

OFFICE OF THE CITY ATTORNEY
CHARLES PARKIN, City Attorney
411 W. Ocean Boulevard, 9th Floor
Long Beach, CA 90802

ORDINANCE NO. ORD-22-0009

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AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF LONG BEACH AMENDING THE LONG BEACH MUNICIPAL CODE BY AMENDING AND RESTATING CHAPTER 5.53, AND REPEALING SECTION 5.53.090, RELATING TO COVID-19 WORKER RETENTION

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 24, 2020, in order to mitigate the effects of COVID-

1 19 within the City, the Long Beach Health Officer issued the “Safer at Home” Order to
2 control the affects and spread of COVID-19 and has thereafter issued several new and
3 revised Health Orders in response to COVID-19 variants and surges; and

4 WHEREAS, in response to the COVID-19 pandemic City Council adopted
5 an ordinance on May 19, 2020 adding Chapter 5.53 to the Long Beach Municipal Code
6 requiring certain businesses in Long Beach to comply with citywide worker retention
7 provisions applicable to an employer’s change of ownership or control, resulting from
8 COVID-19; and

9 WHEREAS, COVID-19 daily cases and community transmission remain
10 high. As of February 14, 2022, the 7-day daily average case rate is 42.8 cases per
11 100,000 people. This is remains much higher than 13.9 cases per 100,000 people as of
12 December 10, 2021. This indicates a continued and high risk of COVID-19 infection for
13 those who are not or cannot be vaccinated against COVID-19; and

14 WHEREAS, based upon Centers for Disease Control and Prevention (CDC)
15 indicators and thresholds, this means that community transmission of COVID-19 within
16 the County of Los Angeles and the City of Long Beach is high; and

17 WHEREAS, it has become clear that the approach of re-evaluating the
18 ordinance every 90 days is only adding uncertainty to an already uncertain situation for
19 workers and ownership in the hotel and janitorial industry; and

20 WHEREAS, making Right to Retention permanent will strengthen Long
21 Beach’s economic development strategy and economic recovery in the event of a future
22 pandemic or economic recession; and

23 WHEREAS, Right to Retention will preserve job quality in the hospitality
24 and janitorial industries, which are two industries related to tourism that Long Beach has
25 invested over \$750 million dollars in over the last few decades; and

26 WHEREAS, better jobs in the hospitality and janitorial industries means
27 more access to good jobs for Long Beach residents; and

28 WHEREAS, Right to Retention policies would preserve job equity as

1 workers in the hospitality and janitorial industries, the majority of whom are women and
2 workers of color, have pushed for decades to transform jobs in the hospitality and
3 janitorial industries into dignified jobs that can support a family; and

4 WHEREAS, Right to Retention is beneficial to local businesses seeking to
5 rehire a skilled and trained workforce; and

6 WHEREAS, Right to Retention can reduce onboarding and training costs
7 for businesses seeking to rehire or retain a skilled and qualified workforce; and

8 WHEREAS, several neighboring cities in Los Angeles County have made
9 Right to Recall and Retention ordinances permanent for workers in their
10 hospitality industries, including Santa Monica, West Hollywood, and Glendale; and

11 WHEREAS, now the City Council desires to amend Chapter 5.53 and make
12 Chapter 5.53 permanent to provide certainty and security to workers in high contact,
13 high-risk industries;

14 NOW, THEREFORE, the City Council of the City of Long Beach ordains as
15 follows:

16 Section 1. Chapter 5.53 of the Long Beach Municipal Code is amended
17 and restated as follows:

18 CHAPTER 5.53

19 COVID-19 CITYWIDE WORKER RETENTION

20 5.53.010 Purpose.

21 As a result of the COVID-19 pandemic, many workers in the City of
22 Long Beach are facing significant job and economic insecurity. The COVID-
23 19 pandemic has caused hospitality and janitorial service employers in the
24 City to discharge, layoff and furlough workers at a massive scale. Many
25 hotel and janitorial service workers have been separated from their jobs as
26 a result of the pandemic, and thousands more are still experiencing
27 economic hardship. This has caused a sense of uncertainty with these
28 workers. While federal, state and local programs, and efforts by certain non-

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profits, have provided some support to hotel and janitorial service workers in the short-term, what these workers need most is the continuing opportunity of retaining their jobs during business transfers of ownership. To ensure fair employment practices, provide some security during times of economic upheaval and protect against dangers posed by future pandemics, including future COVID -19 variants and surges, the City hereby enacts legal protections for workers when a business changes ownership.

