ORDINANCE NO. 176291

An ordinance adding Article 17 to Division 10 of the Los Angeles Administrative Code to establish a sweat-free procurement policy for procurement of equipment, materials, goods, and supplies, and to establish compliance procedures for the City's Contractor Code of Conduct.

THE PEOPLE OF THE CITY OF LOS ANGELES DO ORDAIN AS FOLLOWS:

Section 1. A new Article 17 is added to Chapter 1 of Division 10 of the Los Angeles Administrative Code to read:

CHAPTER 1, ARTICLE 17

SWEAT-FREE PROCUREMENT

Sec. 10.43. Purpose.

Each year the City spends millions of dollars contracting with the private sector for the purchase or rental of equipment, goods, materials and supplies. The prudent expenditure of public dollars requires that the City's procurement process lead to the selection of qualified and responsible contractors who have the ability to perform the contract.

The City of Los Angeles has long supported the premise that employers should fairly compensate employees, that the health and safety of workers should be protected, and that no form of discrimination or abuse should be tolerated. Experience indicates that laws and regulations designed to safeguard basic tenets of ethical business practice are disregarded in some workplaces, commonly referred to as "sweatshops."

In its role as a market participant that procures equipment, goods, materials, and supplies, the City seeks to protect its interests by assuring that the integrity of the City's procurement process is not undermined by contractors who engage in sweatshop practices and other employment practices abhorrent to the City. When the City inadvertently contracts with these contractors, the City's ethical contractors are placed at a distinct competitive disadvantage. Many times ethical contractors are underbid by unscrupulous contractors in competition for City contracts. These ethical contractors may be dissuaded from participating in future City procurement contracts.

The City's proprietary contracting interests are served by doing business with contractors who make a good faith effort to ensure that they and their subcontractors

shun sweatshop practices and adhere to workplace and wage laws. Seeking to protect these municipal interests, the City requires that all contractors subject to this Article sign an affidavit stating that they and, to the best of their knowledge, their subcontractors will comply with the City's Contractor Code of Conduct.

Sec. 10.43.1. Definitions.

The following definitions shall apply to this Article:

A. **"Abusive Forms of Child Labor"** means work performed by a person under the age of 18 when the person does not voluntarily seek the work or the person is threatened with physical, mental or emotional harm for nonperformance. It includes work performed by a person in violation of any applicable law of the country of manufacture or assembly governing the minimum age of employment, compulsory education, or occupational health and safety. It also includes the use of a person under the age of 18 for illicit activities, in particular for the production or trafficking of illicit drugs or for prostitution.

B. **"Contract"** means an agreement to procure equipment, goods, materials or supplies to the City. Contract includes, but is not limited to, the procurement of garments, uniforms, foot apparel, and related accessories.

C. **"Contractor"** means a person, partnership, corporation or other entity which has a contract with the City.

D. **"Foreign convict or forced labor"** shall have the meaning as in Section 1307 of Title 19 of the United States Code.

E. **"DAA"** means the Designated Administrative Agency which for this Article is the Department of General Services.

F. **"Procurement"** means City purchasing or renting of equipment, goods, materials or supplies.

G. **"Slave labor"** means any form of slavery or practices similar to slavery, such as the sale and trafficking of persons, debt bondage, serfdom, forced or compulsory labor, or forced or compulsory recruitment of persons below the age of 18 for use in armed conflict.

H. **"Subcontractor"** means a person, partnership, corporation or other entity which enters into a contract with a contractor for performance of some or all of the City contracted work.

I. **"Sweatshop labor"** means work performed by a person employed by a contractor or subcontractor which has habitually violated laws of any applicable jurisdiction governing wages, employee benefits, occupational health and safety, nondiscrimination, or freedom of association.

Sec. 10.43.2. Application.

This Article applies to contractors who enter into contracts with a value in excess of $25,000 and a term in excess of three months.

Sec. 10.43.3. Contractor Code of Conduct.

Prior to receiving a contract, a contractor shall sign under oath the City's Contractor Code of Conduct. The City's Contractor Code of Conduct shall be developed by the DAA and shall describe the purposes of the Article as stated in Section 10.43. The Contractor Code of Conduct shall also require a contractor to promise the following:

A. To comply with all applicable wage, health, labor, environmental, and safety laws, legal guarantees of freedom of association, building and fire codes, and laws and ordinances relating to workplace and employment discrimination.

B. To comply with all human and labor rights and labor obligations that are imposed by treaty or law on the country in which the equipment, supplies, goods or materials are made or assembled, including but not limited to abusive forms of child labor, slave labor, foreign convict or forced labor, or sweatshop labor.

C. To take good faith measures to ensure that, to the best of the contractor's knowledge, the contractor's subcontractors also comply with the City's Contractor Code of Conduct.

D. For contracts involving the procurement of garments, uniforms, foot apparel, and related accessories, to ensure that workers are paid no less than a procurement living wage, meaning for domestic manufacturers a base hourly wage adjusted annually to the amount required to produce, for 2,080 hours worked, an annual income equal to or greater than the U.S. Department of Health and Human Services most recent poverty guideline for a family of three plus an additional 20 percent of the wage level paid either as hourly wages or health benefits. For manufacturing operations in countries other than the United States, the DAA shall establish a procurement living wage which is comparable to the wage for domestic manufacturers as defined above, adjusted to reflect the

country's level of economic development by using the World Bank's Gross National Income per capita Purchasing Power Parity index.

