

THE FAIR PAYMENT PRACTICES ORDINANCE

Whereas, the City of Oakland strives to be a welcoming, inclusive place for all City residents; and

Whereas, the City of Oakland strives to empower all its residents to participate in Oakland's economic life. A key aspect of participation in economic life is the ability as a consumer to purchase goods and services; and

Whereas, for many Oakland residents (for example, those who are denied access to credit, or who are unable to obtain bank accounts), the ability to engage in consumer transactions depends on the ability to pay for goods and many services in cash. This is especially true of the very poor; and

Whereas, millions of Americans do not hold bank accounts, or otherwise fall outside the non-cash financial system. Some stand apart by choice, because they are concerned about privacy and do not want their every financial transaction recorded by banks and credit card companies; physical cash remains the most accessible anonymous medium of exchange in this country. Others may not be well situated to participate in the formal banking system or may be excluded from that system against their will. In short, denying the ability to use cash as a payment method means excluding too many people; and

Whereas, according to the Federal Deposit Insurance Corporation (FDIC), in 2017, 17% of all African-American households and 14% of all Latino households in the U.S. had no bank account at all, and while 84% of white people are considered "fully banked", only 52% of African-American households and 63% of Latino households achieve the same status.¹ Not accepting cash payment is tantamount to systematically excluding segments of the population that are largely low-income people of color. Cashless business models may also have significant detrimental impacts on young people who do not meet age requirements for credit cards, for the elderly (many of whom have not transitioned to credit and digital payment modes at the same rate as younger generations), and for other vulnerable groups (such as the homeless and immigrant populations); and

Whereas, a so-called "privacy tax" is imposed upon lower income residents that cannot afford more secure products. The U.S. funded "Lifeline Assistance" program funded the purchase of certain Android phones that came pre-installed with Chinese malware that could not be uninstalled, and which were given at low or no cost to qualifying individuals thereby placing their privacy interests and communications at risk². Lower income residents entitled to government benefits are already forced to surrender their right to

¹ <https://www.federalreserve.gov/publications/2018-economic-well-being-of-us-households-in-2017-banking-credit.htm>

² <https://www.forbes.com/sites/thomasbrewster/2020/01/09/us-funds-free-android-phones-for-the-poor--but-with-permanent-chinese-malware/#170ba279abab>

privacy in order to qualify, forced to agree to searches of their person, home, drug testing, and disclosure of information not normally required during the regular course of business³; and

Whereas, the use of a credit or debit card as payment allows the seller to learn our first and last name, and when combined with a zip code required by many merchants, a revealing portrait of our lives becomes possible. When data appending services are used, sellers may be able to acquire our email and postal addresses, and phone number. This information allows sellers to access the largely unrelated data broker industry, which could reveal additional demographic information including but not limited to, our employment history, marital and homeownership status, hobbies, medical conditions, sexual preferences, and locational history⁴; and

Whereas, the City of Oakland has been a Sanctuary City since 1986, and did enact a Sanctuary Contracting Ordinance in May 2019, to ensure that taxpayer funds are not subsidizing ICE's deportation machine. ICE Enforcement Removal Operations issued a Request for Information on August 3, 2017, and subsequently entered into a contract with data broker behemoth Thomson-Reuters to obtain commercial subscription data services capable of providing continuous real-time information pertaining to 500,000 identities per month from sources such as State Identification Numbers; real time jail booking data; credit history; insurance claims; phone number account information; wireless phone accounts; wire transfer data; driver's license information; Vehicle Registration Information; property information; pay day loan information; public court records; incarceration data; employment address data; Individual Taxpayer Identification Number (ITIN) data; and employer records. Undocumented residents that are forced to use credit or debit cards to conduct everyday transactions are therefore placed at additional risk of detection and deportation by ICE; and

Whereas, the July 2019 data breach of Capital One, which affected over 100 million Americans and 6 million Canadians, greatly impacting the privacy interests of all involved, did not even register in the top 10 largest data breaches; and

