City of Long Beach
Working Together to Serve

Memorandum

R-16

Date: November 21, 2006

To: Honorable Mayor and City Council

From: Councilwoman Laura Richardson, Sixth District

Subject: Labor Peace Agreement

Background

On October 4, 2005, the Long Beach City Council considered a proposal from Council members Bonnie Lowenthal, Dan Baker and Tonia Reyes-Uranga requesting that the full City Council adopt a labor peace agreement that would become a condition of approval for any new lease, lease amendment or lease assignment for all hotels located on City-owner property. The proposal stated that labor disputes were increasing in the hotel industry and that cities are impacted by the loss of revenue resulting when potential hotel clients and customers refuse to cross labor picket lines. Additionally, such labor actions can be extremely disruptive and tarnish a city's reputation, thereby affecting future considerations for travelers and convention selection of Long Beach as a host city.

The Council voted to approve a recommendation to request the City Attorney to draft an ordinance that would require the City receive documentation from a hotelier that can include, but is not limited to, a labor peace agreement as a condition of approval for any new lease, lease amendment or lease agreement for all hotels located on City-owned property.

On January 17, 2006, the City Attorney brought before the City Council the first reading of an ordinance amending the Long Beach Municipal Code by adding a labor peace agreement requirement for hotels and motels on City-owner property. The Council approved a motion to refer the item to the State Legislation and Environmental Affairs Committee for further discussion.

On May 9, 2006, the State Legislative and Environmental Affairs Committee met to discuss the labor peace agreement and to hear from interested parties and the public at large. Several questions we submitted into the record through public testimony and traditional and electronic mail. The questions were submitted to the City Attorney's Office for response.

The Committee met again on May 22, 2006, to continue the discussion and to examine the City Attorney's responses to the various questions that were submitted. The Committee voted to refer all questions, answers, labor peace agreement ordinance and any other information that had been collected by the State Legislative and Environmental Affairs Committee to the City Council for its decision.

Recommended Action

Recommend that the City Council review and adopt a Labor Peace Agreement submitted by the City Attorney.

CLR/TL

labor peace agenda item 11-06

ORDINANCE NO.

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF LONG BEACH AMENDING THE LONG BEACH MUNICIPAL CODE BY ADDING CHAPTER 16.58 RELATING TO LABOR PEACE AGREEMENTS FOR HOTELS ON CITY-OWNED PROPERTY

The City Council of the City of Long Beach ordains as follows:

Section 1. The Long Beach Municipal Code is amended by adding Chapter 16.58 to read as follows:

Chapter 16.58

Labor Peace Agreements for Hotels on City-Owned Property

16.58.010 Purpose.

The City of Long Beach has a financial and proprietary interest in hospitality operations that lease real property from the City. These operations base their lease, rental or license payments to the City in part on the revenue they generate. Therefore, it is essential that these operations conduct business efficiently and without interruption. The City has found that the efficient and uninterrupted operation of hospitality operations may be threatened by labor disputes. The City's investment in these operations must be shielded from any impact that labor disputes may have on the revenue of these hospitality operations. The City has further found that the City can only protect its investment by requiring its hotel operations lessees to sign contracts with the labor organizations that represent employees in the hospitality industry. These contracts will

Robert E. Shannon
City Attorney of Long Beach
333 West Ocean Boulevard
Long Beach, California 90802-4664
Telephone (562) 570-2200

VERSION "C" DRAFT ONLY

prohibit the labor organizations and its members from engaging in picketing, work stoppages, boycotts or other economic interference with the business of the hospitality operators, for the duration of their lease with the City.

16.58.020 Definitions.

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

B. "City Council" means the City Council of the City of Long Beach.

C. "Hospitality Operations" means the general business operations of a hospitality operator.

D. "Hospitality Operations Lessee" means any company with a lease from the City for a hotel or motel, providing lodging and other guest accommodations.

E. "Hospitality Workers" means all full-time and part-time employees in a Hospitality Operation, except supervisors, managers and guards.

F. "Labor Organization" means an organization of any kind, or an agency or employer representation committee or plan, in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work.

G. "Lease" means any lease or license from the City to use any City property for Hospitality Operations.

H. "Lease Amendment" means any amendment approved by the City Council that:

1. extends the term of an existing lease for a period of more than one (1) year;

2. approves a reduction in rent for the then existing

Robert E. Shannon
City Attorney of Long Beach
333 West Ocean Boulevard
Long Beach, California 90802-4664
Telephone (562) 570-2200

tenant/operator, or (3) permits an expansion of the existing hotel or motel operation in order to add additional rooms, or to make structural changes to add additional square footage for amenities such as banquet or convention facilities.

I. "Lease Assignment" means any action approved by the City Council which approves the transfer of a lease to a new hotel or motel operator having no affiliation with the City's previous tenant. An assignment shall not be deemed to have occurred if the tenant/operator seeks an assignment of the leasehold interest to:

1. a wholly owned subsidiary of the tenant/operator,

2. a limited liability company in which the tenant/operator in which the tenant/operator is a managing member,

3. a partnership in which the tenant/operator is a general partner, or

4. an assignment to any entity which acquires all or substantially all of the stock or assets of the tenant operator.

J. "No-Strike Pledge" means a provision in a labor peace agreement prohibiting the Labor Organization and its members from engaging in picketing, work stoppages, boycotts or any other economic interference with Hospitality Operations of a Hospitality Operations Lessee for the duration of the City lease term.

K. "Person" means a sole proprietorship, partnership, corporation, joint venture or business organization of any kind.

16.58.030 No-Strike Pledge requirement for hospitality operations.

The City shall not execute any new Lease, Lease Amendment, or Lease Assignment with a Hospitality Operations Lessee unless and until the Hospitality Operations Lessee has signed a labor peace agreement

Robert E. Shannon
City Attorney of Long Beach
333 West Ocean Boulevard
Long Beach, California 90802-4664
Telephone (562) 570-2200

with any Labor Organization seeking to represent Hospitality Workers at the premises covered by the Lease. Each labor peace agreement must contain a No-Strike Pledge. A Hospitality Operations Lessee shall be relieved of the obligations of this section with respect to a Labor Organization if the Labor Organization places conditions upon its No-Strike Pledge that the City Council finds, after notice and hearing, to be arbitrary or capricious.

16.58.040 Limitations.

A. Nothing in this ordinance requires Hospitality Operations Lessee to recognize a particular Labor Organization.

B. This ordinance is not intended to, and shall not be interpreted to, enact or express any generally applicable policy regarding labor-management relations or to regulate those relations in any way.

C. This ordinance is not intended to favor any particular outcome in the determination of employee preference regarding union representation.

D. Nothing in this ordinance permits or requires the City or any Hospitality Operations Lessee to enter into any agreement in violation of the National Labor Relations Act of 1935, approved July 5, 1935 (49 Stat. 449; 29 U.S.C.S. §151, *et seq.*).

Sec. 2. 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.

//

//

Robert E. Shannon
City Attorney of Long Beach
333 West Ocean Boulevard
Long Beach, California 90802-4664
Telephone (562) 570-2200

I hereby certify that the foregoing ordinance was adopted by the City Council of the City of Long Beach at its meeting of _____, 2006, by the following vote:

Ayes: Councilmembers: _____

_____

_____

_____

Noes: Councilmembers: _____

_____

Absent: Councilmembers: _____

_____

_____

City Clerk

Approved: _____ _____

Mayor

MJM:kjm 7/25/06 #05-04782
L:\APPS\CtyLaw32\WPDOCS\D019\P005\00089523.WPD

Robert E. Shannon
City Attorney of Long Beach
333 West Ocean Boulevard
Long Beach, California 90802-4664
Telephone (562) 570-2200

VERSION "C" DRAFT ONLY

JMBM | Jeffer Mangels Butler & Marmaro LLP

Marta M. Fernandez, Esq.
Direct (310) 201-3534
mmf@jmbm.com

1900 Avenue of the Stars, 7th Floor
Los Angeles, California 90067-4308
(310) 203-8080 (310) 203-0567 Fax
www.jmbm.com

Ref:

February 8, 2006

Dan Baker, Councilmember
Chairman, State Legislation
and Environmental Affairs Committee
333 W. Ocean. 14th Floor
Long Beach, CA 90802

Dear Mr. Baker:

On behalf of the Long Beach Hospitality Alliance, I am enclosing a series of questions concerning the proposed city ordinance on Labor Peace Agreements. As we have advised, we have serious concerns regarding the legality of the proposed ordinance under federal labor law. To assist in our analysis we would appreciate responses to the attached questions. If you need clarification of any of the attached or have questions, please do not hesitate to call me.