Sec. 10.43.4. Administration and Contract Language.

The DAA shall be responsible for the administration of this Article. The DAA shall issue written instructions on the implementation and ongoing administration of this Article. Such instructions may provide for the delegation of functions to other City departments. All contracts shall include language obligating the contractor to comply with this Article and imposing the enforcement remedies articulated in this Article.

Sec. 10.43.5. Enforcement and Remedies.

When allegations of violations of this Article are brought to the attention of the DAA, the DAA shall promptly review the allegations and, if confirmed, consider and implement appropriate enforcement action. When determining whether there is a violation of this Article, the DAA shall take into consideration relevant and reliable information including, but not limited to, information provided by the contractor and its subcontractors at the point of manufacturer, assembly or service, reports from reputable national and international organizations, documented media reports, and credible information from local groups and organizations. If the DAA determines that a contractor has violated this Article, the DAA may recommend that the awarding authority take some or all of the following measures:

A. Demand that a contractor or its subcontractor at the point of manufacture, assembly or service provide access to independent human rights monitors.

B. Demand that a contractor or its subcontractor at the point of manufacture, assembly or service provide management and workers with training and best practices guidelines to ensure future compliance with this Article.

C. Retain all monies earned under the contract until compliance with this Article is achieved.

D. Assess contactor with a statutory penalty equal to the greater of $1,000 or 20% of the value of the procured equipment, goods, supplies, or materials.

E. Terminate the contract for breach and pursue any and all remedies available under law.

F. Apply the City's Contractor Responsibility Ordinance to the contractor.

Sec. 10.43.6. Exceptions.

This Article shall not apply to a contract if to do so would violate or conflict with federal or state law. The DAA may waive compliance with this Article under the following circumstances:

A. The contract is necessary to respond to an emergency that endangers public health or safety and no contractor which is in compliance with this Article is capable of responding to the emergency.

B. The contract is for equipment, supplies, goods, or materials that are available from only one contractor, and that contractor is otherwise qualified and acceptable to the City. Sole-source waivers to this Ordinance shall be approved by a committee with representatives from the Office of the City Administrative Officer, the Department of General Services, and the Chief Legislative Analyst. Any such waiver shall be posted on the website of the Department of General Services.

C. The contract is with another public entity.

D. The requirements of this Article conflict with the terms or conditions of a federal or state grant, subvention or agreement.

Sec. 10.43.7. Severability.

If any provision of this Article is found invalid by a court of competent jurisdiction, the remaining provisions shall remain in full force and effect.

Sec. 2. The City Clerk shall certify to the passage of this ordinance and have it published in accordance with Council policy, either in a daily newspaper circulated in the City of Los Angeles or by posting for ten days in three public places in the City of Los Angeles: one copy on the bulletin board located in the Main Street lobby to the City Hall; one copy on the bulletin board located at the ground level at the Los Angeles Street entrance to the Los Angeles Police Department; and one copy on the bulletin board located at the Temple Street entrance to the Los Angeles County Hall of Records.

I hereby certify that this ordinance was passed by the Council of the City of Los Angeles, at its meeting of NOV 0 9 2004.

FRANK T. MARTINEZ, City Clerk

By _____
Deputy

Approved NOV 1 8 2004

_____
Mayor

Approved as to Form and Legality

ROCKARD J. DELGADILLO, City Attorney

By _____
ADRIENNE KHORASANEE
Deputy City Attorney

Date 11/3/04

File No. CF02-2167

AT#103471

DECLARATION OF POSTING ORDINANCE

I, MARIA C. RICO, state as follows: I am, and was at all times hereinafter mentioned, a resident of the State of California, over the age of eighteen years, and a Deputy City Clerk of the City of Los Angeles, California.

Ordinance No. 176291 - Adding 17 to Division 10 of the L.A.A.C. to establish a sweat-free procurement policy for procurement of equipment, materials, goods, & supplies, & to establish compliance procedures for the City Contractor Code of Conduct - a copy of which is hereto attached, was finally adopted by the Los Angeles City Council on November 9, 2004, and under the direction of said City Council and the City Clerk, pursuant to Section 251 of the Charter of the City of Los Angeles and Ordinance No. 172959, on November 22, 2004, I posted a true copy of said ordinance at each of three public places located in the City of Los Angeles, California, as follows: 1) One copy on the bulletin board at the Main Street entrance to Los Angeles City Hall; 2) 568 copy on the bulletin board at the ground level Los Angeles Street entrance to the Los Angeles Police Department; and 3) one copy on the bulletin board at the Temple Street entrance to the Hall of Records of the County of Los Angeles.

Copies of said ordinance were posted conspicuously beginning on November 22, 2004 and will be continuously posted for ten or more days.

I declare under penalty of perjury that the foregoing is true and correct.

Signed this 22nd day of November 2004 at Los Angeles, California.

Maria C. Rico

Maria C. Rico, Deputy City Clerk

Ordinance Effective Date: Jan. 1, 2005 Council File No. 02-2167

(Rev. 3/21/03)