Whereas, the five largest known data breaches occurred at American owned businesses and impacted billions of people around the world⁵; and

³ <https://www.fastcompany.com/90317495/another-tax-on-the-poor-surrendering-privacy-for-survival>

⁴ <https://www.aclufl.org/en/news/why-dont-we-have-more-privacy-when-we-use-credit-card>

⁵ <https://www.cnbc.com/2019/07/30/five-of-the-biggest-data-breaches-ever.html>

Whereas, the states of New Jersey⁶ and Massachusetts⁷, and the cities of San Francisco⁸, Philadelphia⁹, and Berkeley¹⁰ have each enacted prohibitions on cashless stores. On January 23, 2020, the City Council of New York passed a similar ordinance - Mayor DeBlasio has stated he supports the intent¹¹.

Whereas, the City Council finds that it is the intent of this ordinance to ensure that all Oakland residents, including those who lack access to other forms of payment, are able to participate in Oakland's economic life by paying cash for goods or services; now, therefore

Commented [PHM1]: Helpful to include information about prevalence of the practice in Oakland? Is this currently a problem? If not currently a problem, could use Berkeley ordinance language: "As of today, there are few stores in Oakland that do not accept cash, and so now is a good opportunity to guarantee that these discriminatory practices are not permitted in our City."

THE CITY COUNCIL OF THE CITY OF OAKLAND DOES ORDAIN AS FOLLOWS:

Section 1. Title

This ordinance shall be known as the Fair Payment Practices Ordinance.

Section 2. Definitions.

- 1) "Brick-and-Mortar Business" shall mean any place of business operating at a fixed, permanent physical premises. Brick-and-Mortar Business does not include any business not operating at a physical premises within Oakland (one example being a business operating in Oakland exclusively via the Internet without any physical premises in Oakland), or any business operating from a vehicle or other mobile space (one example being a food truck), or any business operating from a temporary physical premises (one example being a pop-up restaurant).
- 2) "Cash" shall mean United States currency, in the form of both paper Federal Reserve Notes and metal coins.
- 3) "Professional Services" shall mean any service that requires extended analysis, the exercise of discretion and independent judgment in their performance, and/or the application of an advanced, specialized type of knowledge, expertise, or training customarily acquired either by a prolonged course of study or equivalent experience in the field. Examples of Professional Services include, but are not limited to, services provided by accountants, architects, attorneys, engineers, financial advisers, insurance agents, interior designers, management and other consultants, medical and allied health care professionals such as doctors, dentists, and nurses; and software developers. Licensure by the state or city

⁶ <https://www.politico.com/states/new-jersey/story/2019/03/18/murphy-signs-bill-banning-most-cashless-stores-in-new-jersey-919093>

⁷ <https://malegislature.gov/laws/generallaws/partiii/titleiv/chapter255d/section10a>

⁸ <https://sfgov.legistar.com/View.ashx?M=F&ID=7255924&GUID=2EE5FAC2-597B-4806-81FB-A3F1F398C0A9>

⁹ <http://phlcouncil.com/wp-content/uploads/2018/10/Cashless-Retail-Prohibition-Bill-Greenlee.pdf>

¹⁰ <https://www.dailyca.org/2019/12/10/berkeley-city-council-ordinance-requires-businesses-to-accept-cash-as-payment/>

¹¹ <https://www.nytimes.com/2020/01/23/nyregion/nyc-cashless-ban.html>

does not in itself mean an individual provides Professional Services; for example, a cosmetologist, shoe repair, tailor of clothes, and dry cleaning shall fall under the Brick-and-Mortar Business category.

Section 3. Requirement To Accept Cash.

- (a) Except as set forth in Section 4, any Brick-and-Mortar Business offering goods or services, or any person, or entity offering Professional Services, shall not require a buyer to pay using credit or to prohibit Cash as payment in order to purchase the goods or services. A Brick-and-Mortar Business, or any person, or entity offering Professional Services, shall accept Cash when offered by the buyer as payment, so long as that buyer is physically present and not conducting the transaction by telephone, mail, or the Internet.
- (b) A Brick-and-Mortar Business or person or entity offering Professional Services shall not:
 - i. Post signs on the premises that cash payment is not accepted; or
 - ii. Charge a higher price to customers who pay cash than they would pay using any other form of payment.

