

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

ORDINANCE NO.

ORD-21

REVISED

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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

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

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 retention provisions applicable to an employer's change of
11 ownership or control, resulting from COVID-19.

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 5.53 to read as follows:

16 CHAPTER 5.53

17 COVID-19 CITYWIDE WORKER RETENTION

18 5.53.010 Purpose.

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

1 some support to hotel and janitorial service workers in the short-term, what
2 these workers need most is the opportunity of retaining their jobs during
3 business transfers of ownership. To ensure fair employment practices
4 during the economic upheaval resulting from the pandemic and to reduce
5 the demand on government-funded social services, the City hereby enacts
6 legal protections for workers when a business changes ownership.

7
8 5.53.020 Definitions.

9 The following definitions shall apply to this Chapter:

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

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

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

18 D. "Commercial Property Business" means an owner, operator,
19 manager or lessee, including a contractor, subcontractor, or sublessee, of a
20 non-residential property in the City that provides janitorial services and
21 employs twenty-five (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.

1 5.53.030 Business worker retention.

2 A. Business Employer's Responsibilities.

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

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

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

19 B. Transition employment period.

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

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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 5.53.060, 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 when a business changes ownership, recommendations for additional

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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. 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.

I hereby certify that the foregoing ordinance was adopted by the City Council of the City of Long Beach at its meeting of _____, 20____, by the following vote:

Ayes: Councilmembers: _____

Noes: Councilmembers: _____

Absent: Councilmembers: _____

Recusal(s): Councilmembers: _____

City Clerk

Approved: _____
(Date)

Mayor