

## ORDINANCE NO. #,###-N.S.

### NUCLEAR WEAPONS FREE BERKELEY ACT

The People of the City of Berkeley ordain as follows:

Section 1. That Chapter 12.90 of the Berkeley Municipal Code is amended to read as follows:

## Chapter 12.90

### NUCLEAR WEAPONS FREE BERKELEY ACT

Sections:

- [12.90.010](#) Name.
- [12.90.020](#) Purpose.
- [12.90.030](#) Findings.
- [12.90.040](#) Prohibition of work for nuclear weapons.
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#### **12.90.010 Name.**

This Chapter shall be known as "The Nuclear Weapons Free Berkeley Act." (Ord. 5784-NS § 1, 1986)

#### **12.90.020 Purpose.**

The purpose of this act is to create a nuclear-weapons free world by:

- A. Advocating for the elimination of nuclear weapons worldwide by August 6, 2045, the 100-year anniversary of dropping a nuclear weapon on the Japanese city of Hiroshima;

- B. Advocating for a freeze on the modernization of nuclear weapons, for the elimination in the stockpile of non-deployed nuclear weapons, and for a plan to phase out all nuclear weapons by 2045;
- C. Opposing nuclear weapons by banning work for nuclear weapons within the City of Berkeley;
- D. Advocating that federal government funding of nuclear weapons be repurposed towards combating climate change and towards helping develop and expand carbon-free energy sources;
- E. Preventing the spread of nuclear weapons by promoting non-proliferation efforts.

### **12.90.030 Findings.**

The people of Berkeley find that:

- A. When the original Nuclear Free Berkeley Ordinance was passed in the late 1980s, the total number of nuclear warheads globally had peaked at over 60,000. Since then, the global trend has been to reduce the number of nuclear weapons. However, in the last decade, the number of weapons has leveled off at approximately 10,000 globally. The continued existence of large numbers of nuclear weapons poses an existential threat to humanity. Therefore, there is an ethical imperative for complete nuclear disarmament.
- B. Our national leaders continue to maintain and upgrade a large nuclear weapons stockpile despite the Treaty on the Non-Proliferation of Nuclear Weapons (NPT) calling for "...negotiations in good faith on effective measures relating to cessation of the nuclear arms race at an early date and to nuclear disarmament..." We support furthering the current START (Strategic Arms Reduction Treaty) and creating more such agreements with other nations with a goal of zero nuclear weapons across the globe.
- C. The international community already banned the use of biological and chemical weapons in the 1925 Geneva Protocol and then reinforced the ban in the 1972 Biological Weapons Convention and the 1993 Chemical Weapons Convention by prohibiting production, possession, and trade of such weapons. These weapons were banned because they are deemed inhumane and they kill indiscriminately. These bans set a precedent for banning the production, possession, trade, and use of nuclear weapons as well.
- D. On July 7, 2017, 122 out of the 193 member states of the UN voted to adopt the Treaty on the Prohibition of Nuclear Weapons. This international agreement is a "legally binding instrument to prohibit nuclear weapons, leading towards their total elimination." Unlike the NPT, this agreement calls for complete prohibition instead of allowing some countries to keep a portion of their nuclear weapon stockpile. As of December 1, 2017, no nuclear weapons states have signed this agreement. However, this treaty demonstrates that the majority of nations believe that, as with chemical and biological weapons, nuclear weapons should be completely banned and eliminated. The People of the City of Berkeley believe that every nation should sign this treaty and eliminate all nuclear weapons.
- E. The threat to use nuclear weapons is an integral part of global policy. Hence, diplomacy and non-proliferation research are necessary for peace and to avoid nuclear warfare.

F. The gas centrifuge process is the primary method for producing weapons-grade fissile material for nuclear weapons. In 2015, Iran agreed to greatly limit its number of centrifuges and allow the International Atomic Energy Agency (IAEA) to monitor the country's remaining centrifuges. In order to prevent the production of nuclear weapons, it is a necessity to limit the number of nuclear centrifuges across the globe.