Very truly yours,

MARTA M. FERNANDEZ of
Jeffer, Mangels, Butler & Marmaro LLP

MMF:td
enclosure

MEMORANDUM

TO: Dan Barker

FROM: Marta M. Fernandez

DATE: February 8, 2006

RE: Proposed City of Long Beach Ordinance

The following are questions which you might pose to the Long Beach City Council concerning the proposed ordinance:

- The U.S. Supreme Court has taken the position that cities and states should not use their spending authority to induce private employer neutrality on union matters unless the state agency is acting as a "proprietor" and able to make the case that it needs to regulate labor activities for the "efficient procurement of needed goods and services." Boston Harbor 507 U.S. 281 (1993). Does the City of Long Beach meet the "efficient procurement of needed goods and services" test articulated under the Boston Harbor case? In other words, why does the City believe it requires employer neutrality on leased property in order to procure needed goods and services for the City?

- The proposed ordinance does not define "labor peace agreement." What is a labor peace agreement?

- How long is the employer/lessee required to maintain a labor peace agreement with the union?

- If by "labor peace agreement" the ordinance means a neutrality agreement between the employer/lessee and a union for purposes of union organizing, how long does the union have to recruit employees before the neutrality agreement expires? What if employees do not want to be represented by a union?

- What if more than one union wishes to represent the employees of the employer/lessee?

- Can the employer/lessee bargain with the union over the terms of the labor peace/neutrality agreement? If so, what happens to the city lease in the interim? What happens if agreement cannot be reached?

- How is an employer/lessee to ensure that the no-strike pledge remains in place upon expiration of labor agreements reached with a union?

- If the ordinance is to apply to new leases, what will the process require in terms of timing? In other words, will the employer/lessee be required to sign a labor peace agreement with a union before negotiating a lease with the City? Alternatively, will the employer/lessee be permitted to enter into a lease and then have a period of time thereafter to enter into a labor peace agreement?

- If the ordinance applies to existing leases, what period of time will lessees/employers have to enter into a labor peace agreement? What will the City's remedy be in the event the lessee/employer is unable to reach agreement with a union concerning a labor peace agreement?

- How are "hospitality operations" defined? The ordinance currently defines the term "hospitality operations" as "the general business operations of a hospitality operator." Does hospitality operator include only hotels or will it cover other hospitality industry operations that may provide lodging to guests?

- Are there any hospitality operators on city leased property that would not be covered by the ordinance? If so, why not?

bcc: Ed Proenza
Mike Murchison

City of Long Beach

Working Together to Serve

ROBERT E. SHANNON, CITY ATTORNEY

Memorandum

Date: May 9, 2006

To: Chairwoman, Laura Richardson, and Members of the State Legislation and Environmental Affairs Committee

From: Michael J. Mais, Assistant City Attorney MJM

Subject: **Questions Pertaining to the Labor Peace Agreement**

Questions Raised by Mike Murchison

1. **Should the City pass a "labor peace" agreement, which union will the hotels be required to recognize?**

   Answer: The two proposed ordinances do not require that a Hospitality Operation enter into an agreement with any particular union or labor organization.

2. **If a hotel already has a union, will they have to renegotiate their contract in order to include a "labor peace" agreement?**

   Answer: If the existing contract between a union and a Hospitality Operation already contained a "no-strike" pledge there would be no requirement that the existing contract be re-negotiated.

3. **Does a "labor peace" agreement require employers to release personal employee information to the union?**

   Answer: The two proposed ordinances do not specify the terms that must be contained in the labor peace agreement other than the requirement that the agreement contain a "no-strike" pledge. If either ordinance passes, it will be up to the Hospitality Operation and the Labor Organization to agree on the core terms of the agreement.

4. **Which hotels does a "labor peace" agreement affect?**

   Answer: If either ordinance passes it could affect any hotel or motel located on City owned property. As of this date the existing hotels are: 1) The Coast Long Beach Hotel, 2) Hyatt Regency Long Beach, 3) Long Beach Marriott, and 4) Queen Mary.

5. **Will a "labor peace" agreement come into play each year a hotel on city-leased land adjusts its rent?**

Answer: If Ordinance "A" were to pass a rent adjustment would not be triggered because it would apply only to "new" leases on City owned property. If Ordinance "B" were to pass as written an annual rent adjustment could trigger the requirement for a labor peace agreement. However, the City Attorney has opined that Ordinance "B" would be subject to legal challenge due to the fact that it would violate the terms of already existing contracts. (*See* City Attorney Memo dated January 12, 2006)

6. **How many hotels are on city-leased land?**

Answer: There currently are 4 existing hotels on City owned property: Coast Long Beach Hotel, Hyatt Regency Long Beach, Long Beach Marriott and the Queen Mary. A fifth potential site would be added if the Naga lease is negotiated and executed.

7. **How many motels are on city-leased land, and if there are any, how are they impacted?**

Answer: There currently are no "motels" located on City owned property. However, if such a motel did exist it would be subject to the provisions of either Ordinance "A" or "B" if either were adopted.

Marta M. Fernandez' questions on Behalf of Long Beach Hospitality Alliance:

8. **Does the City of Long Beach meet the "efficient procurement of needed goods and services" test articulated under the Boston Harbor case? In other words, why does the City believe it requires employer neutrality on leased property in order to procure needed goods and services for the City?**

Answer: Hotel or motel operations located on City owned property base their lease, rental or license payments in part on the revenue that the business entity generates. In order for the City to maximize its economic return it may wish to insure that its tenants operate in an efficient and uninterrupted basis. The required "no strike" pledge is intended to provide that assurance.

9. **The proposed ordinance does not define "labor peace agreement." What is a labor peace agreement?**

Answer: The precise terms of any Labor Peace agreement are left to the parties so that an agreement can be reached that contains a "no-

strike" pledge and is fully compliant with the provisions of the National Labor Relations Act of 1935.

10. **How long is the employer/lessee required to maintain a labor peace agreement with the union?**

Answer: As long as the Hospitality Operation remains on a City owned leasehold.

11. **If by "labor peace agreement" the ordinance means a neutrality agreement between the employer/lessee and a union for purposes of union organizing, how long does the union have to recruit employees before the neutrality agreement expires? What if employees do not want to be represented by a union?**

Answer: The precise terms of any agreement are left to the parties to negotiate within the parameters of the National Labor Relations Act of 1935.

12. **What if more than one union wishes to represent the employees of the employer/lessee?**

Answer: If there was more than one union organization then the Hospitality Operation would be required to enter into multiple labor peace agreements in order to insure that a "no-strike" pledge was in effect as to each involved labor organization.

13. **Can the employer/lessee bargain with the union over the terms of the labor peace/neutrality agreement? If so, what happens to the city lease in the interim? What happens if agreement cannot be reached?**

Answer: Either of the proposed ordinances contemplates that the parties will negotiate the terms of the labor peace agreement. Under either proposed ordinance the City could not execute a new lease until the Labor Peace agreement was in place.

14. **How is an employer/lessee to ensure that the no-strike pledge remains in place upon expiration of labor agreements reached with a union?**

Answer: This would be the subject of negotiation between the Hospitality Operation and the Labor Organization.

15. **If the ordinance is to apply to new leases, what will the process require in terms of timing? In other words, will the employer/lessee be required to sign a labor peace agreement with a union before negotiating a lease with the City? Alternatively, will the employer/lessee be permitted to enter into a lease and then have a period of time thereafter to enter into a labor peace agreement?**

Answer: Under either version of the proposed ordinances the City would not execute a new lease until the Hospitality Operation has entered into a Labor Peace agreement with a Labor Organization.

16. **If the ordinance applies to existing leases, what period of time will lessees/employers have to enter into a labor peace agreement? What will the City's remedy be in the event the lessee/employer is unable to reach agreement with a union concerning a labor peace agreement?**

Answer: The two proposed ordinances would not apply to existing leases that are not amended or assigned. Under proposed ordinance "B" a labor peace agreement would be required in the case of an amendment or an assignment of an existing lease. However, the City Attorney has opined the draft ordinance "B" would be subject to legal challenge because it could constitute a breach of an existing contract (See City Attorney Memo dated January 12, 2006).

