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May 12, 2020

HONORABLE MAYOR AND CITY COUNCIL
City of Long Beach
California

RECOMMENDATION:

Recommendation to declare ordinance amending the Long Beach Municipal Code by adding Chapter 5.55, relating to COVID-19 worker recall; 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 5.55, RELATING TO COVID-19 WORKER RECALL; 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 pandemic, and thousands more are expected to face separation in the
2 coming months. While federal, state, and local programs, and efforts by
3 certain non-profits, have provided some support to hotel and janitorial
4 service workers in the short-term, what these workers need most is the
5 promise of a return to their previous jobs as the pandemic begins to recede
6 and business activity resumes. To ensure fair employment practices during
7 the economic upheaval resulting from the pandemic and to reduce the
8 demand on government-funded services, the City hereby enacts legal
9 protections for workers laid-off due to the COVID-19 pandemic.

10
11 5.55.020 Definitions.

12 The following definitions shall apply to this Chapter:

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

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

18 C. "Employer" means a Commercial Property Employer or Hotel
19 Employer.

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

22 E. "Hotel Employer" means any person who owns, controls, or
23 operates a hotel in the City and employs twenty-five (25) or more
24 employees who provide services at a hotel in conjunction with the hotel's
25 purpose.

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 related to the
5 COVID-19 pandemic. This Section creates a rebuttable presumption that
6 any termination occurring on or after March 4, 2020, was due to a non-
7 disciplinary reason. For purposes of this Chapter, a Laid-off Employee does
8 not include any person employed as a manager, supervisor, or confidential
9 employee.

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

13
14 5.55.030 Right of recall.

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

21 1. held the same or similar position at the site of
22 employment at the time of the Laid-off Employee's most recent separation
23 from active service with the Employer; or

24 2. is or can be qualified for the position with the same
25 training that would be provided to a new employee hired into that position.

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

1 Employer shall offer the position to the Laid-off Employee with the greatest
2 Length of Service with the Employer.

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

7
8 5.55.040 Enforcement.

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

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

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

16 C. Punitive damages, pursuant to California Civil Code Section
17 3294.

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

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

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

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

28 2. The Employer is provided fifteen (15) days from receipt

1 of the written notice to cure any alleged violation.

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

5
6 5.55.050 Retaliatory action prohibited.

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

12
13 5.55.060 Exemption for collective bargaining agreement.

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

20
21 5.55.070 No waiver of rights

22 Except for a collective bargaining agreement provision made
23 pursuant to Section 5.55.060, any waiver by a worker of any or all
24 provisions of this Chapter shall be deemed contrary to public policy and
25 shall be void and unenforceable. Other than in connection with the bona
26 fide negotiation of a collective bargaining agreement, any request by an
27 Employer to a worker to waive rights given by this Chapter shall constitute a
28 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. This is an emergency measure and is urgently required for the reasons identified in Section 5.55.010 herein. On that basis this ordinance shall be passed as an emergency measure, to take effect immediately.

Section 3. Pursuant to Section 211 of the City Charter, this ordinance is an emergency ordinance duly adopted by the City Council by a vote of five (5) of its members and shall take effect immediately. The City Clerk shall certify to a separate roll call and vote on the question of the emergency of this ordinance and to its passage by

1 the vote of five (5) members of the City Council of the City of Long Beach, and cause the
2 same to be posted in three (3) conspicuous places in the City of Long Beach, and it shall
3 thereupon take effect and shall be operative immediately.

4

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

12

13 I hereby certify that on a separate roll call and vote which was taken by the
14 City Council of the City of Long Beach upon the questions of the emergency of this
15 ordinance at its meeting of _____, 2020, the ordinance was declared to be
16 an emergency by the following vote:

17

18 Ayes: Councilmembers: _____

19

20 _____

21

22 Noes: Councilmembers: _____

23

24 Absent: Councilmembers: _____

25

26 Recusal(s): Councilmembers: _____

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

Ayes: Councilmembers: _____

Noes: Councilmembers: _____

Absent: Councilmembers: _____

Recusal(s): Councilmembers: _____

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OFFICE OF THE CITY ATTORNEY
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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