5.53.020 Definitions.

The following definitions shall apply to this Chapter:

A. "Business" means a Hotel or Commercial Property Business.

B. "Change in Control" means any sale, assignment, transfer, bankruptcy, contribution, or other disposition of all or substantially all of the assets used in the operation of a Business, or a discrete portion of a Business that continues to operate as the same type of Business of the Incumbent Business Employer, or any Person who controls the Incumbent Business Employer.

C. "City" means the City of Long Beach.

D. "Commercial Property Business" means non-residential property in the City that provides janitorial services and employs twenty-five (25) or more employees.

E. "Employment Commencement Date" means the date on which a Worker retained by a Successor Business Employer pursuant to this Ordinance commences work for the Successor Business Employer in exchange for compensation under terms and conditions established by the Successor Business Employer or as required by law.

F. "Hotel" has the same meaning as in Section 9.02.080 of the Long Beach Municipal Code. This Chapter only applies to hotels with

1 twenty-five (25) or more employees who provide services in conjunction with
2 the hotel's purpose.

3 G. "Incumbent Business Employer" means the Person who owns,
4 controls, subcontracts or operates a Hotel or Commercial Property Business
5 prior to the Change in Control.

6 H. "Length of Service" means the total of all periods of time
7 during which a Worker has been in active service, including periods of time
8 when the Worker was on leave or vacation.

9 I. "Person" means an individual, corporation, partnership, limited
10 partnership, limited liability company, business trust, estate, trust,
11 association joint venture, agency, instrumentality, or any other legal or
12 commercial entity, whether domestic or foreign.

13 J. "Successor Business Employer" means the Person who owns
14 controls, and/or operates a Business after a Change in Control.

15 K. "Transfer Document" means the purchase agreement or other
16 documents creating a binding arrangement to effect the Change in Control.

17 L. "Worker" means an individual employed by the Incumbent
18 Business Employer who performs work at a Hotel or Commercial Property
19 Business and: (1) who has a Length of Service with the Incumbent
20 Business Employer for six (6) months or more; (2) whose primary place of
21 employment is a Business subject to a Change in Control; (3) who is
22 employed or contracted to perform work functions directly by the Incumbent
23 Business Employer, or by a Person who has contracted with the Incumbent
24 Business Employer to provide services at the Business subject to the
25 Change in Control; and (4) who worked for the Incumbent Business
26 Employer on or after March 4, 2020, and prior to the execution of the
27 Transfer Document. "Worker" does not include a person employed as a
28 manager, supervisor, or confidential employee.

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5.53.030 Business worker retention.

A. Business Employer's Responsibilities.

1. The Incumbent Business Employer shall, within fifteen (15) days after execution of a Transfer Document, provide to the Successor Business Employer the name, address, date of hire, and occupation classification of each Worker.

2. The Successor Business Employer shall maintain a preferential hiring list of Workers identified by the Incumbent Business Employer as set forth in Subsection A.1 of this Section, and shall be required to hire from that list for a period beginning upon the execution of the Transfer Document and continuing for six (6) months after the Business is open to the public under the operation of the Successor Business Employer.

3. If the Successor Business Employer extends an offer of employment to a Worker, the Success Business Employer shall retain written verification of that offer for no fewer than three (3) years from the date the offer was made. The verification shall include the name, address, date of hire, and occupation classification of each Worker.

B. Transition employment period.

1. A Successor Business Employer shall retain each Worker hired pursuant to this Chapter for no fewer than ninety (90) days following the Worker's Employment Commencement Date. During the ninety (90)-day transition employment period, a Worker shall be employed under reasonable terms and conditions of employment or as required by law. The Successor Business Employer shall provide a Worker with a written offer of employment. This offer shall remain open for at least five (5) business days from the date of the offer.

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2. If, within the period established by Section A.2, the Successor Business Employer determines that it requires fewer Workers than were required by the Incumbent Business Employer, the Successor Business Employer shall offer the position to the Worker in the same occupational classification with the greatest Length of Service with the Incumbent Business Employer.

3. During the ninety (90)-day transition employment period, the Successor Business Employer shall not discharge without cause a Worker retained pursuant to this Chapter.

4. At the end of the ninety (90)-day transition employment period, the Successor Business Employer shall perform a written performance evaluation for each Worker retained pursuant to this Ordinance. If the Worker's performance during the ninety (90)-day transition employment period is satisfactory, the Successor Business Employer shall consider offering the Worker continued employment under the terms and conditions established by the Successor Business Employer or as required by law. The Successor Business Employer shall retain a record of the written performance evaluation period of no fewer than three years.

