights hereunder in a court of law. This

Section shall not be construed to limit an employee's right to bring a common law cause of action for wrongful termination.

10. Severability

If any provision or application of this Section is declared illegal, invalid or inoperative, in whole or in part, by any court of competent jurisdiction, the remaining provisions and portions thereof and applications not declared illegal, invalid or inoperative shall remain in full force or effect. The courts are hereby authorized to reform the provisions of this Section, including limiting the scope of coverage or striking the five-year provision of subsection 6, in order to preserve the maximum permissible effect of each subsection herein. Nothing herein may be construed to impair any contractual obligations of the Port. This Section shall not be applied to the extent it will cause the loss of any federal or state funding of Port activities.". ; and be it

FURTHER RESOLVED: That in accordance with the Elections Code and Chapter 3 of the Oakland Municipal Code, the City Clerk shall fix and determine a date for submission of arguments for or against said proposed charter amendment, and said date shall be posted in the Office of the City Clerk; and be it

FURTHER RESOLVED: That in accordance with the Elections Code and Chapter 3 of the Oakland Municipal Code, the City Clerk shall provide for notice and publication as to said proposed charter amendment in the manner provided for by law; and be it

FURTHER RESOLVED: That each ballot used at said municipal election shall have printed therein, in addition to any other matter required by law the following:

PROPOSED CHARTER AMENDMENT

MEASURE PROVIDING FOR LIVING WAGE AND LABOR STANDARDS AT PORT-ASSISTED BUSINESSES

MEASURE _____

Measure _____. Shall the Oakland City Charter be amended to add section 728 to (a) require that specified Port of Oakland contractors pay a minimum living wage of $10.50 and retain qualified employees of the previous contractor for at least 90 days; (b) prohibit contracting-out of Port employees' work except in emergencies;, and (c) require that certain hospitality and retail food contractors sign labor agreements with labor organizations that include no-strike pledges?	Yes	
	No	

FURTHER RESOLVED: that the City Clerk and City Manager are hereby authorized and directed to take any and all actions necessary under law to prepare for and conduct the March 5, 2002 election and appropriate all monies necessary for the City Manager and City Clerk to prepare and conduct the March 5, 2002 election, consistent with law.

IN COUNCIL, OAKLAND, CALIFORNIA, _____, 2001

PASSED BY THE FOLLOWING VOTE:

AYES- BRUNNER, CHANG, MAYNE, NADEL, REID, SPEES, WAN AND PRESIDENT DE LA FUENTE

NOTES-

ABSENT-

ABSTENTION-

ATTEST:_____

CEDA FLOYD
City Clerk and Clerk of the Council
of the City of Oakland, California

REVISED 11/20/01

OAKLAND CITY COUNCIL

RESOLUTION NO. _____C.M.S.

INTRODUCED BY COUNCILMEMBER_____

RESOLUTION SUBMITTING, ON THE CITY COUNCIL'S OWN MOTION, A PROPOSED CHARTER AMENDMENT, ENTITLED, "LIVING WAGE AND LABOR STANDARDS AT PORT-ASSISTED BUSINESSES", TO BE SUBMITTED TO THE ELECTORS AT THE NOMINATING MUNICIPAL ELECTION ON MARCH 5, 2002; DIRECTING THE CITY CLERK TO FIX THE DATE FOR SUBMISSION OF ARGUMENTS, TO PROVIDE FOR NOTICE AND PUBLICATION IN ACCORDANCE WITH THE STATEWIDE PRIMARY ELECTION, EACH TO BE HELD ON MARCH 5, 2002

WHEREAS, Oakland City Charter Article VII specifies the role and responsibilities of the City's Port Department and created the Board of Port Commissioners; and

WHEREAS, the Board of Port Commissioners oversees the operations of the Port Department which includes the Port of Oakland and the Oakland airport; and

WHEREAS, with certain exceptions the ordinances passed by the Oakland City Council do not apply to the Port Department; and

WHEREAS, due to the Board of Port Commissioners' role and responsibilities under the current City Charter, the City of Oakland's Living Wage Ordinance does not apply to the Port of Oakland; and