17. **How are "hospitality operations" defined? The ordinance currently defines the term "hospitality operations" as "the general business operations of a hospitality operator." Does hospitality operator include only hotels or will it cover other hospitality industry operations that may provide lodging to guests?**

Answer: As indicated in the question, the term "Hospitality Operations" is defined as: "the general business operations of a hospitality operator." Both draft ordinances would apply to any hospitality operation located on City owned property that provides lodging to guests.

18. **Are there any hospitality operators on city leased property that would not be covered by the ordinance? If so, why not?**

Answer: Yes. Lodgeworks at the Pike (which is currently not built) is on City owned or controlled property. However, the City would not be the Lessor of this property since the property is currently under a master lease with DDR.

DAVIS, COWELL & BOWE, LLP

Counselors and Attorneys at Law

May 8, 2006

Reply to:

595 Market Street, Suite 1400
San Francisco, California 94105
415.597-7200
Fax 415.597-7201

1701 K Street, N.W. Suite 210
Washington, DC 20006
202..223.2620
Fax 202.223.8651

8 Beacon Street, 4th Floor
Boston, MA 02108
617.227.5720
Fax 617.227.5767

1630 S. Commerce St. Suite A-1
Las Vegas, Nevada 89102
702.386.5107
Fax 702.386.9848

Barry S. Jellison (CA)
J. Thomas Bowen (CA, NV)
Steven L. Stemerman (CA, NV)
Richard G. McCracken (CA, NV)
W. David Holsberry (CA,NV)
Elizabeth A. Lawrence (CA,NV,AZ)
Andrew J. Kahn (CA, NV, AZ)
John J. Davis, Jr. (CA)
Florence E. Culp (CA, NV)
Michael T. Anderson (CA,NV,DC,MA)
Timothy Sears (CA, NV, DC)
Kristin L. Martin (CA, NV)
Eric B.Myers (CA)
Lisa W. Pau (CA)

George R. Murphy (DC)
Mark Hanna (DC, VA, NJ)
Arlus J. Stephens (DC, OH, PA)

of counsel:
Philip Paul Bowe (CA)
Mark Brooks (TN)

1389 Broad Street
Clifton, NJ 07013
973.916.0999
Fax 973.916.0906

TO: Long Beach City Officials

FROM: Andrew Kahn, Attorney for UNITE HERE

RE: Labor Peace Requirements Set by Localities for Hotels

1. What are labor peace requirements about?

Localities are increasing adopting "labor peace" requirements when they lease property to hotels or subsidize them. These are requirements that the hotel enter into an agreement with any union which wishes to organize the hotel's employees in which the union commits to not engaging in any strike, boycott or other economic interference with the agency's revenues from the hotel. The locality does not dictate any other provision of the labor peace agreement (LPA), but rather leaves that up to negotiations between the employer and union. Such requirements have been adopted by ordinances in Los Angeles, Pittsburgh and Washington D.C. Individual hotel projects have had such requirements imposed in San Francisco and numerous other cities. Numerous airports have imposed labor peace requirements for their foodservice leases.

2. Does a labor peace requirement force the employer to be unionized?

Absolutely not. If employees of the hotel are not yet unionized, the LPA typically takes the form of an agreement solely about the process by which employees can choose whether or not to unionize: UNITE HERE wants to avoid bitter, drawn-out organizational campaigns that scare workers and antagonize managers. UNITE HERE does not require an employer to negotiate about wages, hours or working conditions unless and until employees have chosen the union as their bargaining representative.

3. What are the risks to the City if no labor peace agreement is in place?

Without such an agreement, a union has a legally-protected right to urge consumers to boycott the non-union hotel. When this hurts hotel revenues, the hotel in turn pays less in lease payments to the City. Without such an agreement, unions typically end up encouraging consumer boycotts of non-union operations during the organizing process as a way of encouraging the employer to quit wasting everyone's time and money and come to the bargaining table. Even where a hotel's employees prefer being non-union, the competition from non-union facilities

unfairly impacts unionized employers, and therefore UNITE HERE regularly discourages groups from patronizing non-union hotels. Localities cannot ban strikes, picketing or boycotts, but unions can voluntarily waive those rights on their own behalf and for those employees who have chosen union representation.

Due to the NLRB's lack of resources and built-in inefficiencies, without an LPA in place, any management lawyer worth his salt can prevent his client from being ordered to bargain with a union for at least three years after a majority of employees sign cards authorizing the union to bargain for them. See, e.g., Santa Fe Hotel, 319 NLRB No. 116 (1995), enf'd, 107 F.3d 923 (CADC Oct. 16, 1996)(court finally orders bargaining in October 1996 after election occurring October 1993 after over two-thirds of employees signed union cards in early 1993). The Board process offers near-endless opportunities for litigation, forcing union representatives to spend weeks sitting around NLRB offices rather than working in the field, and often incurring legal fees necessary to answer the numerous technical objections an employer can raise (for example, an employer can force litigation before the election over the fact-intensive question of whether every lead worker is a statutory "supervisor" or not – even if those individuals play no role in the organizing campaign, never end up voting, and are too few in number to change the outcome of the election).

During the prolonged time period involved in NLRB representation case proceedings, employers typically fire union supporters or these supporters get fed up and quit. See Prof. Paul Weiler, "Promises to Keep: Securing Workers' Rights to Self-Organization Under the NLRA," 96 Harvard Law Review 1769, 1793-1795 (1983). During that time period employers typically face employees to attend meetings to hear attacks on the Union, while the employer excludes the Union from the property so that employees cannot hear both sides. Federal labor law does not bar this one-sided campaigning by employers, nor does it prohibit employers from lying to their employees in campaigning against unions. In re Virginia Concrete Corp., Inc., 338 NLRB 1182 (2003); Lechmere, Inc. v. NLRB, 502 U.S. 527 (1992). Due to onslaughts like this, in less than half the cases where the union wins an NLRB election does it end up with a contract. Weiler, supra.

These problems are why unions are compelled to (and almost always do) resort to economic pressure in the absence on an LPA if they wish to fulfill employee desires for a union contract. We mention these things not because we ask your sympathy for organized labor, but merely to demonstrate to you why it is likely over the course of a long-term lease that there will be labor interference with the City's proprietary interests in a revenue stream from the hotel, if no labor peace agreement is in place.

4. How much risk of lawsuit would the City face from adopting a labor peace requirement?

We are extremely confident that a locality with a proprietary interest in hotel operations has the legal right to set a labor peace requirement for new hotel leases, as several court decisions have upheld similar requirements: Hotel Employees & Restaurant Employees Union, Local 2 v. Marriott Corp., 1993 WL 341286 (N.D.Cal. 1993), Hotel Employees & Restaurant Employees Union, Local 57 v. Sage Hospitality Resources, LLC, 390 F.3d 206 (CA 3 2004), and No. Ill. Chap. ABC v. Lavin, __ F.3d __, 2005 WL 3336530, 178 LRRM 2650 (CA 7 2005).[1] These decisions are not subject to serious question because they flow directly from the U.S. Supreme Court's holding in the Boston Harbor case that a locality is free to protect its proprietary interests by requiring private employers with whom it does business to enter into agreements with organized labor to avoid the risk of labor picketing and other forms of interference with those proprietary interests. Bldg & Constr. Trades Council v. Assoc'd Builders & Contractors of Mass., 507 U.S. 218, 113 S.Ct. 1190 (1993).

Waivers of the right to take economic action against an employer are contained in practically every collective bargaining agreement, and thus it is well-settled that a union can waive its own rights and those of its members to take economic action. NLRB v. Magnavox, 415 U.S. 322, 325, 94 S.Ct. 1099 (1974); Standard Concrete Products Inc. v. General Truck Drivers, Office, Food and Warehouse Union, Local 952, 353 F.3d 668, 676 (CA 9 2003).

