



OFFICE OF THE CITY ATTORNEY

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ORD-19

CHARLES PARKIN
City Attorney

GARY J. ANDERSON
Assistant City Attorney

March 1, 2022

DAWN A. MCINTOSH
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 5.55, and by repealing Section 5.55.090, relating to COVID-19 Worker Recall, 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 5.55, relating to COVID-19 Worker Recall, 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 5.55, AND REPEALING SECTION 5.55.090, RELATING TO COVID-19 WORKER RECALL

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 5.55 to the Long Beach Municipal Code
6 requiring certain businesses in Long Beach to comply with citywide worker recall
7 provisions applicable to employer lay-offs resulting from the COVID-19 pandemic; and

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

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

16 WHEREAS, it has become clear that the approach of re-evaluating the
17 ordinance every 90 days is only adding uncertainty to an already uncertain situation for
18 workers and ownership in the hotel and janitorial industry; and

19 WHEREAS, making Right to Recall permanent will strengthen Long
20 Beach’s economic development strategy and economic recovery in the event of a future
21 pandemic or economic recession; and

22 WHEREAS, Right to Recall will preserve job quality in the hospitality and
23 janitorial industries, which are two industries related to tourism that Long Beach has
24 invested over \$750 million dollars in over the last few decades; and

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

27 WHEREAS, Right to Recall policies would preserve job equity as workers in
28 the hospitality and janitorial industries, the majority of whom are women and workers of

1 color, have pushed for decades to transform jobs in the hospitality and janitorial
2 industries into dignified jobs that can support a family; and

3 WHEREAS, Right to Recall is beneficial to local businesses seeking to
4 rehire a skilled and trained workforce; and

5 WHEREAS, Right to Recall can reduce onboarding and training costs for
6 businesses seeking to rehire or retain a skilled and qualified workforce; and

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

10 WHEREAS, now the City Council desires to amend Chapter 5.55 and make
11 Chapter 5.55 permanent to provide certainty and security to workers in high contact,
12 high-risk industries;

13 NOW, THEREFORE, the City Council of the City of Long Beach ordains as
14 follows:

15 Section 1. Chapter 5.55 of the Long Beach Municipal Code is amended
16 and restated as follows:

17 CHAPTER 5.55

18 COVID-19 CITYWIDE WORKER RECALL

19 5.55.010 Purpose.

20 As a result of the COVID-19 pandemic, many workers in the City of
21 Long Beach are facing significant job and economic insecurity. The COVID-
22 19 pandemic has caused hospitality and janitorial service employers in the
23 City to discharge, layoff and furlough workers at a massive scale. Many
24 hotel and janitorial service workers have already been separated from their
25 jobs as a result of the pandemic, and thousands more are still experiencing
26 economic hardship. This has caused a sense of uncertainty with these
27 workers. While federal, state, and local programs, and efforts by certain
28 non-profits, have provided some support to hotel and janitorial service

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workers in the short-term, what these workers need most is the promise of a return to their previous jobs as the pandemic begins to recede and business activity resumes. To ensure fair employment practices, provide some security during times of economic upheaval and protect against dangers posed by future pandemics, including future COVID-19 variants and surges, the City hereby enacts legal protections for workers laid-off due to the COVID-19 pandemic.

5.55.020 Definitions.

The following definitions shall apply to this Chapter:

- A. "City" means the City of Long Beach.
- B. "Commercial Property Employer" means an owner, operator, manager or lessee, including a contractor, subcontractor, or sublessee, of a non-residential property in the City that provides janitorial services and employs twenty-five (25) or more employees.
- C. "Employer" means a Commercial Property Employer or Hotel Employer.
- D. "Hotel" has the same meaning as in Section 9.02.080 of the Long Beach Municipal Code.
- E. "Hotel Employer" means any person who owns, controls, or operates a hotel in the City and employs twenty-five (25) or more employees who provide services at a hotel in conjunction with the hotel's purpose. A "Hotel Employer" includes any contracted, leased or sublet premises connected to or operated in conjunction with the building's purpose, or providing services at the building.
- F. "Laid-off Employee" means a Hotel or Commercial Property employee who, in a particular week, performed at least two (2) hours of 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. This Section
5 creates a rebuttable presumption that any termination occurring on or after
6 March 4, 2020, was due to a non-disciplinary reason. For purposes of this
7 Chapter, a Laid-off Employee does not include any person employed as a
8 manager, supervisor, or confidential employee.

