



OFFICE OF THE CITY ATTORNEY
Long Beach, California

ORD-23

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February 4, 2014

HONORABLE MAYOR AND CITY COUNCIL
City of Long Beach
California

RECOMMENDATION:

Recommendation to declare ordinance amending the Long Beach Municipal Code by adding Chapter 16.60, relating to the payment of living wage to workers at the Long Beach Airport and the Long Beach Convention Center, read the first time and laid over to the next regular meeting of the City Council for final reading. (Citywide)

DISCUSSION:

Pursuant to your request on January 21, 2014, this ordinance has been revised and is submitted for your consideration. The revisions consist of expanding the ordinance's scope beyond food and beverage, to also include all retail concessions at the Long Beach Airport and the Long Beach Convention Center.

SUGGESTED ACTION:

Approve recommendation.

Very truly yours,

CHARLES PARKIN, City Attorney

By


LINDA T. VU
Deputy City Attorney

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ORDINANCE NO.

AN ORDINANCE OF THE CITY COUNCIL OF THE
CITY OF LONG BEACH AMENDING THE LONG BEACH
MUNICIPAL CODE BY ADDING CHAPTER 16.60
RELATING TO THE PAYMENT OF LIVING WAGE TO
WORKERS AT THE LONG BEACH AIRPORT AND THE
LONG BEACH CONVENTION CENTER

The City Council of the City of Long Beach ordains as follows:

Section 1. Chapter 16.60 is hereby added to the Long Beach Municipal
Code to read as follows:

Chapter 16.60

PAYMENT OF LIVING WAGE TO WORKERS AT THE AIRPORT AND THE
LONG BEACH CONVENTION CENTER

16.60.010 Purpose.

The purpose of this Chapter is to protect the public health, safety and
welfare by requiring that public funds be expended in such a manner as to
facilitate individual self-reliance by employees of food, beverage and retail
concessionaires at the Long Beach Airport and the Long Beach Convention
Center.

16.60.020 Definitions.

A. "City" means the City of Long Beach.

B. "Compensation" includes any wages, tips, bonuses, and other
payments reported as taxable income paid by a Concessionaire to a
Concession Worker.

1 C. "Concession Contract" means any contract from the City
2 covering Concession Operations at the Long Beach Airport and the Long
3 Beach Convention Center.

4 D. "Concession Contract Amendment" means only an
5 amendment that is required to be separately approved by the City Council
6 and that:

7 1. extends the term of an existing contract for a period of
8 more than one (1) year (the aggregate limit or maximum total of time that a
9 contract may be extended without being deemed a "Concession Contract
10 Amendment" is not to exceed one (1) year); or

11 2. approves a reduction in any concession payments to
12 the City for the then existing tenant/operator.

13 E. "Concession Operations" means the general business
14 operations of food and beverage or retail concessions at the Long Beach
15 Airport and the Long Beach Convention Center, but do not include the
16 provision by an airline of food or beverage to passengers while on board an
17 airplane.

18 F. "Concession Workers" means all full-time and part-time
19 employees in a Concession Operation.

20 G. "Concessionaire" means all food and beverage or retail
21 concessions contractors together with all tenants, lessees, subtenants,
22 sublessees, subcontractors, successors and assigns of such contractors
23 that provide such concession services at the Long Beach Airport or the
24 Long Beach Convention Center.

25 H. "Service charge" means all separately-designated amounts,
26 regardless of name or label, that are added to the base charge for food or
27 beverages, and collected by a Concessionaire from customers, except
28 taxes and fees levied by federal, state or local government.

1 16.60.030 Concessionaires subject to the requirements of this Chapter.

2 Concessionaires at the Long Beach Airport and the Long Beach
3 Convention Center that enter into any new Concession Contract or
4 Concession Contract Amendment with the City shall comply with the
5 minimum compensation standards established by this Chapter.

6 16.60.040 Payment of minimum compensation.

7 A. Each Concessionaire subject to this Chapter pursuant to
8 Section 16.60.030 shall pay Concession Workers a wage of not less than
9 the hourly rates set forth in this Section. The rate upon enactment shall be
10 thirteen dollars and twenty-six cents (\$13.26) per hour worked. This rate
11 shall be adjusted by the amount of increases in the federal minimum wage
12 over the amount in effect on December 31, 2013, or, if greater, by the
13 cumulative increase in the cost of living. The cost of living increase shall be
14 measured by the percentage increase as of December 31 in any year over
15 the level as of December 31, 2013 of the Consumer Price Index (All Urban
16 Consumers, Los Angeles-Riverside-Orange County) as published by the
17 Bureau of Labor Statistics, U.S. Department of Labor or the successor
18 index or federal agency. If in any calendar year there is no increase in the
19 federal minimum wage and the increase in the Consumer Price Index is
20 less than two percent (2%), then the rate shall be adjusted by an increase
21 of two percent (2%). The Mayor or the City agency designated by the Mayor
22 shall publish a bulletin by April 1 of each year announcing the adjusted
23 rates, which shall take effect the following July 1. Such bulletin will be made
24 available to all Concessionaires and to any other person who has filed with
25 the Mayor or the designated agency a request to receive such notice but
26 lack of notice shall not excuse noncompliance with this Section. A
27 Concessionaire shall provide written notification of the rate adjustments to
28 each of its Concession Workers and make the necessary payroll