5. What does the union ask for in exchange for waiving its rights to boycott, etc.?

It is well-established that an employer and a union not yet representing a majority can enter into a legally-binding agreement about the union organizing process. Retail Clerks v. Lion Dry Goods, 369 U.S. 17, 82 S.Ct. 541, 7 L.Ed.2d 503 (1962)(enforcing contract allowing union access to break rooms). What UNITE HERE has generally obtained from employers in exchange for its waiver of the

---

[1]There are no cases to the contrary. On occasion localities have gone beyond simply demanding a union commitment to labor peace to also dictate other provisions of the agreement. Such a distortion of the labor peace concept has been held preempted by the National Labor Relations Act (for in that situation the locality is acting as a regulator rather than a proprietor protecting its own interests). Similarly, if the scope of a state or local requirement extends past the agency's own spending or revenues, courts find this shows the requirement to represent regulatory rather than proprietary action.

rights to boycott and strike are employer commitments to (1) not campaign against employees choosing union representation, (2) allow the Union access to non-work areas and to lists of employees' names and addresses (if the employee has not objected to disclosure), (3) recognize the Union as the bargaining representative based upon a confidential card-check by a neutral, and (4) have an arbitrator resolve any disputes arising during the term of the agreement. Such agreements are commonly referred to as "card check/neutrality agreements".

Contrary to claims by some management lawyers, the National Labor Relations Board has not questioned the legality of this sort of agreement, but instead questioned only whether recognition achieved by card-check should preclude a subsequent election petition to decertify the union. See Aladdin Gaming, 345 NLRB No. 41 (2005)("a 'card check' to determine majority status is a well used and legitimate method of establishing whether a union has been selected by a majority of the employees as their collective-bargaining representative. MGM Grand Hotel Inc., 329 NLRB 464, 465 (1999)."); Dana Corp. 341 NRLB No. 150 (2004)(accepting review of recognition bar issue). The Board cannot find a card-check inherently unlawful because the Act encourages employer recognition of unions based on a majority of employees signing petitions or cards authorizing union representation (every union which wishes to proceed to an NLRB election must first show the NLRB that it tried to obtain voluntary recognition based on signatures but was turned down, and must show employee support through signatures). Card-check/neutrality agreements have uniformly and repeatedly been upheld by the courts. See e.g., HERE Local 217 v. J.P.Morgan Hotel, 996 F.2d 561, 567 (CA 2 1993); HERE Local 2 v. Marriott Corp., 961 F.2d 1464 (CA 9 1992).[2] The card-check is typically done on a confidential basis by a neutral so that it involves no greater invasion of privacy than using a voting booth: it is essentially an election using absentee ballots. Over 40,000 Las Vegas hotel employees and thousands of San Francisco and L.A. hotel employees have been organized via card check/neutrality agreements involving dozens of different operators. The grocery industry was unionized via card-check agreements, as have many other industries. Local government agency employees have been given the right to organize via card-check. Gov. Code sec. 3507.1. Hotel employees deserve the same right.

The NLRB itself always orders employers to turn over the names and addresses of all employees after an election petition has been filed, so this provision of the agreement does not obtain information the Union would not eventually obtain through NLRB proceedings (although this would be after Board litigation about the scope of the unit: the unions' primary objection to NLRB representation

---

[2]The sole issue presented to the NLRB at present is whether a recognition achieved by a card-check will delay an NLRB election during negotiations if during negotiations some employees change their minds and sign petitions to oust the union.

proceedings is not to using a NLRB ballotbox but rather to all the years of litigation usually connected to an NLRB election).

Of course, the City need not decide now whether the provisions of currently- proposed card-check/neutrality agreements are lawful or good ideas, because no LPA need be worked out until a current lease is up for negotiation with the City. If the Union is then demanding something unlawful in exchange for giving up its right to strike, the employer can then complain to the City and the proposed ordinance would allow the City to relieve the employer from the labor peace requirement. Moreover, an employer who has signed an LPA that later appears unlawful can raise this with the arbitrator typically provided for under an LPA (or with the court if there is no arbitration clause).

6. Why address this issue now if there is no labor dispute at a hotel owned by the City?

If the City does not address this issue at the outset of a lease (or negotiations over its amendment), then later during the lease term it will be too late for the City to do anything about its loss of revenues from labor disruption.

Thus it is simply irrelevant that today some non-union hotel workers may be happy with their situation: that condition can easily change over the course of a long-term lease. The industry has high employee turnover and relatively low wages and benefits, prompting many workers to want to organize. UNITE HERE is growing and has organized many hotels in the last few years.

Non-union workers have gone on strike on several occasions prior to any union appearing on the scene (for example, just in the last five years my clients received calls from workers at two facilities after the workers were already on strike, at the Sunstone-owned hotel near the Oakland airport and Farm Fresh in Arizona). UNITE-HERE would instead agree to have disputes over the terms and conditions of employment resolved by arbitration rather than by strikes or boycotts. The employer would have equal say in selecting an arbitrator, thus guaranteeing that its needs are considered.

7. Does the proposed ordinance violate employers' constitutional rights?

Absolutely not. The proposed ordinance is carefully drafted so as not to apply during existing city leases but rather would apply only to new leases or lease amendments, and hence there is absolutely no merit to the claims of some employers that the ordinance impairs contractual obligations or represents an unconstitutional taking. An employer lawsuit on this ground would be frivolous and give the City strong grounds for collecting its attorneys fees for defending it.

8. If employers sue, how will that impact the City?

Should any employer sue the City for having enacted the ordinance, our clients through our office will vigorously assist in the ordinance's defense (you can contact the Berkeley City Attorney to confirm that we are good to our word, as we helped that City successfully defend its living wage ordinance in court by intervening as a co-defendant and then filing several briefs and declarations supporting the City, for which the Court ordered RUI to pay our attorneys fees). In that case no discovery into individual councilpersons occurred. The courts held that councilpersons' subjective motivation was irrelevant to the constitutionality of the ordinance. RUI v. City of Berkeley, 371 F.3d 1137, 1154-56 (CA 9 2004). That is well-established law. Lavin, supra; Sage, supra, at n.7; City of Columbia v. Omni Outdoor Advertising, 499 U.S. 365, 377, 111 S. Ct. 1344, 1352 (1991)("The situation would not be better, but arguably even worse, if the courts were to apply a subjective test: not whether the action was in the public interest, but whether the officials involved thought it to be so. This would require the sort of deconstruction of the governmental process and probing of the official "intent" that we have consistently sought to avoid. ***[6] We have proceeded otherwise only in the "very limited and well-defined class of cases where the very nature of the constitutional inquiry requires [this] inquiry." [citing race discrimination and bill of attainder cases]); U.S. v. Morgan, 313 U.S. 409, 422, 61 S.Ct. 999 (1941)("it was not the function of the court to probe the mental processes of the Secretary."); People v. Bigler, 5 Cal. 23, 26 (1855)("I know of no authority this Court possesses to inquire into the motives of the Legislature in the passage of any law; on the contrary, it has been uniformly held, that they could not be inquired into."); Nickerson v. San Bernardino, 179 Cal. 518, 522-524, 177 P. 465 (1918)(same rule applies to local legislators); County of Los Angeles v. Superior Court of Los Angeles County, 13 Cal.3d 721, 726, 532 P.2d 495 (1975) (this rule precludes discovery on local legislators' motives); City of Santa Cruz v. Superior Ct., 40 Cal. App. 4th 1146 (1995) (same rule extended to bar discovery of non-legislators if purpose is to inquire into motives of local legislative body).

It is doubtful an employer could show any monetary damages from having been directed to enter into negotiations with a union about the non-financial matters involved in labor peace agreements. It costs an employer no money to stay neutral, allow access to breakrooms, and respect the outcome of an arbitrator's tallying of employee signatures. The Court would probably not speculate that the employer's workforce will select union representation and that such representation will then lead to higher employer costs – especially as employers here have publicly claimed to offer compensation superior to that provided by union hotels.

9. How can we get more information?

If you have any legal questions or concerns, feel free to call me at 800-622-0641. At the website for the organization American Rights At Work (www.araw.org) you will find further explanation of why unions have to resort to economic pressure during organizing drive, and more information about cardchecks and the NLRB. Other labor law experts whom you could consult include Georgetown Law Professor Michael Gottesman and former NLRB General Counsel Fred Feinstein, now a professor at University of Maryland. Thank you for your consideration.

