



R-11
Memorandum
City of Long Beach

Office of Councilmember Steven Neal
Councilmember, 9th District

Date: October 22, 2013
To: Honorable Mayor and Members of the City Council
From: Councilmember Steven Neal, Ninth District *SN*
Vice Mayor Robert Garcia, First District *RG*
Councilmember Suja Lowenthal, Second District *SL*
Subject: "Worker Retention Ordinance"

Recommendation:

Respectfully request the City Attorney draft a proposed ordinance requiring future foodservice concessions contractors at Long Beach Airport and Convention Center to rehire for an initial trial period the workers employed by their predecessor contractor, and to present this ordinance to the city council within 6 weeks.

Background:

The current workforce at the City's Airport and Convention Center has valuable knowledge about these operations and their clientele.

Turnover in contractors should not automatically lead to displacement of their workforces, as such displacement could impose serious additional costs on programs to add the jobless and underinsured.

Any new management of these operations should provide these workers a fair chance to prove themselves on the job. The California Labor Code already provides for worker retention when janitorial contractors change hands, and we should extend such a policy to Airport and Convention Center foodservice workers.

Many other localities including Los Angeles, Oakland, and Washington DC have successfully implemented worker retention requirements for new contractors for many years.

Fiscal Impact:

There is no fiscal impact.

ORDINANCE NO.

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF LONG BEACH
ADOPTING CHAPTER 5.91 RELATING TO MASS DISPLACEMENT OF
WORKERS AT CITY-ASSISTED FOODSERVICE FACILITIES

The City Council of the City of Long Beach does ordain as follows:

Section 1. Chapter 5.91 is hereby added to the Long Beach Municipal Code to read as follows:

5.91.010 Purpose

This Chapter is to ensure that the massive public investment in the City's Convention Center and Airport inure to the benefit of the workforce there and the general public. It accomplishes these objectives by providing that workers at foodservice businesses if taken over by new operators at these locations may not be terminated without just cause for ninety workdays after the change in control, thereby providing these workers a fair opportunity to show their worth to the new employer.

5.91.020 Definitions

1. "*City-Assisted Foodservice Employer*" means an entity or person employing individuals to provide foodservice at a City-Assisted Facility. Those employees are referred to here as "Foodservice Workers".
2. "*City-Assisted Facility*" shall mean the Long Beach Airport and Long Beach Convention Center.

3. "*Foodservice*" includes preparation and/or sale of food or beverages, including retail sale of packaged items, but does not include food or beverage to be served on-board by airlines.
4. "*Entity or person*" means an individual, corporation, partnership, limited partnership, limited liability partnership, limited liability company, business trust, estate, trust, association, joint venture, agency, instrumentality, or any other legal or commercial entity, whether domestic or foreign, but does not include the federal, state or county government or any subdivision thereof.
5. "*New Operator*" is any purchaser or new management company, contractor, subcontractor, lessee, sub lessee, or other person or entity which will become or take over as a City-Assisted Foodservice Employer after the effective date of this Ordinance.

5.91.030. Maintenance of existing employees--Termination within 90 workdays only for just cause.

A. A New Operator shall fill its positions at the City-Assisted Facility by first hiring from the workforce which has been or is being displaced by the departure or reduction-in-force of a preceding operator at such facility, and shall retain those workers for at least 90 workdays unless there is just cause for their discharge.

B. It shall not constitute just cause for discharge that these workers were receiving superior wages or benefits in their prior positions.

C. Nothing herein shall be construed to require the New Operator to retain the supervisory or managerial capacity of an employee.

5.91.040 Waiver

The provisions of this Chapter may not be waived by agreement between an individual Foodservice Worker and City-Assisted Foodservice Employer. All of the provisions of this Chapter, or any part hereof, may be waived in a bona fide collective bargaining agreement, but only if the waiver is explicitly set forth in such 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, or be permitted, as a waiver of all or any part of the provisions of this Chapter.

5.91.050 Retaliation

No person shall discharge, reduce any part of the compensation of nor discriminate against any Foodservice Worker due to the enactment of this Chapter nor due to their assertion of any rights under this Chapter.

5.91.060 Enforcement

1. The City or any Foodservice Worker or any nonprofit organization operating in Long Beach may bring an action against a City-Assisted Foodservice Employer in Superior Court to enforce the provisions of this Chapter for themselves and all employees adversely affected by violations of this Chapter, and shall be entitled to all remedies available under the law or in equity appropriate to remedy any violation of this Chapter,

including but not limited to lost compensation, damages, reinstatement and injunctive relief. If a plaintiff prevails in any action to enforce this Chapter they shall be awarded their reasonable attorney's fees and expenses.

2. Each New Operator shall maintain records for three years showing the reasons for not hiring or discharging individuals during their first 90 workdays. The City Manager and each Foodservice Worker and their designees are authorized to review these records upon reasonable request to ascertain compliance with this Chapter.

3. City staff are hereby directed to consider compliance with this Chapter in making contracting decisions.

4. The City assumes no obligation to enforce the terms of this Chapter, and nothing herein shall be construed as creating a cause of action against the City.

5. The City Manager may, in his or her discretion, develop regulations interpreting this Chapter and/or establishing complaint procedures within the City related to enforcement of this Chapter. Pursuit of any such complaint procedure shall not be a prerequisite for asserting a claim hereunder in a court of law.

Section 2. Findings

1. The Council finds that the prospect of massive displacement of the large existing workforces at the covered businesses would likely severely injure the City's economy and impose significant burdens upon society such as welfare and public

health expenses and security risks at the Airport. The Council finds this ordinance is the only realistic means of preventing such displacement.

2. The Council finds that regulation of foodservice worker retention should proceed initially only at the Airport and Convention Center due to factors unique to the businesses there such as their superior location and ability to pay thanks to large City investments and City policies limiting access to these facilities for competitors, the competency of their existing workforces (including their security clearances and demonstrated record in preserving Airport security), the greater likelihood of mass displacement at these workplaces compared to most others within the City (especially given the large number of persons capable of taking these jobs), and the negative impact on City revenues should new employers refuse to rehire existing workers and thereby spur boycott activities by displaced workers and their organizations.
3. The Council wishes to fully assess economic and social impacts of regulating these businesses initially before covering any other businesses, and thus to proceed in a fully-informed incremental way.

Section 3. Severability If any provision or application of this Ordinance is declared illegal, invalid or inoperative, in whole or in part, by the final decision of any court of competent jurisdiction, the remaining provisions and all portions not declared illegal, invalid or inoperative shall remain in full force or effect, and no such determination shall invalidate the remaining provisions or portions of the provisions of this Ordinance. If the Court finds immediate effectiveness of this Ordinance as to a New Operator to be barred

by law as to any employer, then this Ordinance shall go into effect as to such employer as soon as permissible by law.

Section 4. The City Clerk shall certify to the passage of this ordinance by the City Council and cause it to be posted in three conspicuous places in the City of Long Beach, and it shall take effect on the thirty-first 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 ____ 2013 by the following vote:

Ayes: Councilmembers: _____

Noes: Councilmembers: _____

Absent: Councilmembers: _____

Approved: _____

Mayor