1 adjustments by July 1 following the publication of the bulletin. Tips or
2 gratuities received by Concession Workers and service charges or
3 commissions shall not be credited as being any part of or offset against the
4 wage rates required by this Section.

5 B. Service charges shall not be retained by a Concessionaire but
6 shall be paid in the entirety by the Concessionaire to the Concession
7 Worker(s) performing services for the customers from whom the service
8 charges are collected. No part of these amounts may be paid to
9 supervisory or managerial employees. The amounts shall be paid to the
10 Concession Worker(s) equitably and according to the services that are or
11 appear to be related to the description of the amounts given by the
12 Concessionaire to the customers. The amounts shall be paid to the
13 Concession Worker(s) in the next payroll following collection of an amount
14 from the customer. The foregoing provisions do not apply to any tip,
15 gratuity, money, or part of any tip, gratuity, or money that has been paid or
16 given to or left for a Concession Worker by customers over and above the
17 actual amount due for services rendered or for food or beverage sold or
18 served to the customer.

19 16.60.050 Required contract provisions.

20 Every contract with a Concessionaire subject to this Chapter
21 pursuant to Section 16.60.030 shall contain provisions requiring it to comply
22 with the provisions of this Chapter as they exist on the date when the
23 Concessionaire entered the contract with the City or when such contract is
24 amended.

25 16.60.060 Posting requirements.

26 Each Concessionaire shall cause the living wage requirement under
27 this Chapter to be posted at its place of business in the Airport or Long
28 Beach Convention Center, so as to be conspicuous to the general public, to

1 patrons entering or using such facilities, and to the Concession Workers
2 employed at such facilities.

3 16.60.070 Waiver.

4 The provisions of this Chapter may not be waived by agreement
5 between an individual Concession Worker and a Concessionaire. All of the
6 provisions of this Chapter, or any part hereof, may be waived in a bona fide
7 collective bargaining agreement, but only if the waiver is explicitly set forth
8 in such agreement in clear and unambiguous terms. Unilateral
9 implementation of terms and conditions of employment by either party to a
10 collective bargaining relationship shall not constitute, or be permitted, as a
11 waiver of all or any part of the provisions of this Chapter.

12 16.60.080 Retaliation.

13 No person shall discharge, reduce any part of the compensation of,
14 nor discriminate against any Concession Worker due to the enactment of
15 this Chapter or due to his or her assertion of any rights under this Chapter.

16 16.60.090 Enforcement.

17 A Concession Worker claiming violation of this Chapter may bring an
18 individual or class action against his or her employer in Superior Court to
19 enforce the provisions of this Chapter and shall be entitled to all remedies
20 available under the law or in equity appropriate to remedy any violation of
21 this Chapter, including but not limited to lost compensation, damages,
22 reinstatement or injunctive relief. A Concession Worker who prevails in any
23 action to enforce this Chapter shall be awarded his or her reasonable
24 attorney's fees and litigation expenses. Nothing herein shall be construed
25 to preclude the City or others from obtaining the usual remedies for
26 violations of contract, ordinance or anti-retaliation laws. Notwithstanding the
27 foregoing, the City shall be under no duty to monitor compliance with this
28 Chapter; however, the City may consider compliance with this Chapter in

1 making contracting decisions.

2 16.60.100 Severability.

3 If any provision of this Chapter, or the application thereof to any
4 person or circumstance, is held invalid, that invalidity shall not affect any
5 other provision or application of this Chapter that can be given effect without
6 the invalid provision or application; and to this end, the provisions or
7 applications of this Chapter are severable.

8
9 Section 2. The City Clerk shall certify to the passage of this ordinance by
10 the City Council and cause it to be posted in three (3) conspicuous places in the City of
11 Long Beach, and it shall take effect on the thirty-first (31st) day after it is approved by the
12 Mayor.

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I hereby certify that the foregoing ordinance was adopted by the City Council of the City of Long Beach at its meeting of _____, 2014, by the following vote:

Ayes: Councilmembers: _____

Noes: Councilmembers: _____

Absent: Councilmembers: _____

City Clerk

Approved: _____
(Date)

Mayor