DAVIS, COWELL & BOWE, LLP

Counselors and Attorneys at Law

Reply to:

595 Market Street, Suite 1400
San Francisco, California 94105
415.597-7200
Fax 415.597-7201

1701 K Street, N.W. Suite 210
Washington, DC 20006
202..223.2620
Fax 202.223.8651

8 Beacon Street, 4th Floor
Boston, MA 02108
617.227.5720
Fax 617.227.5767

630 S. Commerce St. Suite A-1
Las Vegas, Nevada 89102
702.386.5107
Fax 702.386.9848

Barry S. Jellison (CA)
J. Thomas Bowen (CA, NV)
Steven L. Stemerman (CA, NV)
Richard G. McCracken (CA, NV)
W. David Holsberry (CA,NV)
Elizabeth A. Lawrence (CA,NV,AZ)
Andrew J. Kahn (CA, NV, AZ)
John J. Davis, Jr. (CA)
Florence E. Culp (CA, NV)
Michael T. Anderson (CA,NV,DC,MA)
Timothy Sears (CA, NV, DC)
Kristin L. Martin (CA, NV)
Eric B.Myers (CA)
Lisa W. Pau (CA)

George R. Murphy (DC)
Mark Hanna (DC, VA, NJ)
Arlus J. Stephens (DC, OH, PA)

of counsel:
Philip Paul Bowe (CA)
Mark Brooks (TN)

1389 Broad Street
Clifton, NJ 07013
973.916.0999
Fax 973.916.0906

May 17, 2006

TO: Long Beach City Officials c/o City Clerk

FROM: Andrew Kahn, Attorney for UNITE HERE Local 681

RE: Responses to Questions Raised by City Attorney, Council and Ms. Fernandez for Legislative Committee meeting 5/22 2pm

A. City Attorney Questions: What are the probable consequences of adopting the proposed ordinance, and are those consequences desirable?

In the short term, there will be no consequences, because no leases are about to expire or be amended to the benefit of the lessee.

In the long term, the ordinance would require hotels to reach agreements with the union containing no-strike pledges at some point. Any other terms of these agreements would be up to the hotels and the union to negotiate, and not a matter for the City of Long Beach to be concerned about unless a hotel were to seek a waiver.

It is likely that the Union will ask for card-check neutrality ("CCN") agreements of the sort hotels in LA area, Las Vegas and elsewhere have signed. In those agreements, in return for receiving a commitment to labor peace, the employer agrees to (a) not campaign against unionization (stay neutral), (b) allow the Union access to break rooms on non-work time and some access to employee lists, and (c) recognize the Union's majority status if a majority of workers sign union authorization cards. The Union commits to the Council that it will not ask for a CCN agreement more onerous to the Long Beach hotels than obtained by UNITE HERE elsewhere.

Whether the hotels will agree to a CCN agreement is anyone's best guess. If they do not, they will have the option of appealing to the City Council for relief from the ordinance. If they do sign such an agreement, whether workers then choose to unionize is anyone's best guess.

Without such an ordinance having been passed, over the course of a long-term lease, it is likely the Union will use its legally-protected right to take economic action against the non-union hotels. When this hurts hotel revenues, these hotels in turn will pay less in lease payments to the City.

Why is this likely? (1) Non-union hotels take business (and thus jobs) away from the unionized hotels. (2) Far more importantly, non-union hotels tend to mistreat their workers. For example, (a) none of them give their workers the job security of a written contract prohibiting employee discharges except for just cause, and thus workers are let go for inappropriate reasons. (b) None of the non-union hotels offer portable benefits. (c) The hotel industry in Long Beach generates profits for out-of-town owners while many workers receive wages inferior to those paid by other employers. (3) These workers are "organizable", as immigrants have shown lately they are willing to stand up for themselves. The jobs of hotel workers cannot be shipped overseas. UNITE HERE is committed to organizing, and has the resources to do so. Thousands of hotel workers have been organized by UNITE HERE just in the last year alone.

The organizing process is often contentious in the hotel industry when no CCN agreement is in place. In many cases, hotels have fired union sympathizers, interrogated employees about their union sympathies and threatened them with retaliation for supporting the union: even though such conduct is illegal, the existing legal remedies are paltry. In an organizing process without a CCN agreement, relationships between supervisors and workers and between the union and the employer become increasingly tense and hostile.

Because of this, workers and the union in such an organizing situation often feel they have no choice but to resort to economic pressure in order to obtain a contract. The City would lose revenues from this hotel. Hotel chains may be willing to sustain this loss for an extended period because they want to deter employees elsewhere in their chain from unionizing, regardless of the impact this may have on the City of Long Beach or hotel employees.

B. Question From Council About Union Security Clauses

We were asked at the last hearing whether the Union asks employers to sign contracts requiring union membership. We believe it is entirely inappropriate (and perhaps unlawful) for the Council to base its decision on either hostility to the bargaining demands which the Union might make after recognition, or sympathy for such bargaining demands. Your decision must be based solely upon the City's own proprietary interests. We outline the problems with the industry and with the NLRB process above not because those problems themselves justify the Ordinance; rather, those problems simply show you why there is a strong likelihood that if the Ordinance does not pass, the Union will end up taking economic actions which will adversely impact the City's proprietary interests.

However, simply by way of information, let me explain that once unions attain majority status, they are lawfully permitted in California to enter into collective bargaining agreements with employers which require employees to pay their fair share for the representational services provided by the Union, commonly called "union security clauses." Employees covered by union security clauses can opt out of paying for non-representational functions performed by the Union. Unions view such clauses as similar to the requirements of the law that everyone pay their taxes: I may not agree with what my City Council does, but in this country we follow majority rule, so I am obligated to pay my taxes even if I disagree with what the majority of the governmental body decides. UNITE HERE puts proposed collective bargaining agreements up for a vote of the members in the unit before signing the agreement. Not every labor agreement in California has a union security clause. Some union security clauses exempt those who chose not to join prior to the time the agreement is signed. CCN agreements do not include union security clauses and cannot include them, because that is a term or condition of employment that cannot be negotiated unless and until the Union attains majority status.

C. Remaining Questions from Marta Fernandez

I have numbered these in accordance with the City Attorney's numbering of these questions.

8. "The U.S. Supreme Court has taken the position that cities and states should not use their spending authority to induce private employer neutrality on union matters unless the state agency is acting as a "proprietor" and able to make the case that it needs to regulate labor activities for the "efficient procurement of needed goods and services." Boston Harbor, 507 U.S. 281 (1993). Does the City of Long Beach meet the "efficient procurement of needed goods and services" test articulated under the Boston Harbor case? In other words, why does the City believe it requires employer neutrality on leased property in order to procure needed goods and services for the City?"

The City Attorney's answer is correct, but we would elaborate as follows: this question reflects a misunderstanding of the Supreme Court's preemption doctrine as understood by every appellate court to address the issue. The Supreme Court in Boston Harbor was not saying the only time a proprietary interest exists is when a City buys goods and services. In Sage Hospitality and in the San Francisco Marriott cases (cited in our 5/8 memo) , the courts held that the logic of Boston Harbor also applies to allow localities to impose labor peace requirements to protect their revenues from city-assisted hotel projects from the effects of labor

disputes. There are no contrary decisions. A broader definition of the proprietary rights or market participant doctrine is well-established elsewhere in the law, as in Commerce Clause and antitrust jurisprudence, and the Supreme Court has relied on this jurisprudence in defining NLRA preemption. This jurisprudence holds that when a public agency acts as a landlord it falls within the market participant or proprietary rights doctrine. See e.g., Crescent Towing & Salvage Co., Inc. v. Ormet Corp., 720 So.2d 628, 632 (La.,1998)("The Commission's actions, merely as the lessor of a marine terminal, were those of a market participant, in competition with other terminals, rather than a market regulator."); Four T's, Inc. v. Little Rock Municipal Airport Commission, 108 F.3d 909, 913 (8th Cir.1997); Salem Transportation Company of New Jersey, Inc. v. Port Authority of New York and New Jersey, 611 F.Supp. 254, 258 (S.D.N.Y.1985); Transport Limousine of Long Island, Inc. v. Port Authority of New York and New Jersey, 571 F.Supp. 576, 581 (E.D.N.Y.1983)

16-18. We concur with the City Attorney's answers except his inference that Version B of the Ordinance would be legally questionable. However, we are preparing some suggested modifications to Version B to make it even safer from challenge.

If you have any further questions please feel free to contact me at 800-622-0641.