Section 4. Exceptions.

- a) Suspected Counterfeit Currency. A Brick-and-Mortar Business, or person or entity offering Professional Services may refuse to accept Cash that the person or business reasonably suspects to be counterfeit.
- b) Single Transactions Above \$5,000. Where a single transaction involves the purchase of one or more goods and/or services, the total price of which (including tax) exceeds \$5,000, a Brick-and-Mortar Business, or person or entity offering Professional Services must accept Cash as payment for any amount up to \$5,000, but may refuse to accept Cash as payment for the remainder of the amount due. By way of example but not limitation, if a customer purchases an item the total price of which (including tax) is \$7,500, the buyer would be entitled to pay up to \$5,000 in cash, but the seller would be permitted to require the customer to pay the remaining \$2,500 due using some form of payment other than Cash.
- c) Renter of Motor Vehicles. Any company in the business of renting motor vehicles is exempt from Section 3, provided that the company accepts a cashier's check or a certified check when offered by a buyer as payment.

e)d) Large denominations. A Covered Business may refuse to accept Cash in any denomination larger than a twenty dollar note, but shall otherwise accept any combination of Federal Reserve Notes and metal coins in connection with any transaction.

Commented [PHM2]: Why \$5000? Berkeley ordinance exception is \$500.

Commented [PHM3]: Doesn't have to be \$20, but a large denominations limit will be less burdensome (and less dangerous) to small businesses.

Formatted: Font: (Default) Arial, 12 pt

Formatted: Font: (Default) Arial, 12 pt

Formatted: Font: (Default) Arial, 12 pt

Formatted: Font: (Default) Arial, 12 pt

Section 5. Enforcement.

- (a) Cause of Action. Any violation of this Ordinance constitutes an injury and any person may institute proceedings for injunctive relief, declaratory relief, or writ of mandate in any court of competent jurisdiction to enforce this Ordinance.
- (b) No Worker Liability. The obligation to ensure compliance with this Ordinance shall fall only on the business entity (or where a formal entity is not present, the individual owner(s) of the business which are responsible for a policy or practice which violates this Ordinance) or the individual owner(s) of the business. No employee or independent contractor shall be held liable for any violation of this Ordinance.
- (c) Violations. Each transaction or attempted transaction whereby Cash is not accepted as required by Section 3 shall constitute a separate violation of this Ordinance.
- (d) Penalties. The City of Oakland shall issue an administrative citation for any violation of this Ordinance. The amount of the penalty shall be determined as specified below:
 - i. For a first violation of this Ordinance, an infraction punishable by a fine not to exceed \$100, and not less than \$50.
 - ii. For a second violation of this ordinance within a 12-month period, an infraction punishable by a fine not to exceed \$500, and not less than \$200.
 - iii. For a third violation of this ordinance within a 12-month period, and any additional violation within the same period, a misdemeanor punishable by a fine not to exceed \$1,000 and not less than \$700.
 - iv. Subject to the specific criteria of this Ordinance, the City Manager shall follow the due process requirements outlined in Oakland Municipal Code sections 1.12.050 (Notification), 1.12.060 (Assessment), and 1.12.080 (Appeal).
- (e) Attorney's Fees and Costs. A court shall award a plaintiff who prevails on a cause of action under subsection (a) reasonable attorney's fees and costs.

Section 6. Severability

The provisions in this Ordinance are severable. If any part of provision of this Ordinance, or the application of this Ordinance to any person or circumstance, is held invalid, the remainder of this Ordinance, including the application of such part or provisions to other persons or circumstances, shall not be affected by such holding and shall continue to have force and effect.

Section 7. Construction

The provisions of this Ordinance are to be construed broadly to effectuate the purposes of this Ordinance.

Section 8. Effective Date

This Ordinance shall take effect immediately upon adoption.