

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

# ORD-20 REVISED

ORDINANCE NO.

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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 5.55, 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  
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 recall provisions applicable to employer lay-offs resulting  
11 from the COVID-19 pandemic.

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 5.55 to read as follows:

16 CHAPTER 5.55

17 COVID-19 CITYWIDE WORKER RECALL

18 5.55.010 Purpose.

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

1 certain non-profits, have provided some support to hotel and janitorial  
2 service workers in the short-term, what these workers need most is the  
3 promise of a return to their previous jobs as the pandemic begins to recede  
4 and business activity resumes. To ensure fair employment practices during  
5 the economic upheaval resulting from the pandemic and to reduce the  
6 demand on government-funded services, the City hereby enacts legal  
7 protections for workers laid-off due to the COVID-19 pandemic.  
8

9 5.55.020 Definitions.

10 The following definitions shall apply to this Chapter:

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

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

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

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

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

26 F. "Laid-off Employee" means a Hotel or Commercial Property  
27 employee who, in a particular week, performed at least two (2) hours of  
28 work within the geographical boundaries of the City for an Employer, had a

1 Length of Service with the Employer of six (6) months or more, and whose  
2 most recent separation from active employment occurred on or after March  
3 4, 2020, as a result of a lack of business, a reduction in work force,  
4 bankruptcy, or other economic, non-disciplinary reason. 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 5.55.030 Right of recall.

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

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.

5.55.090 City Manager report.

Following adoption of this Chapter, and every ninety (90) days thereafter, City Manager shall report back to the City Council and Mayor on the effectiveness of the provisions of this Chapter in protecting workers' stability of employment, recommendations for additional protections that further the intent of this Chapter, and whether the provisions of the Chapter are still necessary based on the City's recovery from the impacts of the COVID-10 pandemic.

Section 2. 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 \_\_\_\_\_, 20\_\_\_\_, by the following vote:

Ayes: Councilmembers: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Noes: Councilmembers: \_\_\_\_\_

\_\_\_\_\_

Absent: Councilmembers: \_\_\_\_\_

\_\_\_\_\_

Recusal(s): Councilmembers: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_  
City Clerk

Approved: \_\_\_\_\_  
(Date)

\_\_\_\_\_  
Mayor