



OFFICE OF THE CITY ATTORNEY
Long Beach, California

ORD-19

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May 12, 2020

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HONORABLE MAYOR AND CITY COUNCIL
City of Long Beach
California

RECOMMENDATION:

Recommendation to declare ordinance amending the Long Beach Municipal Code by adding Chapter 5.53, relating to COVID-19 worker retention; declaring the urgency thereof to make the ordinance effective immediately as an emergency measure; and read the first time and lay over to the next regular meeting of the City Council for final reading for regular ordinance. (Citywide).

DISCUSSION

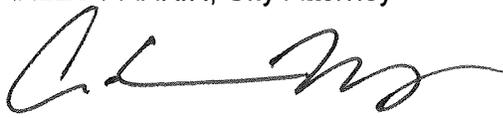
Pursuant to your request on April 14, 2020, this ordinance has been prepared to allow Council to adopt as an emergency ordinance and is submitted for your consideration.

SUGGESTED ACTION

Approve recommendation.

Very truly yours,

CHARLES PARKIN, City Attorney

By  for
GARY J. ANDERSON
Principal Deputy City Attorney

GJA:kjm A20-02705
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ORDINANCE NO.

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF LONG BEACH AMENDING THE LONG BEACH MUNICIPAL CODE BY ADDING CHAPTER 5.53, RELATING TO COVID-19 WORKER RETENTION; DECLARING THE URGENCY THEREOF; AND DECLARING THAT THIS ORDINANCE SHALL TAKE EFFECT IMMEDIATELY

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

1 more are expected to face separation in the coming months. While federal,
2 state and local programs, and efforts by certain non-profits, have provided
3 some support to hotel and janitorial service workers in the short-term, what
4 these workers need most is the opportunity of retaining their jobs during
5 business transfers of ownership. To ensure fair employment practices
6 during the economic upheaval resulting from the pandemic and to reduce
7 the demand on government-funded social services, the City hereby enacts
8 legal protections for workers when a business changes ownership.

9
10 5.53.020 Definitions.

11 The following definitions shall apply to this Chapter:

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

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

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

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

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

28 F. "Hotel" has the same meaning as in Section 9.02.080 of the

1 Long Beach Municipal Code. This Chapter only applies to hotels with
2 twenty-five (25) or more employees who provide services in conjunction with
3 the hotel's purpose.

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

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

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

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

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

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

1 manager, supervisor, or confidential employee.

2
3 5.53.030 Business worker retention.

4 A. Business Employer's Responsibilities.

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

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

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

21 B. Transition employment period.

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

1 from the date of the offer.

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

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

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

21 C. Notice of change in control.

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

28 2. Notice shall include, but not be limited to, the name of

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

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

7
8 5.53.040 Enforcement.

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

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

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

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

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

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

28 B. A civil action brought by a Worker alleging a violation of any

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provision of this Chapter shall commence only after the following requirements have been met:

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

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

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

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

5.53.050 Retaliatory action prohibited.

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

5.53.060 Exemption for collective bargaining agreement.

All of the provisions of this Chapter, or any part thereof, may be expressly waived in a collective bargaining agreement, but only if the waiver

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is explicitly set forth in the 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 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.

5.53.090 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

1 when a business changes ownership, recommendations for additional
2 protections that further the intent of this Chapter, and whether the provisions
3 of this Chapter are still necessary based on the City's recovery from the
4 impacts of the COVID-19 pandemic.

5
6 Section 2. This is an emergency measure and is urgently required for the
7 reasons identified in Section 5.53.010, Purpose. On that basis this ordinance shall be
8 passed as an emergency measure, to take effect immediately.

9
10 Section 3. Pursuant to Section 211 of the City Charter, this ordinance is
11 an emergency ordinance duly adopted by the City Council by a vote of five (5) of its
12 members and shall take effect immediately. The City Clerk shall certify to a separate roll
13 call and vote on the question of the emergency of this ordinance and to its passage by
14 the vote of five (5) members of the City Council of the City of Long Beach, and cause the
15 same to be posted in three (3) conspicuous places in the City of Long Beach, and it shall
16 thereupon take effect and shall be operative immediately.

17
18 Section 4. This ordinance shall also be adopted by the City Council as a
19 regular ordinance, to the end that in the event of any defect or invalidity in connection
20 with the adoption of this ordinance as an emergency ordinance, the same shall,
21 nevertheless, be and become effective on the thirty-first (31st) day after it is approved by
22 the Mayor. The City Clerk shall certify to the passage of this ordinance by the City
23 Council of the City of Long Beach and shall cause the same to be posted in three (3)
24 conspicuous places in the City of Long Beach.

25
26 I hereby certify that on a separate roll call and vote which was taken by the
27 City Council of the City of Long Beach upon the questions of the emergency of this
28 ordinance at its meeting of _____, 2020, the ordinance was declared to be

1 an emergency by the following vote:

2

3 Ayes: Councilmembers: _____

4 _____

5 _____

6 _____

7 Noes: Councilmembers: _____

8 _____

9 Absent: Councilmembers: _____

10 _____

11 Recusal(s): Councilmembers: _____

12 _____

13

14 I further certify that thereafter, at the same meeting, upon a roll call and vote
15 on adoption of the ordinance, it was adopted by the City Council of the City of Long Beach
16 by the following vote:

17

18 Ayes: Councilmembers: _____

19 _____

20 _____

21 _____

22 Noes: Councilmembers: _____

23 _____

24 Absent: Councilmembers: _____

25 _____

26 Recusal(s): Councilmembers: _____

27 _____

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I further certify that the foregoing ordinance was thereafter adopted on final reading of the City Council of the City of Long Beach at its meeting of _____, 2020, by the following vote:

Ayes: Councilmembers: _____

Noes: Councilmembers: _____

Absent: Councilmembers: _____

Recusal(s): Councilmembers: _____

City Clerk

Approved: _____
(Date)

Mayor

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