

AN ORDINANCE OF THE CITY COUNCIL OF THE
CITY OF LONG BEACH AMENDING THE LONG BEACH
MUNICIPAL CODE BY ADDING CHAPTER 5.55, RELATING
TO COVID-19 WORKER RECALL

WHEREAS, on January 31, 2020, the United States Secretary of Health
and Human Services declared a public health emergency based on the threat caused by
COVID-19 (also known as the "Coronavirus"); and

WHEREAS, on March 4, 2020, the Governor of California proclaimed a
State of Emergency (Executive Order N-25-20) in California based on the threats to
public health caused by COVID-19; and

WHEREAS, on March 4, 2020, after deep concern by the World Health
Organization and the Federal government, and as a result of the need to proactively slow
the spread of, and combat, COVID-19 in the City of Long Beach, the City Public Health
Officer issued a Declaration of Local Health Emergency and the Acting City Manager
issued a Proclamation of Local Emergency; and

WHEREAS, on March 10, 2020, the City Council of the City of Long Beach
recognized that an emergency did exist and unanimously passed a Resolution ratifying
the City Manager's Proclamation of a Local Emergency and the Public Health Officer's
Declaration of Local Health Emergency; and

WHEREAS, on March 11, 2020, the World Health Organization declared
the COVID-19 a pandemic; and

WHEREAS, on March 13, 2020, the President of the United States of
America declared a National Emergency as a result of COVID-19; and

WHEREAS, on March 19, 2020, the Governor of the State of California
issued an Order (Executive Order N-33-20) that all individuals living in California stay

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1 home or at their place of residence, except as needed to maintain continuity of operations
2 for certain critical infrastructure sectors, to protect the public health of Californians, to
3 mitigate the impact of COVID-19, and to ensure the healthcare delivery system is
4 capable of serving all; and

5 WHEREAS, on March 24, 2020, in order to mitigate the effects of COVID-
6 19 within the City, the Long Beach Health Officer issued the "Safer at Home" Order to
7 control the affects and spread of COVID-19; and

8 WHEREAS, it is the desire of the City Council to adopt an ordinance adding
9 a Chapter to the Long Beach Municipal Code requiring certain businesses in Long Beach
10 to comply with citywide worker recall provisions applicable to employer lay-offs resulting
11 from the COVID-19 pandemic.

12 NOW, THEREFORE, the City Council of the City of Long Beach ordains as
13 follows:

14 Section 1. The Long Beach Municipal Code is amended by adding
15 Chapter 5.55 to read as follows:

16 CHAPTER 5.55

17 COVID-19 CITYWIDE WORKER RECALL

18 5.55.010 Purpose.

19 As a result of the COVID-19 pandemic and the "Stay at Home" order
20 issued by California Governor Gavin Newsom and the "Safer at Home"
21 order by City of Long Beach, both of which were issued to protect the public
22 health and welfare, many workers in the City of Long Beach are facing
23 significant job and economic insecurity. The COVID-19 pandemic has
24 caused hospitality and janitorial service employers in the City to discharge,
25 layoff and furlough workers at a massive scale. Many hotel and janitorial
26 service workers have already been separated from their jobs during the
27 pandemic, and thousands more are expected to face separation in the
28 coming months. While federal, state, and local programs, and efforts by

1 certain non-profits, have provided some support to hotel and janitorial
2 service workers in the short-term, what these workers need most is the
3 promise of a return to their previous jobs as the pandemic begins to recede
4 and business activity resumes. To ensure fair employment practices during
5 the economic upheaval resulting from the pandemic and to reduce the
6 demand on government-funded services, the City hereby enacts legal
7 protections for workers laid-off due to the COVID-19 pandemic.

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9 5.55.020 Definitions.

10 The following definitions shall apply to this Chapter:

11 A. "City" means the City of Long Beach.

12 B. "Commercial Property Employer" means an owner, operator,
13 manager or lessee, including a contractor, subcontractor, or sublessee, of a
14 non-residential property in the City that provides janitorial services and
15 employs twenty-five (25) or more employees.

16 C. "Employer" means a Commercial Property Employer or Hotel
17 Employer.

18 D. "Hotel" has the same meaning as in Section 9.02.080 of the
19 Long Beach Municipal Code.

20 E. "Hotel Employer" means any person who owns, controls, or
21 operates a hotel in the City and employs twenty-five (25) or more
22 employees who provide services at a hotel in conjunction with the hotel's
23 purpose. A "Hotel Employer" includes any contracted, leased or sublet
24 premises connected to or operated in conjunction with the building's
25 purpose, or providing services at the building.

26 F. "Laid-off Employee" means a Hotel or Commercial Property
27 employee who, in a particular week, performed at least two (2) hours of
28 work within the geographical boundaries of the City for an Employer, had a

1 Length of Service with the Employer of six (6) months or more, and whose
2 most recent separation from active employment occurred on or after March
3 4, 2020, as a result of a lack of business, a reduction in work force,
4 bankruptcy, or other economic, non-disciplinary reason. This Section
5 creates a rebuttable presumption that any termination occurring on or after
6 March 4, 2020, was due to a non-disciplinary reason. For purposes of this
7 Chapter, a Laid-off Employee does not include any person employed as a
8 manager, supervisor, or confidential employee.

9 G. "Length of Service" means the total of all periods of time
10 during which a Laid-off Employee has been in active service, including
11 periods of time when the Laid-off Employee was on leave or on vacation.

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13 5.55.030 Right of recall.

