



Board of Directors Agenda Report

MEETING DATE: OCTOBER 22, 2020 ITEM NUMBER: 10D

SUBJECT: Consideration of and Vote on Whether or Not to Approve Two New Work Conditions Policies and Board Resolution in Order to Become Qualified to Receive AB 1499 Funding

DATE: October 16, 2020, 2020

FROM: Michele Richards, CEO

PRESENTATION BY: Michele Richards, CEO

RECOMMENDATION

At the Board of Directors' discretion.

BACKGROUND

AB 1499 is legislation passed in July, 2018 requiring retailers who sell tangible products on the real property of a California state-designated fairgrounds to separately state the amount of those sales on their Sales and Use Tax returns. Three quarters of one 1% of that sales tax collected is designated for fair funding.

The OC Fair & Event Center now has an opportunity to become qualified to receive \$830,170 in funding for general operational support.

In order to become qualified, the Board must approve:

- a policy to meet certain required work conditions for all non-management employees, including the seasonal and part-time employees who work during our events and the annual OC Fair.
- an additional policy requiring the same work conditions for non-management employees of any tenants who have rights to occupancy at the fairgrounds for one year or longer, and who employ more than 50 full-time employees.
- a Board resolution requesting the funds for general operational support signed by the Board Chair and CEO.

A draft of the two work conditions policies and the Board resolution are attached for the Board's consideration.

32nd District Agricultural Association
Board Policies

6.08 Employee Work Conditions (AB 1499)

Date Adopted/Last Revised: Month #, 20XX

Note: Capitalized terms not otherwise defined in this Board Policy have the meanings set forth in the Definitions section of Board Policy 1.01. Should any provision in this policy contradict any provision of California law, California law shall control.

Policy

The 32nd DAA will abide by the following work conditions for non-management employees in the manner described under Chapter 3 of Division 7 of Title 3 of the California Code of Regulations:

- A meal period of not less than 30 minutes for a work period of more than five hours per day, unless the work period per day of the employees is less than six hours and the meal period is waived by mutual consent of both the employer and the employee.
- A second meal period of not less than 30 minutes for a work period of more than 10 hours per day, unless the work period per day of the employees is less than 12 hours, the second meal period is waived by mutual consent of both the employer and the employee, and the first meal period was not waived.
- Compensation at the rate of no less than one and one-half times the regular rate of pay for any work in excess of eight hours in one workday, any work in excess of 40 hours in any one workweek, and the first eight hours worked on the seventh day of work in any one workweek.
- Compensation at the rate of no less than twice the regular rate of pay for any work in excess of 12 hours in one day.
- Compensation at the rate of no less than twice the regular rate of pay for any work in excess of eight hours on any seventh day of a workweek.

This policy applies to all non-management employees employed by the 32nd DAA and employees of leases that grant exclusive and continuous occupancy for a period of one-year or longer.

This policy **does not** apply to:

- a. Employees covered by a valid collective bargaining agreement if that agreement expressly provides for all of the following: (1) Wages, hours of work, and working conditions of the employees; (2) Meal periods for the employees, including final and binding arbitration of disputes concerning application of its meal period provisions.
- b. Interim events and short-term rentals of a term less than a year.
- c. Lessees that employ less than fifty employees of a full-time status as determined by the Internal Revenue Service's Monthly Measurement Method.

32nd District Agricultural Association
Board Policies

6.09 Contracting Policies and Procedures (AB 1499)

Date Adopted/Last Revised: Month #, 20XX

Note: Capitalized terms not otherwise defined in this Board Policy have the meanings set forth in the Definitions section of Board Policy 1.01. Should any provision in this policy contradict any provision of California law, California law shall control.