G. Federal funds, personnel, and other resources presently committed to work for nuclear weapons should be redirected toward urgently needed human services and work to mitigate climate change, which also poses an existential threat to humanity.

H. On November 24, 2003, the University of California's Academic Council passed the "Academic Council Resolution on SUTI: Recommendations Regarding Sensitive but Unclassified Technical Information." In this resolution, the Council emphasizes the importance of research that can be shared openly and published. For this reason, it states, "UC practice, in turn, has been to refuse to perform classified research on our campuses. This stems from UC's longstanding policy that faculty research should be publishable. A contract or grant for research to be conducted on a UC campus normally is unacceptable to the University if it limits the freedom to publish or disseminate results." Since Lawrence Berkeley National Laboratory is operated by UC Berkeley, it also follows UC policy for research. Therefore, classified research is banned at all UC campuses and Lawrence Berkeley National Laboratory. Since classified work includes all work for nuclear weapons, it is unnecessary to restrict city contracts with or the hiring of consultants from either of these entities. If either entity decides to engage in work for nuclear weapons in the future, they will no longer be exempt and will be subject to the contract restrictions set forth in this chapter.

#### **12.90.040 Prohibition of work for nuclear weapons.**

A. No person, corporation, university, laboratory, institution or other entity shall knowingly commence, engage in, or continue any work for nuclear weapons within the City of Berkeley.

B. Nothing in this section shall be construed to prohibit the following:

1. Any activity not specifically described in this section;
2. Any unclassified research, study, evaluation or teaching;
3. Any use of radioactive material for peaceful purposes, including but not limited to: the research and application of nuclear medicine, including the production of medical isotopes; the production or use of radioactive materials or fissile material for non-proliferation research; the production of radioactive material for peaceful research and applications; or uses of radioactive material for smoke detectors, light emitting watches and clocks, and other applications not related to the development of nuclear weapons.

#### **12.90.050 Food irradiation.**

Any food intended for human consumption that has been irradiated in a food irradiation facility and is intended for sale within Berkeley shall be labelled in accordance with FDA regulations.

### **12.90.060 Nuclear weapons free contracts and investments.**

A. Contracts. The City of Berkeley shall not contract with any entity that is knowingly engaging in work for nuclear weapons as a substantial part of its economic activity, unless the City Council makes a specific determination that no reasonable alternative exists, taking into consideration the following factors:

1. The intent and purpose of the act;
2. The availability of alternative services, goods and equipment, or other supplies substantially meeting required specifications of the proposed contract; and,
3. Quantifiable additional costs resulting from use of available alternatives.

This does not prevent the hiring of scientists and consultants who could provide the City with useful knowledge and help in regards to energy, power production, climate change mitigation, and city planning, as long as their primary work is not work for nuclear weapons.

B. Investments. The City of Berkeley shall refrain from knowingly making any investments directly in entities whose primary purpose is work for nuclear weapons.

C. Exception for Non-Proliferation. Because nuclear material is necessary to study and develop new methods for monitoring for nuclear weapons development and accomplishing non-proliferation, the City is not prohibited by this Chapter from contracting with and/or making investments in any entity that uses nuclear material for the sole purpose of stopping the spread of nuclear weapons and/or further development of nuclear weapons. This includes, as long as they do not recommence any work for nuclear weapons:

1. Lawrence Berkeley National Laboratory
2. University of California at Berkeley

### **12.90.070 Community right to know.**

For as long as any work for nuclear weapons exists within the City of Berkeley, the City, through its own agencies and in cooperation with other local governmental agencies and educational organizations and interested citizen groups, shall assist and promote educational activities including but not limited to curriculum in all public schools and adult education programs, to advance public awareness and understanding of up-to-date scientifically proven facts about nuclear weapons, radiation, and climate change and any current research practices in all related matters. For the purpose of proper education, the City will support representation from the relevant scientific community in the nuclear field for all education work.