WHEREAS, contractors and lease holders receive a substantial benefit from doing business at the Port of Oakland, in part because of the large public investment in infrastructure, such that it is fair to require them to adhere to certain minimum labor standards in dealing with their employees at the Port; and

WHEREAS, the Port has a substantial proprietary interest in certain contracts with employers in the hospitality and retail food industry because the Port will receive a percentage of the revenues or income from the business, and that proprietary interest would be affected by labor

10-H-1
ORA/COUNCIL
DEC 04 2001

273787

Rules
Item H-1
11-29-01

disruptions at the Port; and

WHEREAS, an amendment to the Oakland City Charter adding section 728 to Article VII would:

(1) require payment of a "living wage" of not less than $10.50 without health benefits, which is the same amount the City of Oakland Living Wage ordinance currently requires, by Port tenants and contractors doing more than $50,000 in business with the Port,
(2) require, with certain exceptions, that new Port contractors doing more than $50,000 with the Port, who replace a prior Port contractor; hire the non-management and non-supervisory employees of the prior Port contractor for a period of not less than 90 days and terminate such employees only for just cause during the 90 day period if the employees can perform the new contractor's work; and
(3) prohibit the Port Department from entering into private contracts to perform work that Port employees performed as of June 30, 2001 except in the case of an emergency; and
(4) require that in exchange for a no-strike agreement, future Port contractors in the hospitality (e.g. hotel or motel businesses) or retail food industry, shall be or become signatory to valid collective bargaining agreements or other contract with each labor organization representing or seeking to represent any of that contractor's employees on Port property, if over the term of the Port contract the Port is entitled to receive a percentage of the revenues or income of the contractor's business as rents, royalties or other income equal to at least $50,000; and

WHEREAS, the proposed Charter amendment would provide for a living wage for employees of Port contractor who do significant business with the Port; protect workers from displacement by private contractors by requiring that Port contractors who replace a prior Port contractor assume the non-management and non-supervisory workers of the prior Port contractor and limiting contracting out of work performed by Port employees; and prevent labor disputes from injuring the Port's revenue stream by requiring no strike clauses in the Port contractor's agreements with labor organizations; now, therefore, be it

RESOLVED: That the Oakland City Charter is amended to add the following section which shall read as follows:

"Section 728. LIVING WAGE AND LABOR PEACE AT PORT-ASSISTED BUSINESSES

1. Scope and Definitions.

The following definitions shall apply throughout this Section:

A. "Port" means the Port of Oakland.

B. "Port-Assisted Business" or "PAB" means (1) any person receiving in excess

of $50,000 worth of financial assistance from the Port, or (2) any Port Contractor. "Port Contractor" means any person party to a Port Contract as herein defined.

C. "Port Contract" means:

(1) Any service contract with the Port for work to be performed at the Port under which the Port is expected to pay more than $50,000 over the term of the contract;

(2) Any contract, lease or license from the Port involving payments to the Port expected to exceed $50,000 either (a) over the term of the contract, lease or license, or (b) during the next 5 years if the current term is less than 1 year but may be renewed or extended, either with or without amendment;

(3) any subcontract, sublease, sublicense, management agreement or other transfer or assignment of any right, title or interest received from the Port pursuant to any of the foregoing contracts, leases or licenses.

A contract, lease or license with the Port or any agreement derived therefrom shall not be deemed a Port Contract unless entered into after enactment of this Section, or amended after enactment of this Section to benefit in any way the party dealing with the Port.

D. "Employee" means any individual employed by a PAB in Port-related employment if the PAB employs more than 20 persons per pay period, unless in the prior 12 pay periods the PAB has not had more than 20 such employees and will not have more than 20 in the next 12 pay periods. A PAB shall be deemed to employ more than 20 persons if it is part of an "enterprise" as defined under the Fair Labor Standards Act employing more than 20 persons.

E. "Person" include any natural person, corporation, partnership, limited liability company, joint venture, sole proprietorship, association, trust or any other entity.

F. "Valid collective bargaining agreement" as used herein means a collective bargaining agreement entered into between the person and a labor organization lawfully serving as the exclusive collective bargaining representative for such person's employees.