C. Notice of change in control.

1. The Incumbent Business Employer shall post written notice of the Change in Control at the location of the affected Business within five (5) business days following the execution of the Transfer Document. Notice shall remain posted during any closure of the Business and for six (6) months after the Business is open to the public under the Successor Business Employer.

2. Notice shall include, but not be limited to, the name of the Incumbent Business Employer and its contact information, the name of

1 the Successor Business Employer and its contact information, and the
2 effective date of the Change in Control.

3 3. Notice shall be posted in a conspicuous place at the
4 Business so as to be readily viewed by Workers, other employees, and
5 applicants for employment.
6

7 5.53.040 Enforcement.

8 A. A Worker may bring a private right of action in the Superior
9 Court of the State of California against an Incumbent Business Employer or
10 the Successor Business Employer for violations of this Chapter and may be
11 awarded:

12 1. Hiring and reinstatement rights pursuant to this
13 Chapter. For a Worker, the ninety (90)-day transition employment period
14 begins on the Worker's Employment Commencement Date with the
15 Successor Business Employer.

16 2. Front or back pay for each day the violation continues,
17 which shall be calculated at a rate of compensation not less than the higher
18 of:

19 a. The average regular rate of pay received by the
20 Worker during the last three (3) years of the Worker's employment in the
21 same occupation classification; or

22 b. The most recent regular rate of pay received by
23 the Worker while employed by either the Business, Incumbent Business
24 Employer, or the Successor Business Employer.

25 3. Value of the benefits the Worker would have received
26 under the Successor Business Employer's benefits plan.

27 B. A civil action brought by a Worker alleging a violation of any
28 provision of this Chapter shall commence only after the following

1 requirements have been met:

2 1. The Worker provides written notice to the Incumbent
3 Business Employer and/or the Successor Business Employer of the
4 provisions of this Chapter alleged to have been violated and the facts
5 supporting the alleged violation; and

6 2. The Incumbent Business Employer and/or the
7 Successor Business Employer is provided fifteen (15) days from receipt of
8 the written notice to cure any alleged violation.

9 C. The Court shall award reasonable attorneys' fees and costs to
10 a Worker who prevails in any such enforcement action or to a Business
11 Employer who prevails and obtains a court determination that the Worker's
12 lawsuit was frivolous.

13 D. Notwithstanding any provision of this Code, or any other
14 ordinance to the contrary, no criminal penalties shall attach for violation of
15 this Chapter.

16
17 5.53.050 Retaliatory action prohibited.

18 No Incumbent or Successor Business Employer employing a Worker
19 shall discharge, reduce in compensation, or otherwise discriminate against
20 any Worker for opposing any practice proscribed by this Chapter, for
21 participating in proceedings related to this Chapter, for seeking to exercise
22 their rights under this Chapter by any lawful means, or for otherwise
23 asserting rights under this Chapter.

24
25 5.53.060 Exemption for collective bargaining agreement.

26 All of the provisions of this Chapter, or any part thereof, may be
27 expressly waived in a collective bargaining agreement, but only if the waiver
28 is explicitly set forth in the agreement in clear and unambiguous terms.

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Unilateral implementation of terms and conditions of employment by either party to a collective bargaining relationship shall not constitute a waiver of all or any of the provisions of this Chapter.

5.53.070 No waiver of rights.

Except for a collective bargaining agreement provision made pursuant to Section 5.543.060, 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 be a violation of this Chapter.

5.53.080 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.

Section 2. Section 5.53.090 of the Long Beach Municipal Code is hereby repealed.

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CHARLES PARKIN, City Attorney
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Section 3. The City Clerk shall certify to the passage of this ordinance by the City Council and shall 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.

I hereby certify that the foregoing ordinance was adopted by the City Council of the City of Long Beach at its meeting of March 8, 2022 by the following vote:

Ayes:	Councilmembers:	<u>Zendejas, Allen, Price, Supernaw,</u> <u>Mungo, Saro, Uranga, Austin.</u>
Noes:	Councilmembers:	<u>None.</u>
Absent:	Councilmembers:	<u>Richardson.</u>
Recusal(s):	Councilmembers:	<u>None.</u>



City Clerk

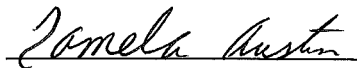
Approved: 3/16/22
(Date) 

Mayor

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 9th day of March, 2022, I posted three true and correct copies of ORD-22-0009 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 9th day of March 2022.



CITY CLERK