

ORDINANCE NO.

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

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

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

PART 2. Definitions.

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

- 1 (C) includes individuals whose work is permanent or temporary, on a full-time or
2 part-time basis, as a contractor or payroll employee.

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

6 **PART 4.** Findings.

- 7 (A) As a major purchaser of goods, the City recognizes its important role to
8 maintain a clear public policy to procure goods and services from vendors that
9 provide humane working conditions for the workers producing their products.
- 10 (B) Better working conditions consistently promote better quality goods for the
11 City by assuring fewer workplace injuries, reduced absences due to illness or
12 fatigue, fewer disruptions in the workplace, lower turnover of workers and a
13 greater incentive to perform efficiently.
- 14 (C) Garment purchases represent a substantial annual expense for the City, totaling
15 at least \$1.7 million in Fiscal Year 2005 alone.
- 16 (D) The prudent expenditure of public dollars requires that the City select
17 responsible vendors who operate production facilities in a humane manner and
18 in compliance with all federal, state, and local laws.
- 19 (E) Vendors engaging in illegal or abusive sweatshop practices that violate the
20 most basic human labor rights such as the use of child, indentured, or prison
21 labor; unhealthy and unsafe work environments, below-subsistence wages,
22 excessively long working hours, and harassment, abuse, or disregard for
23 fundamental human rights, place responsible, law-abiding vendors at a
24 competitive disadvantage because they are able to underbid responsible
25 vendors who pay fair and legal wages and maintain safe work environments
26 required by law.
- 27 (F) These vendors influence the entire supply chain, including workers in
28 subcontractor and subsidiary factories, and the apparel industry is an area
29 where the City can have direct impact on the rights and well being of working
30 people at home and abroad.
- 31 (G) The City recognizes the rights of citizens to know how their tax dollars are
32 spent and seeks to assure that the taxpayers' dollars are not paid to vendors
33 who engage in illegal or abusive sweatshop practices that violate the most
34 basic human labor rights such as: the use of child, indentured, or prison labor;
35 unhealthy and unsafe work environments; below-subsistence wages;

1 excessively long working hours; and harassment, abuse, or disregard for
2 fundamental human rights.

3 **PART 5. Prohibition of Sweatshop Conditions.**

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

- 7 (A) Compliance With All Laws. A vendor shall comply with all federal, state, and
8 local laws and workplace regulations, including those regarding wages and
9 benefits, workplace health and environmental safety, freedom of association,
10 and the fundamental conventions of the International Labor Organization,
11 including those regarding forced and child labor and freedom of association.
- 12 (B) Harassment and Abuse. A vendor shall not engage in behavior that harasses or
13 abuses a worker in a sexual, psychological, verbal manner. Nor shall a vendor
14 use corporal punishment in its employment practices.
- 15 (C) Discrimination. A vendor shall not engage in discriminatory employment
16 practices, as defined in Title 5 of the City Code, on the basis of gender, race,
17 religion, age, disability, sexual orientation, nationality, political opinion, or
18 social or ethnic origin in hiring, salary, benefits, advancement, disciplinary
19 action, termination, or retirement. A vendor shall not require pregnancy tests
20 as a condition of employment nor demand pregnancy tests of employees.
21 Women workers shall receive equal treatment and remuneration, including
22 pay, benefits, and the opportunity to fill a position that is open to a male
23 worker.
- 24 (D) Exposure to Toxins. A vendor shall not expose a worker to toxic chemicals
25 that may endanger a worker's health. A vendor shall take appropriate measures
26 to safeguard workers when any aspect of work requires exposure to any toxic
27 chemical. If a federal, state, or local occupational safety or health law or
28 regulation applies to the workplace condition, compliance with such a law or
29 regulation is not a violation of this subsection.
- 30 (E) Wages and Benefits. A vendor shall pay wages that comply with federal and
31 state law requirements as well as the requirements set forth in the City's
32 standard contract terms and conditions.
- 33 (F) Wage and Hour Records. Vendors shall maintain verifiable wage and hour
34 records for each production worker, employee or independent contractor.

- 1 (G) Working Hours. A vendor shall not require hourly and quota-based employees
2 to work more than 48 hours per week or the limits on regular hours allowed by
3 the law of the country of manufacture, whichever is lower. In addition,
4 vendors shall provide a worker with days off, as provided by applicable labor
5 law.
- 6 (H) Overtime Compensation. A vendor shall not require a worker to work
7 overtime hours unless the worker is paid at a rate of at least one-and-one-half
8 their regular hourly compensation rate as provided by the federal Fair Labor
9 Standards Act.
- 10 (I) Termination. A vendor shall provide for a mediation or grievance process to
11 resolve workplace disputes if required by federal law.
- 12 (J) Closure to Avoid Compliance. A vendor may not close or reduce orders for a
13 production facility:
- 14 (1) as a punitive measure against workers for exercising their right to
15 freedom of association; or
- 16 (2) to avoid its responsibility to take corrective action after there has been a
17 determination that a violation of the Workplace Conditions Code.