G. "Contract under 29 U.S.C.§185(a)" as used herein means a contract to which 29 U.S.C. §185(a) applies, as that provision has been interpreted by the United States Supreme Court.

2. Exemptions from coverage

In addition to the above exemption for workforces of fewer than 20 workers, the following persons shall also be exempt from coverage under this Section:

A. An Employee who is (1) under twenty-one (21) years of age and (2) employed by a nonprofit entity for after-school or summer employment or for training for a period not longer than ninety (90) days, shall be exempt.

B. An Employee who spends less than 25 percent of his work time on Port-related employment.

3. Payment of minimum compensation to Employees

Port-Assisted Businesses shall provide compensation to each Employee of at least the following:

A. Minimum Compensation

The initial minimum compensation shall be wages and health benefits totaling at least ten dollars and fifty cents ($10.50) per hour, or if greater, the rate of any living wage ordinance of the City of Oakland.

B. Credit for Health Benefits

The PAB shall receive a credit against the minimum wage required by this Section of up to $1.37 per hour for the amount it spends on average for health benefits for all Employees covered by this Section and their dependents. For example, if an employer spends an average of $1.25 per hour for health insurance, then the employer need only pay each Employee at least $9.25 per hour in wages.

C. Adjustments

Beginning one year after the effective date of this Section, the above rates shall be upwardly adjusted annually, no later than April 1st, in proportion to the increase as of the preceding December 31st over the prior year in the Bay Region's Consumer Price Index as published by the U.S. Bureau of Labor Statistics. Tips or gratuities received by Employees shall not be credited or offset against the rates of compensation required by this Section. The Port shall publish a bulletin by April 1st of each year announcing the adjusted rates, which shall take effect upon such publication. Such bulletin will be distributed to all PABs covered by this and to any other person who has filed with the Port a request to receive such notice. A PAB shall provide written notification of the rate adjustments to each of its Employees and to its covered tenants, contractors and subcontractors, who shall provide written notices to each of their Employees, if any, and make the necessary payroll adjustments by July 1 following the Port's notice of the adjustment.

4. Notifying Employees of their potential right to the federal earned income credit.

Each PAB shall inform each Employee who makes less than twelve dollars ($12.00) per hour of his or her possible right to the federal Earned Income Credit ("EIC") under Section 2 of the Internal Revenue Code of 1954, 26 U.S.C. §32, and shall make available the forms required to secure advance EIC payments from the business. These forms shall be provided to the eligible Employees in English (and other languages spoken by a significant number of such Employees) within thirty (30) days of employment under this Section and as required by the Internal Revenue Code.

5. Preventing Displacement of Workers

(A) Each PAB which is to replace a prior PAB shall offer employment to the nonmanagement and nonsupervisory Employees of the prior PAB, if these Employees worked for the prior PAB for at least 90 calendar days. Such Employees may be not be terminated by the new PAB during the first 90 work days except for just cause. The new PAB may operate at lower staffing levels than its predecessor but in such event, shall place the prior Employees on a preferential reinstatement list based on seniority. For purposes of this Section, a PAB "replaces" another if it (1) assumes all or part of the lease, contract or subcontract of a prior employer or obtains a new lease, contract, or sublease, and (2) offers employment which Employees of the prior PAB can perform. In the case of a replacement connected to the new PAB relocating from another location, in staffing decisions the new PAB may recognize seniority from its prior locations in addition to the seniority of the prior PAB's workforce.

(B) Notwithstanding Section 902(e) or any other provision of the City Charter, except in an emergency the Port shall not enter into any private contract for work which was performed by persons employed by the Port as of June 30, 2001, nor for the same class of work, including such work at new or expanded Port facilities.

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6. **Agreements required to protect Port's proprietary interests from effects of labor disputes**

(A) As a condition precedent to any Port Contract in which the Port has a proprietary interest and which is in the Hospitality or Retail Food Industry, each such PAB shall be or become signatory to valid collective bargaining agreements or other contracts under 29 U.S.C. §185(a) with each labor organization representing or seeking to represent any of that PAB's Employees on Port property. Each such agreement or contract must contain a provision limiting the ability of the labor organization and its members (and in the case of a collective bargaining agreement, all employees covered by the agreement) to engage in picketing, work stoppages, boycotts or other economic interference with the Port for the duration of the Port's proprietary interest in such PAB's operation or for 5 years, whichever is less ("No-Strike Pledge"). Each such PAB shall also be required to ensure that any of its contractors, subcontractors, tenants, subtenants, licensees or sublicensees in the Hospitality or Retail Food Industry which are likely to impact the Port's proprietary interest will also be covered by No-Strike Pledges.

