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ORD-18

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March 1, 2022

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Assistant City Attorney

HONORABLE MAYOR AND CITY
COUNCIL
City of Long Beach
California

RECOMMENDATION:

Declare Ordinance amending the Long Beach Municipal Code by amending and restating Chapter 5.53, and by repealing Section 5.53.090, relating to COVID-19 Worker Retention, read the first time and laid over to the next regular meeting of the City Council for final reading. (Citywide)

DISCUSSION

Per the City Council's request on February 15, 2021, we have prepared the attached Ordinance amending the Long Beach Municipal Code by amending and restating Chapter 5.53, relating to COVID-19 Worker Retention, for the Council's review and approval.

SUGGESTED ACTION:

Approve recommendation.

Respectfully submitted,

CHARLES PARKIN, City Attorney

By *Gary J. Anderson*

Gary J. Anderson
Assistant City Attorney

GJA:kfa

ATTACHMENT: CITY COUNCIL ORDINANCE

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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 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-

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

8
9 5.53.020 Definitions.

10 The following definitions shall apply to this Chapter:

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

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

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

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

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

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

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

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

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

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

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

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

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

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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 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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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 _____, 2022 by the following vote:

Ayes: Councilmembers: _____

Noes: Councilmembers: _____

Absent: Councilmembers: _____

Recusal(s): Councilmembers: _____

City Clerk

Approved: _____
(Date)

Mayor

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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 AMENDING AND RESTATING SECTION 5.53.010 AND CHAPTER 5.53, AND BY REPEALING SECTION 5.53.090, 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

1 the COVID-19 a pandemic; and

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

4 ~~WHEREAS, on March 19, 2020, the Governor of the State of California~~
5 ~~issued an Order (Executive Order N-33-20) that all individuals living in California stay~~
6 ~~home or at their place of residence, except as needed to maintain continuity of operations~~
7 ~~for certain critical infrastructure sectors, to protect the public health of Californians, to~~
8 ~~mitigate the impact of COVID-19, and to ensure the healthcare delivery system is~~
9 ~~capable of serving all; and~~

10 WHEREAS, on March 24, 2020, in order to mitigate the effects of COVID-
11 19 within the City, the Long Beach Health Officer issued the “Safer at Home” Order to
12 control the affects and spread of COVID-19 and has thereafter issued several new and
13 revised Health Orders in response to CovidCOVID-19 variants and surges; and

14 WHEREAS, ~~it is the desire of the~~ in response to the CovidCOVID-19
15 pandemic City Council ~~to~~ adopted an ordinance on May 12 19, 2020 adding a Chapter
16 5.53 to the Long Beach Municipal Code requiring certain businesses in Long Beach to
17 comply with citywide worker retention provisions applicable to an employer’s change of
18 ownership or control, resulting from COVID-19; and

19 WHEREAS, COVID-19 daily cases and community transmission remain
20 high. As of February 14, 2022, the 7-day daily average case rate is 42.8 cases per
21 100,000 people. This is remains much higher than 13.9 cases per 100,000 people as of
22 December 10, 2021. This indicates a continued and high risk of COVID-19 infection for
23 those who are not or cannot be vaccinated against COVID-19; and

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

27 WHEREAS, it has become clear that the approach of re-evaluating the
28 ordinance every 90 days is only adding uncertainty to an already uncertain situation for

1 workers and ownership in the hotel and janitorial industry; and

2 WHEREAS, making Right to Recall and Retention permanent will strengthen
3 Long Beach's economic development strategy and economic recovery in the event of a
4 future pandemic or economic recession; and

5 WHEREAS, Right to Recall and Retention will preserve job quality in the
6 hospitality and janitorial industries, which are two industries related to tourism that Long
7 Beach has invested over \$750 million dollars significantly in over the last few decades;
8 and

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

11 WHEREAS, Right to Recall and Retention policies would preserve job equity
12 as workers in the hospitality and janitorial industries, the majority of whom are women
13 and workers of color, have pushed for decades to transform jobs in the hospitality and
14 janitorial industries into dignified jobs that can support a family; and

15 WHEREAS, Right to Recall and Retention is beneficial to local businesses
16 seeking to rehire a skilled and trained workforce; and

17 WHEREAS, Right to Recall and Retention can reduce onboarding and
18 training costs for businesses seeking to rehire or retain a skilled and qualified workforce;
19 and

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

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

26 NOW, THEREFORE, the City Council of the City of Long Beach ordains as
27 follows:

28 Section 1. Chapter 5.53 of the Long Beach Municipal Code is amended

1 by amending adding Chapter 5.53 to read and restated as follows:

2 CHAPTER 5.53

3 COVID-19 CITYWIDE WORKER RETENTION

4 5.53.010 Purpose.