18 **PART 6. Vendor Recordkeeping Requirements.**

- 19 (A) Each City contract shall include the contractor's agreement to comply with the
20 requirements of this ordinance and shall incorporate this ordinance by
21 reference.
- 22 (B) For every bid or contract for production of goods or provision of services
23 covered by this policy, each bidder or contractor shall submit to the City the
24 following:
- 25 (1) An affidavit setting forth the following information.
- 26 (a) The country of production and names, physical addresses and
27 phone numbers of each facility involved in the production of goods
28 or provision of services covered by this policy, which shall be
29 updated to show any changes in subcontractors or facilities during
30 the term of the contract;
- 31 (b) An initial copy of each facility's standard payroll records, including
32 the minimum base hourly wage of non-supervisory production
33 employees, percent of wage level paid as health benefit, other

1 benefits, regular deductions from paychecks, normal working hours
2 per day and week, actual working hours per day and week, and
3 overtime policy if any.

4 (2) An agreement in which the vendor commits to the following:

- 5 (a) That the vendor and each proposed supplier or subcontractor will
6 adhere to the Workplace Conditions Code as defined in Part 5;
- 7 (b) That a copy of this code has been furnished to each of the vendor's
8 suppliers or subcontractors; and
- 9 (c) That the vendor has required each supplier to post a copy of this
10 code, including a procedure for filing complaints, in a location that
11 is visible, obvious, and accessible in the workplace and translated
12 into the each worker's first language.

13 (3) A description of any claims or legal actions related to discrimination or
14 worker wages, hours, or working conditions filed against the vendor in
15 any local, state, or federal administrative agency or court in the
16 preceding five years.

17 (4) Any other information deemed necessary by the City for the
18 administration and enforcement of this policy.

19 (C) Each vendor shall retain the documents described in Subsection (B) for a
20 period of three years after the date that the City contract is terminated.

21 (D) Each vendor shall maintain regular payroll records and make such records
22 available to the City or its agents upon the City's request. If the City makes a
23 request under this subsection for the vendor's payroll records, the vendor shall
24 also produce the payroll records of its subcontractors or suppliers to the City or
25 its agents. The City may make such a request directly to a subcontractor who
26 shall be required to submit such records directly to the City or its agents on
27 request. If requested by the City or its agents, all payroll records shall be
28 accompanied by a statement signed by the vendor, stating that the records are
29 complete and accurate.

30 (E) During each year of the term of a contract, the City or its agents may request a
31 written assurance from the contractor and each of its subcontractors that the
32 vendor and its subcontractors and suppliers are in compliance with this
33 ordinance. The vendor shall provide the written assurance within the time
34 period specified by the City or its agents, which shall not be less than 14 days

1 from the receipt of the request. A written assurance containing false or
2 inaccurate information constitutes a breach of contract.

- 3 (F) All records required to be maintained by this ordinance shall at all times be
4 open to inspection and examination of the duly authorized officers and agents
5 of the City.

6 **PART 7. Compliance; Verification.**

- 7 (A) Each vendor shall cooperate fully with an investigation by the City or its
8 agents. An investigation may include random site inspections of any worksite
9 on which all or a portion of the contract is performed, access to workers to
10 discuss compliance with this code, and access to any record required to be
11 maintained by this ordinance.
- 12 (B) The City may enter into an agreement with a nonprofit independent agency to
13 assist in monitoring vendor compliance with this code. Under such an
14 agreement, the independent monitor would receive complaints and provide
15 monitoring, inspection, investigation, and remediation services at facilities
16 producing goods or providing services to the City. The City's annual
17 expenditure to monitor compliance with this code shall be in an amount not to
18 exceed one percent of the City's annual apparel purchases. Refusal of a vendor
19 to permit independent monitoring shall result in disqualification for bidding.
20 An independent monitor must meet the following minimum requirements:
- 21 (1) It may have no relationship with any vendor subject to monitoring
22 beyond the monitoring relationship.
 - 23 (2) It must have knowledge of local non-governmental organizations and
24 human rights groups to assist the City with worker interviews.
 - 25 (3) It must have knowledge of local business and financial auditing
26 practices, health and safety standards, international labor conventions,
27 and local laws and regulations.
 - 28 (4) It must be able to conduct unannounced visits to a production facility
29 and create a streamlined process for interviewing workers at the
30 production facility without a supervisor present.
 - 31 (5) It must be able to conduct off-site worker interviews.
 - 32 (6) It must recognize a worker's right to decline to be interviewed without
33 threat of a negative consequence.

1 (7) It must have knowledge of local language, vernacular, and culture
2 relevant to conducting thorough worker interviews in their local
3 language.