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

12
13 5.55.030 Right of recall.

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

- 20 1. held the same or similar position at the site of
21 employment at the time of the Laid-off Employee's most recent separation
22 from active service with the Employer; or
23 2. is or can be qualified for the position with the same
24 training that would be provided to a new employee hired into that position.

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

1 Length of Service with the Employer.

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

6
7 5.55.040 Enforcement.

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

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

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

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

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

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

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

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

27 2. The Employer is provided fifteen (15) days from receipt
28 of the written notice to cure any alleged violation.

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

5.55.050 Retaliatory action prohibited.

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

5.55.060 Exemption for collective bargaining agreement.

All of the provisions of this Chapter, or any part of the Chapter, may be waived in a bona fide collective bargaining agreement, but only if the waiver is explicitly set forth in that 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.

5.55.070 No waiver of rights

Except for a collective bargaining agreement provision made pursuant to Section 5.55.060, 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 constitute a 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.

Section 2. Section 5.55.090 of the Long Beach Municipal Code is hereby repealed.

Section 3. 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.

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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 ADDING CHAPTER 5.55, AND REPEALING SECTION 5.55.090, RELATING TO COVID-19 WORKER RECALL

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~~

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

6 WHEREAS, on March 24, 2020, in order to mitigate the effects of COVID-
7 19 within the City, the Long Beach Health Officer issued the “Safer at Home” Order to
8 control the affects and spread of COVID-19 and has thereafter issued several new and
9 revised Health Orders in response to COVID-19 variants and surges; and

10 WHEREAS, ~~it is the desire of the~~ in response to the COVID-19 pandemic
11 City Council ~~to~~ adopted an ordinance on May 19, 2020 adding a Chapter 5.55 to the Long
12 Beach Municipal Code requiring certain businesses in Long Beach to comply with
13 citywide worker recall provisions applicable to employer lay-offs resulting from the
14 COVID-19 pandemic.; and

15 WHEREAS, COVID-19 daily cases and community transmission remain
16 high. As of February 14, 2022, the 7-day daily average case rate is 42.8 cases per
17 100,000 people. This is remains much higher than 13.9 cases per 100,000 people as of
18 December 10, 2021. This indicates a continued and high risk of COVID-19 infection for
19 those who are not or cannot be vaccinated against COVID-19; and

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

23 WHEREAS, it has become clear that the approach of re-evaluating the
24 ordinance every 90 days is only adding uncertainty to an already uncertain situation for
25 workers and ownership in the hotel and janitorial industry; and

26 WHEREAS, making Right to Recall permanent will strengthen Long
27 Beach’s economic development strategy and economic recovery in the event of a future
28 pandemic or economic recession; and

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~~order by City of Long Beach, both of which were issued to protect the public health and welfare~~, many workers in the City of Long Beach are facing significant job and economic insecurity. The COVID-19 pandemic has caused hospitality and janitorial service employers in the City to discharge, layoff and furlough workers at a massive scale. Many hotel and janitorial service workers have already been separated from their jobs ~~during as a result of~~ the pandemic, and thousands more are ~~still experiencing economic hardship. expected to face separation in the coming months. This has caused a sense of uncertainty with these workers.~~ While federal, state, and local programs, and efforts by certain non-profits, have provided some support to hotel and janitorial service workers in the short-term, what these workers need most is the promise of a return to their previous jobs as the pandemic begins to recede and business activity resumes. To ensure fair employment practices, ~~provide some security during the times of~~ economic upheaval ~~and protect against dangers posed by future resulting from the pandemics, including future COVID-19 variants and surges, and to reduce the demand on government-funded services,~~ the City hereby enacts legal protections for workers laid-off due to the COVID-19 pandemic.