CC: Robert Shannon/Mike Mais

DAVIS, COWELL & BOWE, LLP

Counselors and Attorneys at Law

May 17, 2006

By fax 562-436-1579

Reply to:

San Francisco
595 Market Street, Suite 1400
San Francisco, California 94105
415.597-7200
Fax 415.597-7201

Washington DC
1701 K Street, N.W. Suite 210
Washington, DC 20006
202..223.2620
Fax 202.223.8651

8 Beacon Street, 4th Floor
Boston, MA 02108
617.227.5720
Fax 617.227.5767

Las Vegas
630 S. Commerce St. Suite A-1
Las Vegas, Nevada 89102
702.386.5107
Fax 702.386.9848

Barry S. Jathson (CA)
J. Thomas Bowen (CA, NV)
Steven L. Stemerman (CA, NV)
Richard G. McCracken (CA, NV)
W. David Holsberry (CA,NV)
Elizabeth A. Lawrence (CA,NV,AZ)
Andrew J. Kahn (CA, NV, AZ)
John J. Davis, Jr. (CA)
Florence E. Culp (CA, NV)
Richard T. Anderson (CA,NV,DC,MA)
Timothy Sears (CA, NV, DC)
Kristin L. Martin (CA, NV)
Eric B.Myers (CA)
Lisa W. Pau

George R. Murphy (DC)
Mark Hanna (DC, VA, NJ)
Arius J. Stephens (DC, OH, PA)

of counsel:
Phillip Paul Bowe (CA)
Mark Brooks (TN)

Clifton, NJ
1389 Broad Street
Clifton, NJ 07013
973.916.0999
Fax 973.916.0906

TO: Robert Shannon, Mike Mais

FROM: Andrew Kahn, Attorney for UNITE HERE Local 681

RE: Drafts of Labor Peace Ordinance

We are very concerned that Version A of the ordinance might be construed as not being met by multi-decade "extensions" with major modifications, as someone could argue this is still not a "new" lease. L.A. City officials have construed this "new" language as applying whenever amendments are made that involve the City's discretionary approval, as the only idea behind the limitation to "new " leases is to avoiding a constitutional attack under the Impairment of Contracts Clause or Takings Clause.

Version B was apparently intended to make it clearer that there would be no "amendment" loophole, but I think you are concerned that Version B is so broad as to lead to a constitutional challenge. Therefore, we suggest that the terms "lease amendment" and "assignment" be defined in Version B, and suggest the following narrowing definitions: "lease amendment" is "any amendment of the lease to extend its term more than 90 days or to modify its terms to the significant financial benefit of the lessee". "Lease Assignment" is "any assignment to which the lessee is not already legally entitled under the lease".

This would mean that insubstantial lease amendments like reduction in the number of parking spaces would not trigger the Ordinance. Nor would it be triggered by an assignment which was already OK'd in the lease. This clarified Version B would be safer from litigation risk and better meet the City's needs for thorough protection against labor disruptions than saying "new" leases alone are covered.

I am not able to attend the meeting on the 22nd so please feel free to talk to my clients directly about whether these amendments satisfy your legal concerns.

Thank you for your consideration.

Vice President &
Associate General Counsel

Hyatt Hotels Corporation
71 S. Wacker Dr.
Chicago, IL 60606 USA

Telephone: 312.780.5520
FAX: 312.780.5284

VIA FACSIMILE: 562-436-1579

Mr. Robert E. Shannon
City Attorney
City of Long Beach
333 West Ocean Boulevard - 11th Floor
Long Beach, California 90802-4664

Dear Mr. Shannon:

I am Vice-President and Associate General Counsel of Hyatt Hotels Corporation ("Hyatt"). This letter will address the request from City Council member Laura Richardson to identify the circumstances that an amendment to a hotel lease on City property would implicate the ordinance entitled, "An Ordinance of the City Council of the City of Long Beach Amending the Long Beach Municipal Code By Adding Chapter 16.58 Relating to Labor Peace Agreements For Hotels on City-owned Property" (referred to herein as the "Ordinance").

I believe I provided an explanation of the specific lease provisions that would be impacted by the Ordinance in my letter to you dated January 6, 2006. There is at least one circumstance in the lease where a required lease amendment is automatically triggered on a periodic basis (see section 3.2.3 of the Lease). The other provisions address virtually any situation where an amendment or assignment would be required.

It is not possible to identify every situation where an amendment or assignment would occur. To some degree, that is why the lease provisions are drafted in broad terms. Furthermore, it is the lessee's contractual rights and bargained for benefits that are at issue here. Nonetheless, there are a variety of circumstances where an amendment or assignment would occur. For example, either the City or the lessee may desire to renegotiate an existing term due to changed circumstance or financial necessity. The surrounding economic and market conditions could force a need for a change. Also, a subsequent change to the physical structure of the hotel facilities could impact the lease and lead either the City or the lessee to seek an amendment. Additionally, a structural change within the lessee's organization or a change in the value of the lease could result in an assignment. Also, as anyone familiar with land based leases can attest to, modifications can arise due to circumstances beyond the control of parties or at the behest of a lender. These examples are but a few categories and should not be viewed as exhaustive by any means. This letter should provide some additional information about the impact of the proposed Ordinance and how the ordinance adversely affects the lessee's rights.

If you have any questions, please feel free to contact me.

Sincerely,

Robert V. Schnitz

cc: City Clerk: Larry Herrera
Via facsimile: 562-570-6789

JMBM | Jeffer Mangels Butler & Marmaro LLP

MEMORANDUM

TO: Chairwoman, Laura Richardson, Members of the State Legislation and Environmental Affairs Committee and Robert E. Shannon, City Attorney of the City of Long Beach

FROM: Marta M. Fernandez

DATE: May 17, 2006

RE: Labor Peace Agreement

The following is submitted by the Long Beach Hospitality Alliance in response to the 19th question posed by the City Attorney in the Committee meeting of May 9. 2006: What is the result of passing this Ordinance and is the result acceptable?

The Alliance respectfully submits that the result of passing the proposed Ordinance (both Option "A" and Option "B" are collectively referred to herein as "Ordinance.") would yield negative results from both a legal as well as business perspective to the hospitality industry and the City of Long Beach. It is the Alliance's position that neither version of the Ordinance should be adopted. In addition, based on the City Attorney's opinion that Option B would be subject to legal challenge due to the fact that it would violate the terms of already existing lease contracts, such version should not be subject to further consideration.

It is the Alliance's position that the proposed Ordinance will inevitably lead to the unionization of hotel properties. The stated goal of the Ordinance is to protect the City's financial interests through labor peace. To this end, the Ordinance mandates that hospitality industry employers on City-owned property enter into "peace agreements" with unions. In exchange for the peace agreement, unions would be allowed to organize hotel employees under a neutrality agreement with the employer, which would require the employer to remain silent while the union actively unionized its workforce. If the union is successful, the hotel employees are unionized and the Ordinance has achieved its stated goal of labor peace. If the union is unsuccessful in its organizing efforts, then the stated goal of labor peace has not been achieved. Accordingly, the only way in which the proposed Ordinance achieves its stated goal is through unionizing efforts. Accordingly, the Ordinance's impact is not neutral, but in fact very much pro-union.

It is the Alliance's position that while it respects the rights of employees to freely elect union representation, the process through which that choice is made is the exclusive

province of the National Labor Relations Act ("NLRA"), and to enact this Ordinance is a circumvention of those federally protected rights. As a result, the Ordinance would create the following unacceptable results:

1. **The proposed Ordinance significantly undermines the free speech rights of employers related to union organizing campaigns, and interferes with employees' rights to self determination with respect to organizing under the NLRA.** The term "peace agreements" is a misleading term that is in reality a vehicle to compel employers to take a position of neutrality with respect to labor relations, in direct conflict with employers' and employees' rights, as granted by the NLRA. By demanding that employers enter into peace agreements, the Ordinance in fact mandates employers to negotiate neutrality agreements with labor unions, which effectively results in union organizing without the benefit of the protections available under the NLRA. The quid pro quo for so-called "peace" will be neutrality agreements between the parties which implicate a loss of existing rights:

- Neutrality agreements require employers to remain silent on the issue of unionization, i.e. they are not able to explain to employees what it means to be a union member to engage in collective bargaining and the pros and cons of union representation. It effectively eliminates the employers' free speech rights and the employees' rights to hear the other side. By eliminating the free flow of information and the inherent fairness of a secret ballot election, the union seeks to guarantee its ability to recover dues from employees regardless of whether those employees truly wish to be represented. As the U.S. Supreme Court has stated: "Freedom of speech is an essential component of the labor-management relationship. Collective bargaining will not work, nor will labor disputes be susceptible to resolution, unless both labor and management are able to exercise their right to engage in 'uninhibited, robust, and wide-open' debate." New York Times v. Sullivan, 376 U.S. 254, 270 (1964).