(B) For purposes of this subsection, "Hospitality or Retail Food Industry" includes hotels, motels or similar businesses, or on-site preparation, service or retailing of food, beverage or medication. A "proprietary interest" shall not be deemed to exist without (1) the Port being entitled to receive a percentage of the revenues or income of a business as rents, royalties or other income, and (2) the Port being expected to receive $50,000 or more in such rents, royalties or other income over the duration of the contract, lease or license.

(C) A PAB shall be relieved of the obligations of this subsection for any period of time during which a third-party neutral agreeable to the Port, the PAB and the Alameda Central Labor Council has found, after notice and hearing, either (a) that the labor organization is placing unreasonable conditions upon its No-Strike Pledge, or (b) that the Port lacks a legally-sufficient proprietary interest in such PAB's operation or the proposed agreement would be otherwise unlawful. If the parties are unable to agree upon a neutral, the PAB may contact the Federal Mediation and Conciliation Service (FMCS) to obtain a list of seven arbitrators affiliated with the National Academy of Arbitrators, from which the parties shall select a neutral by striking off names. At the PAB's request, such proceeding shall be conducted according to the FMCS expedited arbitration procedure. The Port shall bear the neutral's fees.

7. **Retaliation and discrimination barred; no waiver of rights.**

A. A PAB shall not discharge, reduce the compensation of or otherwise discriminate against any person for making a complaint to the Port, participating in any of its proceedings, using any civil remedies to enforce his or her rights, or otherwise asserting his or her rights under this Section.

B. Any waiver by an individual of any of the provisions of this Section shall be deemed contrary to public policy and shall be void and unenforceable, except that Employees shall not be barred from entering into a written valid collective bargaining agreement waiving a provision of this Section (other than subsection 6) if such waiver is set forth in clear and unambiguous terms. Any request to an individual by a PAB to waive his or her rights under this Section shall constitute a violation of this Section.

8. **Enforcement**

A. Each PAB shall maintain for each person in Port-related employment a record of his or her name, pay rate and, if the PAB claims credit for health benefits, the sums paid by the PAB for the employee's health benefits. The PAB shall submit a copy of such records to the Port at least by March 31st, June 30th, September 30th and December 31st of each year, unless the PAB has employed less than 20 persons during the preceding quarter, in which case

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the PAB need only submit a copy of such records every December 31st. Failure to provide a copy of such records within five days of the due date will result in a penalty of five hundred dollars ($500.00) per day. Each PAB shall maintain a record of the name, address, job classification, hours worked, and pay and health benefits received of each person employed, and shall preserve them for at least three years.

B. If a PAB provides health benefits to persons in Port-related employment but does not pay for them on a per-hour basis, then upon the PAB's request, the amount of the hourly credit against its wage obligation shall be the Port's reasonable estimate of the PAB's average hourly cost to provide health benefits to its Employees in Port-related employment. The PAB shall support its request with such documentation as is reasonably requested by the Port or any interested party, including labor organizations in such industry.

C. Each PAB shall give written notification to each current Employee, and to each new Employee at time of hire, of his or her rights under this Section. The notification shall be in the form provided by the Port in English, Spanish and other languages spoken by a significant number of the employees, and shall also be posted prominently in areas at the work site where it will be seen by all Employees.

D. Each PAB shall permit access to work sites and relevant payroll records for authorized Port representatives for the purpose of monitoring compliance with this Section, investigating employee complaints of noncompliance and evaluating the operation and effects of this Section, including the production for inspection and copying of its payroll records for any or all persons employed by the PAB. Each PAB shall permit a representative of the labor organizations in its industry to have access to its workforce at the Port during non-working time and in non-work areas for the purpose of ensuring compliance with this Section.