5.55.020 Definitions.

The following definitions shall apply to this Chapter:

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

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

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

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

3 E. "Hotel Employer" means any person who owns, controls, or
4 operates a hotel in the City and employs twenty-five (25) or more
5 employees who provide services at a hotel in conjunction with the hotel's
6 purpose. A "Hotel Employer" includes any contracted, leased or sublet
7 premises connected to or operated in conjunction with the building's
8 purpose, or providing services at the building.

9 F. "Laid-off Employee" means a Hotel or Commercial Property
10 employee who, in a particular week, performed at least two (2) hours of
11 work within the geographical boundaries of the City for an Employer, had a
12 Length of Service with the Employer of six (6) months or more, and whose
13 most recent separation from active employment occurred on or after March
14 4, 2020, as a result of a lack of business, a reduction in work force,
15 bankruptcy, or other economic, non-disciplinary reason. This Section
16 creates a rebuttable presumption that any termination occurring on or after
17 March 4, 2020, was due to a non-disciplinary reason. For purposes of this
18 Chapter, a Laid-off Employee does not include any person employed as a
19 manager, supervisor, or confidential employee.

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

23
24 5.55.030 Right of recall.

25 A. Priority for Laid-off Employees. An Employer shall offer its
26 Laid-off Employees in writing, to their last known mailing address, electronic
27 mail and text message to the extent the Employer possesses such
28 information, all job positions which become available after the effective date

1 of this Chapter for which the Laid-off Employee is qualified. A Laid-off
2 Employee is qualified for a position if the Laid-off Employee:

- 3 1. held the same or similar position at the site of
4 employment at the time of the Laid-off Employee's most recent separation
5 from active service with the Employer; or
- 6 2. is or can be qualified for the position with the same
7 training that would be provided to a new employee hired into that position.

8 The Employer shall offer positions to Laid-off Employees in an order
9 of preference corresponding to categories (1) and (2) above. Where more
10 than one (1) Laid-off Employee is entitled to preference for a position, the
11 Employer shall offer the position to the Laid-off Employee with the greatest
12 Length of Service with the Employer.

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

17
18 5.55.040 Enforcement.

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

- 22 A. Hiring and reinstatement rights pursuant to this Chapter.
- 23 B. All actual damages (including, but not limited to, lost pay and
24 benefits) suffered by the Laid-off Employee and for statutory damages in the
25 sum of one thousand dollars (\$1,000), whichever is greater.
- 26 C. Punitive damages, pursuant to California Civil Code Section
27 3294.
- 28 D. Reasonable attorney's fees and costs, as determined by the

1 court, if the Laid-off Employee is the prevailing party in the action; or

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

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

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

10 2. The Employer is provided fifteen (15) days from receipt
11 of the written notice to cure any alleged violation.

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

15
16 5.55.050 Retaliatory action prohibited.

17 No employer shall terminate, reduce in compensation, or otherwise
18 discriminate against any worker for seeking to enforce their rights under this
19 Chapter by any lawful means, for participating in proceedings related to this
20 Chapter, for opposing any practice proscribed by this Chapter, or for
21 otherwise asserting rights under this Chapter.

22
23 5.55.060 Exemption for collective bargaining agreement.

24 All of the provisions of this Chapter, or any part of the Chapter, may
25 be waived in a bona fide collective bargaining agreement, but only if the
26 waiver is explicitly set forth in that agreement in clear and unambiguous
27 terms. Unilateral implementation of terms and conditions of employment by
28 either party to a collective bargaining relationship shall not constitute or be

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permitted as a waiver of all or any part of the provisions of this Chapter.

5.55.070 No waiver of rights

Except for a collective bargaining agreement provision made pursuant to Section 5.55.060, 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 constitute a violation of this Chapter.

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~~

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~~COVID-10 pandemic.~~

Section 2. Section 5.55.090 of the Long Beach Municipal Code is hereby repealed.

Section 3. 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.

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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