4 (C) The City may expand the charge of its Human Rights Commission to serve as
5 an advisory body on issues related to the implementation and enforcement of
6 this ordinance, including:

7 (1) the effectiveness of performance monitoring;

8 (2) assessing non-compliance reports from workers, labor unions,
9 governments, businesses, non-government organizations and human
10 rights advocates;

11 (3) collaborating with other public agencies to provide workers with
12 relevant workplace information;

13 (4) providing feedback on effectiveness of penalties for violation of this
14 ordinance;

15 (5) exploring other specific goods or services purchased by the City which
16 may be suitable for application of this ordinance to in consideration of:

17 (a) the amount that the City has spent or is projected to spend for the
18 good or service;

19 (b) evidence of sweatshop labor or other conditions prohibited by this
20 ordinance in the manufacturing, assemblage or distribution of such
21 goods or services; and

22 (c) the financial impact that enforcement of this ordinance regarding
23 those goods or services will have on the City;

24 (6) exploring mechanisms employed by other governmental entities to
25 promote compliance with their workplace procurement policies as well
26 incentive measures they may employ to further those policies.

27 (7) establishing working relationships with other public agencies that have
28 enacted codes of conduct or ethical procurement policies; and

29 (8) establishing working relationships with advocacy groups, labor
30 organizations and other appropriate entities to share information
31 regarding manufacturers, vendors, and suppliers.

1 **PART 8. Enforcement; Penalties.**

- 2 (A) Complaints. Any person may complain of a violation of this ordinance. The
3 City, including its agent designated for this purpose, shall receive and
4 investigate complaints.
- 5 (B) Requests for Information. Upon receiving a complaint alleging noncompliance
6 with this ordinance, the City shall contact the vendor in a timely manner, by
7 certified letter, that the contractor or its subcontractor is the subject of the
8 complaint. The City shall describe the alleged violation and the requirements
9 for responding to the notice. The contractor must respond in a timely manner
10 with evidence that the violation did not occur, or if it did, a detailed plan for
11 corrective action.
- 12 (C) Access to Production and Distribution Facilities. For administration and
13 enforcement purposes, a City vendor shall provide the City with immediate
14 access to a facility or operation that is the subject of a complaint in order to
15 inspect the facility or its operations and records, or to interview workers.
- 16 (D) Independent Audit. If the City is unable to verify compliance, it may require
17 an independent audit at the expense of the vendor, followed by a public report
18 verifying either that the violation did not occur, or in the event that a violation
19 did occur, that corrective action has or has not been effective.
- 20 (E) Remediation. On a finding that a violation of this ordinance has occurred at a
21 vendor's production facility, the City and the vendor shall meet to consult to
22 develop to a remediation plan, of which the City shall have right of approval as
23 set forth in the City's standard contract terms and conditions. Corrective action
24 shall include all steps necessary to correct the violations, including:
- 25 (1) providing prompt notice to workers in the first language of each worker
26 the remediation plan and the prescribed corrective actions;
- 27 (2) paying back wages to workers who worked to manufacture products or
28 services supplied to the City; or
- 29 (3) reinstating a worker who has been dismissed in violation of the law.
- 30 (F) Training On Workplace Conditions. At a facility or operation of a vendor
31 determined to be in violation of this ordinance, the vendor shall provide
32 workplace rights training for workers and best practices training for
33 supervisory and management staff. The vendor shall bear the expense of the
34 training. Upon the City's request, the vendor shall submit its training materials

1 to the City for its review and approval before distribution to supervisors,
2 managers, and employees.

3 (G) The City may require that a vendor provide a written summary of the steps
4 taken to remedy noncompliance with this ordinance. The summary may
5 include any difficulties encountered in attempting to correct noncompliance.
6 The vendor shall provide the written summary within the time period specified
7 by the City.

8 (H) The City may impose sanctions if a vendor knowingly provides
9 misinformation or falsified information to the City or if a vendor refuses to
10 remedy a violation of this ordinance in a timely manner. Sanctions may include
11 termination of the contract for cause due to breach of contract, termination of a
12 contract without notice, financial penalties, debarment from eligibility to bid
13 on City contracts, or suspending the vendor's ability to bid on City contracts
14 for a period to be determined by the City Manager.

15 (I) In the event that a vendor is debarred, the City Purchasing Officer will remove
16 the vendor from Approved Vendor List. In the event of suspension, the
17 Purchasing Officer will remove the vendor from the list for the period
18 specified in the non-compliance sanction.

19 (J) A vendor may protest findings, sanctions, penalties or debarment under this
20 ordinance as prescribed in the City's standard contract terms and conditions.

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

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

26 **PART 11.** This ordinance takes effect on _____, 2007.

PASSED AND APPROVED

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_____, 2007

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Will Wynn
Mayor

APPROVED: _____

David Allan Smith
City Attorney

ATTEST: _____

Shirley A. Gentry
City Clerk

Draft