

April 15, 2016

To: City Attorney Richard Pio Roda and City Manager Chris Zapata
From: Jennifer Lin, East Bay Alliance for a Sustainable Economy
Re: **Large business and chain store definitions: Recommendations and examples from other cities**

San Leandro has an opportunity to raise the minimum wage above the state minimum wage law that will reach \$15 by 2022, with a 1 year extension for businesses with greater than 25 employees in California.

This memo outlines lessons San Leandro could learn, and our recommendations drawing from San Francisco, San Jose, and other cities when defining large, corporate chain-stores.

EBASE, in conversation with our partners working in the retail, hotel, and warehousing sectors, recommends the following definition for large businesses:

- *Employers who have more than 25 employees globally, or who have more than 10 establishments globally.*

Number of Employees Globally

- 25 employees or less in California is the threshold for a small business set by the recent California minimum wage increase signed by Governor Jerry Brown earlier this month. Small businesses have 1 additional year to comply with the statewide minimum wage.
- It is important to count the number of employees in the largest geography possible. For example, if a corporate fast food chain has 20 employees and there is only 1 location in San Leandro, without counting the fast food chain's total employment globally or the franchisee's other locations in other cities, it could be misconstrued as a small business (see franchises and labor costs below).

Franchises

- The State of California has established state definitions and regulations on franchises, including Business and Professions Code Section 2000-20010. Cities may reference this definition in local policies.
- The franchise model is controlled at the top by the corporation, who set labor budgets and staffing allocations through the franchise agreements.¹ These agreements limit the ability for local store managers who want to pay higher wages from doing so.
- See alternative language for chain stores below.

San Francisco's policy

- San Francisco has a policy that covers "Formula Retail Establishments" (an existing land use and planning definition of chain stores) with at least 40 establishments worldwide **and** 20 or more employees in the city.
- We recommend counting employees globally, both inside and outside of a city, when determining business size. San Francisco has other policies that cover 20 employees *located in San Francisco and outside of San Francisco* in determining employer size, as long as there is at

¹ Alejandra Cancino, "SEIU seeks federal investigation of franchise industry." *The Chicago Tribune*, May 18, 2015. Available <http://www.chicagotribune.com/business/ct-fight-for-15-ftc-0519-biz-20150518-story.html>. Accessed April 2016. Referenced in Center for Popular Democracy, EBASE, and ACCE report, "Wages and Hours: Why Workers in Emeryville's Service Sector Need a Fair Workweek." March 2016.

least 1 employee in San Francisco. These policies include the Health Care Security Ordinance, Family Friendly Workplace Ordinance, and Fair Chance Ordinance.

- We consider the 40 establishments threshold **too high**, and would also recommend a covered employer meet **either** the employee size threshold **or** the number of establishments or locations threshold, but not both.
- We would **not** recommend San Francisco's formula retail definition to define chain stores in San Leandro because it originated as a planning code definition, and was not directly crafted to address employment standards.

San Jose "Opportunity to Work" ballot initiative language (currently signature gathering underway to place on November 2016 ballot)

- Defines chain businesses as "a set of businesses that share a common brand or are characterized by standardized options of décor, marketing, packaging, products or services."
- Employment size of chain businesses and franchisees are counted as total number of employees, "whether or not located in the City."
- Language here allows for small franchisees—i.e. those with only a few locations—to be counted as a small business. A franchisee's employment is defined only by the total number of employees at locations owned by that franchisee regardless of location, but does not count the total employment of the franchisor. For example, under this proposal, if a Burger King franchisee owns three locations, their employment size is calculated just on those three locations and not on Burger King's global employment.

Definition of Employer

- We recommend keeping the definition of employer that was in the draft ordinance, which includes those who directly or indirectly controls the wages, hours, or working conditions of any employee, and includes those working under a subcontract, temporary staffing agency, or similar entity. This is consistent with language in other cities including San Francisco, Oakland, and Emeryville.

Emeryville

- Emeryville's minimum wage policy has a definition of large employer that is >55 employees in Emeryville—a threshold that we believe is **too high** and would not recommend.