### **12.90.080 Transportation.**

Any transportation of nuclear weapons or fissile material intended for nuclear weapons is banned within the city limits. Medical isotopes, nuclear power related components, or radioactive waste, in the interest of the public safety, shall be subjected to EPA, DOE, and NRC regulations. The transportation shall be subjected to the following restrictions:

A. In each situation, the City of Berkeley shall determine the safest reasonable routes and means of transport for the movement of any of the above-listed materials and shall notify the agencies and entities responsible for the transportation of those materials. Following selection and approval of the route and means, full public notice shall be given as to this information so long as security is not compromised and as to the additional restrictions of this section.

B. Prior to each instance of shipment of such materials, adequate public notice shall be given. Particular attention shall be paid to giving notice to those directly adjacent to the route of transport. (Ord. 5784-NS § 10, 1986)

### **12.90.090 Public notice of nuclear weapons free zone.**

The previous passage of this act established that every road entering the City of Berkeley would mark the City limits with a sign reading "Nuclear Free Zone, established by City of Berkeley initiative ordinance, 1986." These signs shall be removed no later than March 1, 2019, and replaced with signs at least two feet by three feet reading "Nuclear Weapons Prohibited, established by City of Berkeley initiative ordinance, 2018." (Ord. 5784-NS § 11, 1986)

### **12.90.100 Redirection of resources toward human needs.**

The City of Berkeley Peace and Justice Commission shall solicit testimony from the public and shall prepare a detailed plan for the conversion of any labor, resources, and physical plants for nuclear weapons work within the City of Berkeley to peaceful and productive uses. The commission shall ensure the participation of organized labor. (Ord. 5784-NS § 12, 1986)

### **12.90.110 Definitions.**

"Nuclear weapon" is any explosive device, the intended explosion of which results from the energy released by reactions involving atomic nuclei, either fission or fusion, or both. This definition of nuclear weapons includes the means of transporting, guiding, propelling or triggering the weapon if and only if such means is destroyed or rendered useless in the normal propelling, triggering, or detonation of the weapon.

"Component of a nuclear weapon" is any device, radioactive or nonradioactive, the primary intended function of which is to contribute to the operation of a nuclear weapon or to be a part of a nuclear weapon.

"Work for nuclear weapons" is any work the purpose of which is the development, testing, production, maintenance or storage of nuclear weapons or the components of nuclear weapons, including weapons grade fissile material; or any secret or classified research or evaluation of nuclear weapons; or any operation, management, or administration of such work.

"Non-proliferation" refers to the efforts to control or prevent the spread of nuclear weapons and the means to make them.

"Fissile material" is any material in which the atomic nuclei readily undergo fission.

"Weapons-grade fissile material" is fissile material that is pure enough or has properties that make it suitable to be used in making nuclear weapons.

### **12.90.120 Enforcement.**

The City of Berkeley and its residents shall have the right to enforce this chapter by appropriate civil actions for declaratory or injunctive relief. Reasonable attorney's fees and court costs shall be awarded to a prevailing plaintiff in such litigation. (Ord. 5784-NS § 14, 1986)

### **12.90.130 Severability clause.**

If any word, phrase, sentence, part, section, subsection, or other portion of this title, which constitutes the Nuclear Weapons Free Berkeley Act, or any application thereof to any person or circumstance is declared void, unconstitutional, or invalid for any reason, then such word, phrase, sentence, part, section, subsection, or other portion, or the prescribed application thereof, shall be severable, and the remaining provisions of this chapter, and all applications thereof, not having been declared void, unconstitutional or invalid, shall remain in full force and effect. The People of the City of Berkeley hereby declare that it would have passed this title, and each section, subsection, sentence, clause and phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases had been declared invalid or unconstitutional.

Section 2. That a new Section 23E.16.090 is added to the Berkeley Municipal Code to read as follows:

#### **23E.16.090 Food irradiation facilities**

Food irradiation facilities shall be prohibited in all C-prefixed and M-prefixed districts.

Section 3. That a new definition is added to Section 23F.04.010 as follows:

**Food Irradiation Facility:** A commercial or industrial facility that knowingly and purposely exposes food intended for human consumption, either prepackaged or in bulk, to ionizing radiation, such as gamma rays, X-rays, or electrons in a special room and for a specific duration.