5 As a result of the COVID-19 pandemic ~~and “Stay at Home” order~~
6 ~~issued by California Governor Gavin Newsom and the “Safer at Home”~~
7 ~~order issued by City of Long Beach, issued to protect the public health and~~
8 ~~welfare~~, many workers in the City of Long Beach are facing significant job
9 and economic insecurity. The COVID-19 pandemic has caused hospitality
10 and janitorial service employers in the City to discharge, layoff and furlough
11 workers at a massive scale. Many hotel and janitorial service workers
12 have been separated from their jobs as a result of already during the
13 pandemic, and thousands more are still experiencing economic
14 hardship expected to face separation in the coming months. ~~This has~~
15 caused a sense of uncertainty with these workers. While federal, state and
16 local programs, and efforts by certain non-profits, have provided some
17 support to hotel and janitorial service workers in the short-term, what these
18 workers need most is the continuing opportunity of retaining their jobs
19 during business transfers of ownership. To ensure fair employment
20 practices, provide some security during ~~the times of~~ economic upheaval and
21 protect against dangers posed by future resulting from the pandemics,
22 including future COVID -19 variants and surges, ~~and to reduce the demand~~
23 ~~on government-funded social services,~~ the City hereby enacts legal
24 protections for workers when a business changes ownership, until such
25 time the City Council decides the ordinance is no longer necessary.

26
27 5.53.020 Definitions.

28 The following definitions shall apply to this Chapter:

1 A. “Business” means a Hotel or Commercial Property Business.

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

8 C. “City” means the City of Long Beach.

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

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

17 F. “Hotel” has the same meaning as in Section 9.02.080 of the
18 Long Beach Municipal Code. This Chapter only applies to hotels with
19 twenty-five (25) or more employees who provide services in conjunction with
20 the hotel’s purpose.

21 G. “Incumbent Business Employer” means the Person who owns,
22 controls, subcontracts or operates a Hotel or Commercial Property Business
23 prior to the Change in Control.

24 H. “Length of Service” means the total of all periods of time
25 during which a Worker has been in active service, including periods of time
26 when the Worker was on leave or vacation.

27 I. “Person” means an individual, corporation, partnership, limited
28 partnership, limited liability company, business trust, estate, trust,

1 association joint venture, agency, instrumentality, or any other legal or
2 commercial entity, whether domestic or foreign.

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

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

7 L. "Worker" means an individual employed by the Incumbent
8 Business Employer who performs work at a Hotel or Commercial Property
9 Business and: (1) who has a Length of Service with the Incumbent
10 Business Employer for six (6) months or more; (2) whose primary place of
11 employment is a Business subject to a Change in Control; (3) who is
12 employed or contracted to perform work functions directly by the Incumbent
13 Business Employer, or by a Person who has contracted with the Incumbent
14 Business Employer to provide services at the Business subject to the
15 Change in Control; and (4) who worked for the Incumbent Business
16 Employer on or after March 4, 2020, and prior to the execution of the
17 Transfer Document. "Worker" does not include a person employed as a
18 manager, supervisor, or confidential employee.

19
20 5.53.030 Business worker retention.

21 A. Business Employer's Responsibilities.

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

26 2. The Successor Business Employer shall maintain a
27 preferential hiring list of Workers identified by the Incumbent Business
28 Employer as set forth in Subsection A.1 of this Section, and shall be

1 required to hire from that list for a period beginning upon the execution of
2 the Transfer Document and continuing for six (6) months after the Business
3 is open to the public under the operation of the Successor Business
4 Employer.

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

10 B. Transition employment period.

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

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

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

28 4. At the end of the ninety (90)-day transition employment

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

10 C. Notice of change in control.

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

17 2. Notice shall include, but not be limited to, the name of
18 the Incumbent Business Employer and its contact information, the name of
19 the Successor Business Employer and its contact information, and the
20 effective date of the Change in Control.

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

24 5.53.040 Enforcement.

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

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

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

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

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

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

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

1 Employer who prevails and obtains a court determination that the Worker's
2 lawsuit was frivolous.

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

6
7 5.53.050 Retaliatory action prohibited.

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

14
15 5.53.060 Exemption for collective bargaining agreement.

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

22
23 5.53.070 No waiver of rights.

24 Except for a collective bargaining agreement provision made
25 pursuant to Section 5.543.060, any waiver by a Worker of any or all
26 provisions of this Chapter shall be deemed contrary to public policy and
27 shall be void and unenforceable. Other than in connection with the bona fide
28 negotiation of a collective bargaining agreement, any request by an

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

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

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

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

Section 3. ~~This ordinance shall also be adopted by the City Council as a regular ordinance, to the end that in the event of any defect or invalidity in connection with the adoption of this ordinance as an emergency ordinance, the same shall, nevertheless, be and become effective on the thirty-first (31st) day after it is approved by the Mayor.~~ The City Clerk shall certify to the passage of this ordinance by the City Council ~~of the City of Long Beach~~ and shall cause it the same 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 on a separate roll call and vote which was taken by the City Council of the City of Long Beach upon the questions of the emergency of this ordinance at its meeting of _____, 2020, the ordinance was declared to be an emergency by the following vote:~~

Ayes: _____ Councilmembers: _____

Noes: _____ Councilmembers: _____

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

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Noes: _____ Councilmembers: _____

Absent: _____ Councilmembers: _____

Recusal(s): _____ Councilmembers: _____

City Clerk

Approved: _____
(Date)

Mayor