- Neutrality agreements require employers to open their hotel premises to unions so that union representatives may have access to employees, whether or not those employees wish to have access to union representatives. Typically, unions demand and obtain the right to have access to employee names, job positions, home addresses and home telephone numbers. The right of employees to keep such private information out the hands of third parties is lost.

- Card check is core to neutrality agreements. As part of the organizing process, union representatives approach employees to "sign cards" signifying their alleged choice of unionization. Employees give up their rights to a secret ballot election, and therefore, anonymity, and have virtually no effective rights to redress issues

of coercion or threats with respect to demands to sign those cards or even plain error.

2. **The proposed Ordinance does not and cannot ensure labor peace.** The proposed Ordinance is based on the stated goal of achieving "labor peace" in a City that already enjoys labor peace. The Ordinance purports to ensure that its tenants operate their properties without labor disputes or interruptions. The "no strike pledge" is intended to provide that assurance. In fact, the result is the opposite. First, as the union readily admitted in its presentation to the City Council, it can only agree that it will "pledge not to call for a strike" with respect to those employees it represents. Employees are free to join or reject unionization, and are free at all times to engage in protected concerted activity, including but not limited to strikes, picketing, work slow down and other labor interruptions. Therefore, even if a peace agreement exists, employees are not bound by the agreement until a majority chooses union representation and the employee agree to a no-strike clause. Second, neutrality agreements as well as collective bargaining agreements typically have a term during which a no-strike clause is viable. A no-strike clause is usually included in a collective bargaining agreement and remains in force throughout the term of the labor agreement only. Upon the expiration of the collective bargaining agreement, the no-strike clause, along with the other terms of the agreement expire. Therefore, the labor peace agreement could be complied with yet a work stoppage occur anyway after the employers' work force has been unionized. Indeed, by making it easier for unions to organize, the Ordinance is calculated to result in more employers work forces being unionized. If this happens, there will be an increased risk of strikes, not in the organizing phase but later, when the union is pressing for a new or renegotiated collective bargaining agreement or complaining of unfair labor practices. Finally, nothing ultimately prevents an employer or a union from violating a labor peace agreement. In either case, the sanction occurs after the fact, thereby leaving the City vulnerable to operation interruptions in any event.

The City certainly has a legitimate interest in reducing the likelihood of work stoppages on leased property. However, this interest may be protected in various ways; the most effective being contractual remedies that are negotiated into existing leases.

3. **The Ordinance effectively eliminates employers' arms length bargaining rights, as granted under the NLRA.** By mandating that employers on leased City property maintain a peace or no-strike agreement throughout the term of the lease, as a condition of maintaining such lease, the Ordinance eliminates employers' arms-length bargaining rights when negotiating either the neutrality agreement or subsequent collective bargaining agreements with the union. The Ordinance thereby grants an unfair advantage to unions in the collective bargaining process, which is inconsistent with federal law. Since the lessor will have no choice but to enter into an agreement with the union, the union holds all the cards. Such process wholly undermines the arms-length bargaining process mandated by federal law.

The inevitability of a unionized property coupled with the fact that employers will not be able to negotiate the best labor contract possible given its lack of leverage, hospitality employers

who wish to remain non-union will choose not to do business in the City. This will inevitably reduce the number of hospitality industry employers competing for leased property which clearly is not in the City's best interest.

4. **The Ordinance is subject to legal challenge.** Because the ordinance significantly undermines the speech rights of employers related to union organizing campaigns, and places employers in an unfair disadvantage with respect to the collective bargaining process, the ordinance is in conflict with rights granted under the NLRA. As a result, it is subject to legal challenge. The legal challenge is likely in light of the recent pronouncements by the Ninth Circuit Court of Appeals in Chamber of Commerce of the United States v. Bill Lockyer, 422 F 3rd 973 (9th Cir. 2005). (Decision withdrawn pending En Banc review.)

5. **The City of Long Beach is likely to become embroiled in upcoming labor disputes in the Hotel Industry.** This year, hotel employee union contracts will expire in six major convention cities and Hawaii and will affect approximately 214 hotels. In San Francisco, 13 of 14 properties where contracts expired in August 8, 2004 are under strike watch, and in LA the multi employer bargaining agreement expires November, 2006. The uncertainty of these negotiations make Long Beach a safe alternative for event planners and guests. Such advantage is lost with the passage of an Ordinance that will make unionizing efforts inevitable.

Lastly, there has been repeated reference to the Los Angeles ordinance and its impact in Los Angeles. We contend this is not a proper comparison since downtown Los Angeles is primarily composed of union represented hotels. Therefore, the impact on Los Angeles was minimal regardless of the terms of the ordinance. It is also commonly understood that any new hotel development in downtown Los Angeles, and in particular one tied to the convention center, would most likely operate as a union property. Additionally, since there was already a large presence of union properties that were already engaged in the protracted union negotiations, it made sense for the parties and the city of Los Angeles to guard against a strike. This is not the case in Long Beach.

EventPeople, Inc.

May 22, 2006

CITY OF LONG BEACH
STATE LEGISLATION AFFAIRS COMMITTEE
Laura Richardson, Chair
Patrick O'Donnell, Vice Chair
Rae Gabelich, Member

I just received your Agenda today and I do not see the answers to the questions asked by Gary W. Frahm, on behalf of EventPeople, Inc., at your last meeting.

EventPeople, Inc. is a Facilities Support Services workforce which provides jobs for over **1000** people residing in Downtown Long Beach. The majority of our employees have zip codes of 90802, 90813 and 90806.

Our employees currently work in many of the hotels covered in the proposed Ordinance. As you know, the hospitality industry is an up and down proposition with regard to occupancy, employment demand, seasonality, etc. One day a room may be reserved and another day, it might be vacant. There might be a banquet scheduled tonight, but not tomorrow.

This is where a company like EventPeople assists with the on and off demands of such a flexible and seasonal industry. Our employees fill these jobs regularly and sometimes on a daily basis. Since we have such a large customer base, our employees can choose the hotel, the position available, and shift time **they** wish to work. They are even transported to every job site thus adding more flexibility in controlling their own lifestyles.

EventPeople believes that these ordinances will eliminate access to these jobs from our employees. These are the very jobs our people use to support their families in and around Downtown Long Beach. The proposed Ordinances will also take away the hotels' flexibility in adjusting to room occupancy and banquet bookings.

UNITE'S labor contract states that only union members can be hired. With this in mind, EventPeople has the following questions and would like a response:

- How will you compensate our employees for their lost jobs?
- Will you also give UNITE the power to take my employees?
- If these Ordinances are passed, will this be a violation of the State of California right to work laws?
- Will this constitute discrimination against our employees by closing off job opportunities on city properties?

454 PACIFIC AVENUE, LONG BEACH, CA 90802
PHONE 562.307.0823 FAX 866-454-4275 EMAIL MATTHEWVENEGAS@AOL.COM

- What kind of compensation will you give to my company, a Long Beach based company, for the large loss of business?
- How will you handle the rise in unemployment in your city if these ordinances were to pass?

I question how you can justify giving control to a bunch of people from Orange County, that call themselves UNITE, who will take away jobs your Long Beach residents currently use to support their families. As a business man and speaking on behalf of my employees, I ask you to defeat this intrusion into Long Beach by UNITE. These ordinances are not in the best interest of my employees who are your local residents, are tax payers, and stimulate the local economy with these local jobs. Long Beach is a great business community. Please do not take away the employee's power and ability to work where they want, versus forcing them out of the opportunity.

Sincerely,

Matthew Venegas
President
EventPeople, Inc.

454 PACIFIC AVENUE, LONG BEACH, CA 90802
PHONE 562.307.0823 FAX 866-454-4275 EMAIL MATTHEWVENEGAS@AOL.COM

Excerpt of the
State Legislative and Environmental Affairs
Meeting for May 9, 2006

Labor Peace Agreement

Chair Richardson: Hello everybody. We're here for our first official meeting to talk about the Labor Peace Agreement that the City Council referred to this Committee back around January 17th. Today we have three items on the agenda. What I would like to recommend is that we take items three and four, which is going through the questions and then going back to item one.

Agenda Item Number 3 was read.

Recommendation to review communication signed by Mike Murchison, President, Murchison Consulting and representative of Long Beach Hospitality Alliance submitting questions regarding the Labor Peace Agreement.