14 A. Priority for Laid-off Employees. An Employer shall offer its
15 Laid-off Employees in writing, to their last known mailing address, electronic
16 mail and text message to the extent the Employer possesses such
17 information, all job positions which become available after the effective date
18 of this Chapter for which the Laid-off Employee is qualified. A Laid-off
19 Employee is qualified for a position if the Laid-off Employee:

- 20 1. held the same or similar position at the site of
21 employment at the time of the Laid-off Employee's most recent separation
22 from active service with the Employer; or
23 2. is or can be qualified for the position with the same
24 training that would be provided to a new employee hired into that position.

25 The Employer shall offer positions to Laid-off Employees in an order
26 of preference corresponding to categories (1) and (2) above. Where more
27 than one (1) Laid-off Employee is entitled to preference for a position, the
28 Employer shall offer the position to the Laid-off Employee with the greatest

1 Length of Service with the Employer.

2 B. Time Limit. A Laid-off Employee who is offered a position
3 pursuant to this Chapter shall be given no less than five (5) business days in
4 which to accept or decline the offer of re-employment. A "business day" is
5 any day except Saturday, Sunday or official state holidays.

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7 5.55.040 Enforcement.

8 A Laid-off Employee may bring a private right of action in the
9 Superior Court of the State of California against an Employer for violations
10 of this Chapter and may be awarded:

11 A. Hiring and reinstatement rights pursuant to this Chapter.

12 B. All actual damages (including, but not limited to, lost pay and
13 benefits) suffered by the Laid-off Employee and for statutory damages in the
14 sum of one thousand dollars (\$1,000), whichever is greater.

15 C. Punitive damages, pursuant to California Civil Code Section
16 3294.

17 D. Reasonable attorney's fees and costs, as determined by the
18 court, if the Laid-off Employee is the prevailing party in the action; or

19 E. To an Employer who prevails and obtains a court
20 determination that the worker's lawsuit was frivolous.

21 F. A civil action by a Laid-off Employee alleging a violation of any
22 provision of this Chapter shall commence only after the following
23 requirements have been met:

24 1. The Laid-off Employee provides written notice to the
25 Employer of the provisions of this Chapter alleged to have been violated
26 and the facts to support the alleged violation; and

27 2. The Employer is provided fifteen (15) days from receipt
28 of the written notice to cure any alleged violation.

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G. Notwithstanding any other provision of this Code, or any other ordinance to the contrary, no criminal penalties shall attach for a violation of this Chapter.

5.55.050 Retaliatory action prohibited.

No employer shall terminate, reduce in compensation, or otherwise discriminate against any worker for seeking to enforce their rights under this Chapter by any lawful means, for participating in proceedings related to this Chapter, for opposing any practice proscribed by this Chapter, or for otherwise asserting rights under this Chapter.

5.55.060 Exemption for collective bargaining agreement.

All of the provisions of this Chapter, or any part of the Chapter, may be waived in a bona fide collective bargaining agreement, but only if the waiver is explicitly set forth in that agreement in clear and unambiguous terms. Unilateral implementation of terms and conditions of employment by either party to a collective bargaining relationship shall not constitute or be permitted as a waiver of all or any part of the provisions of this Chapter.

5.55.070 No waiver of rights

Except for a collective bargaining agreement provision made pursuant to Section 5.55.060, any waiver by a worker of any or all provisions of this Chapter shall be deemed contrary to public policy and shall be void and unenforceable. Other than in connection with the bona fide negotiation of a collective bargaining agreement, any request by an Employer to a worker to waive rights given by this Chapter shall constitute a violation of this Chapter.

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5.55.080 Severability.

If any section, subsection, sentence, clause or phrase of this Ordinance is for any reason held to be invalid or unconstitutional by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance. The City Council hereby declares that it would have adopted this Ordinance, and each and every section, subsection, sentence, clause and phrase thereof not declared invalid or unconstitutional, without regard to whether any portion of the Ordinance would be subsequently declared invalid or unconstitutional.

5.55.090 City Manager report.

Following adoption of this Chapter, and every ninety (90) days thereafter, City Manager shall report back to the City Council and Mayor on the effectiveness of the provisions of this Chapter in protecting workers' stability of employment, recommendations for additional protections that further the intent of this Chapter, and whether the provisions of the Chapter are still necessary based on the City's recovery from the impacts of the COVID-10 pandemic.

Section 2. The City Clerk shall certify to the passage of this ordinance by the City Council and cause it to be posted in three (3) conspicuous places in the City of Long Beach, and it shall take effect on the thirty-first (31st) day after it is approved by the Mayor.

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I hereby certify that the foregoing ordinance was adopted by the City Council of the City of Long Beach at its meeting of May 19, 2020, by the following vote:

Ayes: Councilmembers: Zendejas, Pearce, Price,
Supernaw, Mungo Andrews,
Uranga, Austin, Richardson.

Noes: Councilmembers: None.

Absent: Councilmembers: None.

Recusal(s): Councilmembers: None.

OFFICE OF THE CITY ATTORNEY
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411 W. Ocean Boulevard, 9th Floor
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M. De Jesus
City Clerk

[Signature]
Mayor

Approved: 5-22
(Date)

AFFIDAVIT OF POSTING

STATE OF CALIFORNIA) ss
COUNTY OF LOS ANGELES)
CITY OF LONG BEACH)

Tamela Austin being duly sworn says: That I am employed in the Office of the City Clerk of the City of Long Beach; that on the 21st day of May, 2020, I posted three true and correct copies of ORD-20-0015 in three conspicuous places in the City of Long Beach, to wit: One of said copies in the lobby of Civic Chambers; one of said copies in the Main Library; and one of said copies on the front counter of the Office of the City Clerk.



Subscribed and sworn to before me
This 21st day of May 2020.



CITY CLERK