E. Notwithstanding any provision in Article VI of this Charter to the contrary, the City Manager may develop rules and regulations for the Port's activities in (1) Port review of contract documents to insure that relevant language and information are included in the Port's RFP's, agreements and other relevant documents, (2) Port monitoring of the operations of the contractors, subcontractors and financial assistance recipients to insure compliance including the review, investigation and resolution of specific concerns or complaints about the employment practices of a PAB relative to this section, and (3) provision by the Port of notice and hearing as to alleged violations of this section.

9. Private Rights of Action.

A. Any person claiming a violation of this Section may bring an action against the PAB in the Municipal Court or Superior Court of the State of California, as appropriate, to enforce the provisions of this Section and shall be entitled to all remedies available to remedy any violation of this Section, including but not limited to back pay, reinstatement or injunctive relief. Violations of this Section are declared to irreparably harm the public and covered employees generally.

B. Any employee proving a violation of this Section shall recover from the PAB treble his or her lost normal daily compensation and fringe benefits, together with interest thereon, and any consequential damages suffered by the employee.

C. The Court shall award reasonable attorney's fees, witness fees and costs to any plaintiff who prevails in an action to enforce this Section.

D. No criminal penalties shall attach for any violation of this Section, nor shall this Section give rise to any cause of action for damages against the Port or the City.

E. No remedy set forth in this Section is intended to be exclusive or a prerequisite for asserting a claim for relief to enforce any rights hereunder in a court of law. This

Section shall not be construed to limit an employee's right to bring a common law cause of action for wrongful termination.

10. Severability

If any provision or application of this Section is declared illegal, invalid or inoperative, in whole or in part, by any court of competent jurisdiction, the remaining provisions and portions thereof and applications not declared illegal, invalid or inoperative shall remain in full force or effect. The courts are hereby authorized to reform the provisions of this Section, including limiting the scope of coverage or striking the five-year provision of subsection 6, in order to preserve the maximum permissible effect of each subsection herein. Nothing herein may be construed to impair any contractual obligations of the Port. This Section shall not be applied to the extent it will cause the loss of any federal or state funding of Port activities.". ; and be it

FURTHER RESOLVED: That in accordance with the Elections Code and Chapter 3 of the Oakland Municipal Code, the City Clerk shall fix and determine a date for submission of arguments for or against said proposed charter amendment, and said date shall be posted in the Office of the City Clerk; and be it

FURTHER RESOLVED: That in accordance with the Elections Code and Chapter 3 of the Oakland Municipal Code, the City Clerk shall provide for notice and publication as to said proposed charter amendment in the manner provided for by law; and be it

FURTHER RESOLVED: That each ballot used at said municipal election shall have printed therein, in addition to any other matter required by law the following:

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PROPOSED CHARTER AMENDMENT

MEASURE PROVIDING FOR LIVING WAGE AND LABOR STANDARDS AT PORT-ASSISTED BUSINESSES

MEASURE _____

Measure _____. Shall the Oakland City Charter be amended to add section 728 to (a) require that specified Port of Oakland contractors pay a minimum living wage of $10.50 and retain qualified employees of the previous contractor for at least 90 days; (b) prohibit contracting-out of Port employees' work except in emergencies;, and (c) require that certain hospitality and retail food contractors sign labor agreements with labor organizations that include no-strike pledges?	Yes	
	No	

FURTHER RESOLVED: that the City Clerk and City Manager are hereby authorized and directed to take any and all actions necessary under law to prepare for and conduct the March 5, 2002 election and appropriate all monies necessary for the City Manager and City Clerk to prepare and conduct the March 5, 2002 election, consistent with law.

IN COUNCIL, OAKLAND, CALIFORNIA, _____, 2001

PASSED BY THE FOLLOWING VOTE:

AYES- BRUNNER, CHANG, MAYNE, NADEL, REID, SPEES, WAN AND PRESIDENT DE LA FUENTE

NOTES-

ABSENT-

ABSTENTION-

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ORA/COUNCIL
DEC 04 2001

ATTEST:_____
CEDA FLOYD
City Clerk and Clerk of the Council
of the City of Oakland, California

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