

ORDINANCE NO. 17-013

An Ordinance Of The City Council Of The City Of Emeryville Amending Section 5-39.04(D) Of Chapter 39 Of Title 5 Of The Emeryville Municipal Code, "Fair Workweek Employment Standards" (CEQA Determination: Exempt Pursuant To CEQA Guidelines 15061(b)(3) And 15378(b)(2))

WHEREAS, state and federal law do not contain standards to promote predictable, stable, and healthy work schedules or to protect employees who wish to request scheduling accommodations; and

WHEREAS, requiring adequate notice of work schedules, compensation for employer-initiated schedule changes, access to sufficient hours of work for part-time employees, healthy rest between shifts, and a protected right to have input into schedules protects the public health, safety and welfare by ensuring that employees within the City of Emeryville can care for their families, attend classes and medical appointments, budget their weekly income, and conduct other essential activities in a manner that enables and facilitates their individual self-reliance; and

WHEREAS, the City of Emeryville may adopt workweek standards pursuant to the laws vested in the City under the laws and constitution of the state of California including but not limited to the police powers vested in the City pursuant to Article XI, Section 7 of the California Constitution, Section 1205(b) of the California Labor Code and Section 16000 of the California Business and Professions Code; and

WHEREAS, on November 1, 2016, the City Council adopted Ordinance No. 16-007, "Fair Workweek Employment Standards", codified as Chapter 39 of Title 5 of the Emeryville Municipal Code, effective on July 1, 2017; and

WHEREAS, on September 5, 2017, the City Council directed the Ordinance be amended to include additional exceptions to payment of Predictability Pay; and

WHEREAS, the City Council now wishes to amend the Fair Workweek Employment Standards in Chapter 39 of Title 5 of the Emeryville Municipal Code to clarify certain provisions related to exceptions;

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF EMERYVILLE DOES HEREBY ORDAIN AS FOLLOWS:

SECTION ONE. PURPOSE AND INTENT

The purpose and intent of this Ordinance is to amend Chapter 39 of Title 5 of the Emeryville Municipal Code, "Fair Workweek Employment Standards," to clarify certain provisions related to exceptions.

SECTION TWO. AMENDING SECTION 5-39.04(d) OF CHAPTER 39 OF TITLE 5 OF THE EMERYVILLE MUNICIPAL CODE



Section 5-39.04(d) of Chapter 39 of Title 5 of the Emeryville Municipal Code is hereby amended, with additions in **bold underline** text, and deletions are in ~~strikeout~~ text. Those portions not specifically amended remain unchanged. The amended portions shall read as follows:

Exceptions. The requirements of this Section shall not apply under any of the following circumstances:

- (1) Operations cannot begin or continue due to threats to Covered Employers, Employees or property, or when civil authorities recommend that work not begin or continue;
- (2) Operations cannot begin or continue because public utilities fail to supply electricity, water, or gas, or there is a failure in the public utilities or sewer system;
- (3) Operations cannot begin or continue due to: acts of nature (including but not limited to flood, fire, explosion, earthquake, tidal wave, drought), war, civil unrest, strikes, or other cause not within the Covered Employer's control;
- (4) Mutually agreed-upon work Shift swaps or coverage among Employees.
- (5) **To accommodate the following transitions in shifts:**
 - a. **If an Employee works past the end of a scheduled shift to complete service to a customer, which service would entitle the Employee to receive a commission, tip or other incentive pay based on the completion of that service, provided the Employee is compensated at his/her regular rate of pay for the additional work performed by the Employee.**
 - b. **An Employee begins or ends his/her scheduled shift no more than ten minutes prior to or after the scheduled shift, provided the Employee is compensated at his/her regular rate of pay for the additional work performed by the Employee.**
- (6) **Employee voluntarily-initiated shift modifications, such as, voluntary requests to leave a scheduled shift prior to the end of the shift.**
- (7) **The Covered Employer is paying overtime to an Employee, provided the payment of overtime exceeds the Predictability Pay to which the Employee otherwise would be entitled.**

SECTION THREE. CEQA DETERMINATION

The City Council finds, pursuant to Title 14 of the California Administrative Code, Section 15061(b)(3), that this Ordinance is exempt from the requirements of the California Environmental Quality Act (CEQA) in that it is not a Project that has the potential for causing a significant effect on the environment. This action is further exempt from the definition of a Project in Section 15378(b)(2) in that it concerns general policy and procedure making.

SECTION FOUR. SEVERABILITY

Every section, paragraph, clause, and phrase of this Ordinance is hereby declared severable. If, for any reason, any section, paragraph, clause, or phrase is held to be invalid or unconstitutional, such invalidity or unconstitutionality shall not affect the validity or constitutionality of the remaining section, paragraphs, clauses, or phrases.

SECTION FIVE. EFFECTIVE DATE

This Ordinance shall take effect 30 days following its final passage. The City Clerk is directed to cause copies of this Ordinance to be posted or published as required by Government Code section 33693.


SECTION SIX. CODIFICATION

Section Two of this Ordinance shall be codified in the Emeryville Municipal Code. Sections One, Three, Four, Five, and Six shall not be so codified.

This Ordinance was introduced and first read by the City Council of the City of Emeryville at a regular meeting held on Tuesday, October 3, 2017 and **PASSED AND ADOPTED** by the City Council at a regular meeting held on Tuesday, October 17, 2017 by the following vote:

AYES:	<u>5</u>	Mayor Donahue, Vice Mayor Bauters and Council Members Martinez, Medina and Patz
NOES:	<u>0</u>	
ABSTAIN:	<u>0</u>	
ABSENT:	<u>0</u>	

ATTEST:



CITY CLERK


MAYOR

APPROVED AS TO FORM:



CITY ATTORNEY