Policy

The following Contracting Policies and Procedures are as required by Business and Professions Code (BPC) Section 1960.15:

1. Leases that grant exclusive and continuous occupancy for a period of one-year or longer shall include the following provisions:
 - a. Lessee shall provide to all non-management employees the working conditions, or greater, outlined in the Required Working Conditions Policy 6.01. Failure to provide the working conditions shall be considered a material breach.
 - b. Lessee acknowledges that the 32nd DAA is a state institution under the oversight of the California Department of Food and Agriculture (CDFA) which conduct periodic audits for the purpose of ensuring compliance with state law and policy. Upon written request and with reasonable notice, Lessee shall make records available to the CDFA Audit Office for examination in order to confirm compliance with the required work conditions policy. Records may include, but are not limited to, payroll and time keeping records of non-management employees.
 - c. Lessee shall notify the 32nd DAA within 15 days of receiving notice of any complaint made by a non-management employee or finding of a violation by a labor or personnel authority, based on the working conditions outlined in the Required Working Conditions Policy 6.01.
 - d. Upon finding that Lessee failed to comply with the required work conditions, Lessee shall provide the 32nd DAA with written assurance within thirty (30) days of the finding that the breach will be cured before the 32nd DAA may terminate this lease as provided herein.

2. All existing leases prior to October 22, 2020 shall be amended in writing and signed by the parties to include the required contract provisions and policy.
3. Upon the CDFA Audit Office's request, the fair shall make available all records necessary to conduct an audit. During an audit, the 32nd DAA shall assist CDFA in requesting that the Lessee make available its records for examination pursuant to the lease.
4. The 32nd DAA shall inform CDFA in writing within 15 business days of receiving notice of either of the following:
 - a. Any complaint or finding of a violation for the 32nd DAA's failure to provide the required work conditions to a non-management employee; or
 - b. A final ruling issued by a relevant labor or personnel authority that determines the 32nd DAA or a Lessee did not provide its non-management employees the required work conditions.
5. The 32nd DAA shall otherwise be in compliance with all labor laws and current with the Department's audit reporting requirements.

Exemptions:

- a. Lessees that employ less than fifty employees of a full-time status as determined by the Internal Revenue Service's Monthly Measurement Method.



Resolution to Determine the Eligibility of the OC Fair & Event Center to Receive Sales and Use Tax Allocations AB1499 Funding Under Executive Order N-40-20

A resolution of the OC Fair & Event Center (32nd District Agricultural Association) Board of Directors requesting access to the Sales and Use Tax Allocations AB 1499 (New Fair Funding) as of October 22, 2020

The OC Fair & Event Center (32nd District Agricultural Association) Board of Directors understands that in order to receive New Fair Funding, the fair and its lessees, will need to abide by the following work conditions for non-management employees in the manner described under Chapter 3 of Division 7 of Title 3 of the California Code of Regulations.

The Executive Order N-40-20 is suspending Business and Professions Code section 19620.15(h)(3)(C) throughout the duration of the proclaimed emergency which requires:

- A meal period of not less than 30 minutes for a work period of more than five hours per day, unless the work period per day of the employee is less than six hours and the meal period is waived by mutual consent of both the employer and the employee.
- A second meal period of not less than 30 minutes for a work period of more than 10 hours per day, unless the work period per day of the employee is less than 12 hours, the second meal period is waived by mutual consent of both the employer and the employees, and the first meal period was not waived.
- Compensation at the rate of no less than one and one-half times the regular rate of pay for any work in excess of eight hours in one workday, any work in excess of 40 hours in any one workweek, and the first eight hours worked on the seventh day of the work in any one workweek.
- Compensation at the rate of no less than twice the regular rate of pay for any work in excess of 12 hours in one day.
- Compensation at the rate of no less than twice the regular rate of pay for any work in excess of eight hours on any seventh day of a work week.
- The OC Fair & Event Center (32nd District Agricultural Association) Board of Directors agrees to these terms and, as required by the regulations, has adopted a policy that outlines the required work conditions for all non-management civil service employee of the fairgrounds and lessees.



Additionally, the OC Fair & Event Center (32nd District Agricultural Association) Board of Directors has approved contracting policy and procedures that stipulates that all lessees covered by the regulations are required to provide to non-management employees the required work conditions and that all leases shall include the required contract provisions.

Passed, approved and adopted on this day, October 22, 2020.

Yes Votes:

No Votes:

Abstentions:

The above statement is verified and true:

Approved:

Natalie Rubalcava-Garcia, Board Chair

Date

Print Name

Michele Richards, CEO

Date

Print Name