Chair Richardson: I suggest going though each question, let our City Attorney speak first, followed by Mr. Murchison, anyone from the Long Beach Hospitality Alliance and also we would like to give the labor organizations a chance to chime in. So if we go through each of these questions it will help us, once it comes back to the City Council, to have comprehensive notes of exactly what each question was; what the answer was, and everyone's perspective. Then hopefully we can have a clear understanding. Are there any objections to that? Are we all happy? With that we'll go to question number 1 of the questions submitted by Mike Murchison of Murchison Consulting.

Chair Richardson read question #1 from City Attorney's memo dated February 9, 2006.

Should the City pass a "Labor Peace" Agreement, which union will the hotels be required to recognize?

City Attorney Robert E. Shannon: As you know, we've submitted to you a memorandum, which details in writing our response to each of the questions posed by both Mr. Murchison and by Ms. Fernandez. So I will just be reading from the answers. You have them in front of you, I assume.

Chair Richardson: Mr. Shannon, did you give these to the public?

City Attorney: We gave them to the Clerk.

Chair Richardson: Do the people here, do you guys have answers? Okay, great. Go ahead.

City Attorney read the answer to question Number 1.

Answer from the City Attorney: The two proposed ordinances do not require that a Hospitality Operation enter into an agreement with any particular union or labor organization.

Chair Richardson: Mr. Murchison, or whoever wants to speak to these, if you could come a little closer, so if there's a point you want to chime in other than what the City Attorney is sharing, now would be the time to do so.

Mike Murchison, Murchison Consulting: Councilwoman, I am going to defer, if I may, to the representatives of the Hyatt and the Marriott, they're here today to answer this. If that's appropriate from a legal standpoint from their perspective, I didn't want to chime in on any legal issues. It would be premature to do that. So I'll defer to them to do that, if that's okay with the City Attorney.

Marta Fernandez, Attorney, Jeffer, Mangels, Butler & Marmaro LLP and representative of Long Beach Hospitality Alliance would like to follow up later in the meeting, if appropriate.

Chair Richardson: Okay. So at this point you are in agreement with the ordinance that has been currently prepared for the City Council; it does not require a specific union organization in mind. So you are in agreement with that understanding?

Ms. Fernandez: I wouldn't say I am in agreement with the understanding. I don't have a follow up comment to that, at this time.

Chair Richardson: Would anyone from this group like to comment?

James Elmendorf, Los Angeles Alliance for a New Economy: Sure. I substantially agree with the City Attorney's position. (1) That it does not require any recognition of any union of any kind, and (2) I believe the ordinance specifically states that a Labor Peace Agreement would be negotiated with any union that was organizing hotel workers in the City of Long. If there were multiple unions, then they would need to get a Labor Peace Agreement with those unions. I believe in this case there is only one union that does organized hotel works. So presumably any Labor Peace Agreement would need to be sought with that union. Bu, regardless, a Labor Peace Agreement does not require recognition. That's ultimately a decision of workers, not a decision of the hotel, the union or the City Council.

Chair Richardson: Well actually, and someone please correct me if I'm wrong, but I think there are two unions, UNITE HERE is definitely the largest one, but I think, is it SEA FARES, who represents the Queen Mary?

Mr. Elmendorf: Yes, SEA FARES do represent the Queen Mary. And the Queen Mary is in a different category. They represent it as it's a boat as opposed to a hotel, but yes, that's a good point.

Chair Richardson: Well, there's a hotel on the boat?

Mr. Elmendorf: Yes.

Chair Richardson: And that's going to be one of the subsequent questions, of how far does this expand. So it's important that we are clear. So if I'm understanding what I think the intent of the question was then, would this resolution, and I'm going to be referring back to our City Attorney, would this resolution be requiring the hotel locations to have an agreement with both, or would we be saying it could be one of two, or what?

City Attorney: It doesn't address that point. It simply says there has to be an agreement. It does not differentiate between labor organizations. Theoretically, sometime in the future some other labor organizations that don't even exist right now might seek to organize in this particular industry and they would be free to negotiate with that organization.

Chair Richardson: So if, for example, a hotel had an agreement with one of the unions, would that suffice the requirement of that ordinance?

City Attorney: If it had that agreement, yes; if it had the no-strike agreement, of course.

Chair Richardson: Is everyone clear with that? Okay. Is there anyone else who had questions? Okay.

Chair Richardson read question #2 from City Attorney's memo dated February 9, 2006.

If a hotel already has a union, will they have to re-negotiate their contract in order to include a "Labor Peace" Agreement?

Answer from the City Attorney: If the existing contract between a union and a Hospitality Operation already contained a "no-strike" pledge there would be no requirement that the existing contract be re-negotiated.

City Attorney: If a no-strike agreement is already in place, then there will be no required re-negotiations. If, of course, on the other hand, there is no such pledge then such a pledge would have to be entered into. Of course, that would require re-negotiation of their contract.

Ms. Fernandez: The question is, and there's a follow-up question later on which is when a collective bargaining agreement expires, at that expiration for re-negotiation of a collective bargaining agreement, the parties no longer have a no-strike pledge in place, that often a quick pro quo for a viable contract.

Chair Richardson: I'm sorry, Ma'am. We have a lot to do and my job is to make sure we really keep this on track. This question, I agree later it asks the question, that you're saying, once the contract terminates or ends. This question is **if a hotel has a union will they have to re-negotiate their contract? And if we were to pass a labor agreement today, would they be required "today", if they had an existing contract, would they be required to re-negotiate?**

Ms. Fernandez: Right, then the questions really fold into each other. Both questions are one in the same. At the expiration of that contract when they are required to re-negotiate the contract, under the terms of the collective bargaining agreement and the no-strike clause expires, what happens at that point? Because technically, at that point, you are in violation of the ordinance.

Chair Richardson: Mr. Shannon?

City Attorney: The applied assumption is if the agreement with the union expires then they must re-negotiate a new no-strike pledge. There has to be an existing no-strike pledge, during the duration, the life of the lease.

Chair Richardson: If a hotel did not have a no-strike pledge currently would they be required, currently, right now, in their agreement, to have to establish this no-strike pledge, or would they be able to wait until the end of their agreement?

City Attorney: The two ordinances do not purport to address the leases, which are presently in agreement, in existence. They only relate to new amendments, in one case, or new leases in another case. But the leases that exist right now, if they remain in effect and nothing changes with regard to the lease, there is no requirement for a Labor Peace Agreement.

Ms. Fernandez: Yes. Now that doesn't exactly answer the question, Mr. Shannon. Let me just clarify the question. The question is with respect to collective bargaining agreements that may have no-strike clauses in them; which is typical of the existing labor agreements. Upon expiration of those collective bargaining agreements, while the parties are re-negotiating for the terms of a new labor agreement, the no-strike clause typically expires. At that point in time,

there is a gap in time in which, employees have the right to strike during those periods of time. There is no neutrality agreement at that point, typically, there is a collective bargaining agreement, much like the example in question Number 2; existing labor agreements upon their expiration, their no-strike clauses expire. At that point in time, what happens?

City Attorney: If the Labor Peace Agreement otherwise applies to this particular hospitality arrangement, then there has to be negotiated a new no-strike clause.

Ms. Fernandez: What happens in between while that new no-strike clause is being negotiated?

Chair Richardson spoke: If they already had a no-strike pledge?

Ms. Fernandez: There's an existing collective bargaining agreement. Let's say a hotel currently has a labor agreement in place. They are not required, as this question provides, and assuming that labor agreement has a no-strike clause in it, upon expiration of that labor agreement, the no strike clause expires as well, they have not negotiated for a neutrality agreement because they are already unionized.

Chair Richardson: Are you saying they do not have a...

Ms. Fernandez: Under my example they do have a no-strike provision, which is typical, in the existing collective bargaining agreement.

Councilwoman Gabelich: So what I would understand then is that negotiations usually start prior to the expiration of a contract. So during that pre-negotiating period that is when they would have to identify another no-strike pledge. Is that correct?

City Attorney: Well, I don't see this as a significant issue. Because although, it's not directly addressed in the proposals, the assumption would be that both parties would make every good faith effort to re-negotiate a no-strike pledge. However, we can write into the ordinance something that relates to every reasonable effort has to be made within a certain amount of time to re-negotiate a no-strike pledge. We can write that into the ordinance so that really isn't, in my mind, a very significant point.

Ms. Fernandez: In our view it is for those that have existing collective bargaining agreements. I don't understand the ordinance to mean that you have to have it. If you have an existing collective bargaining agreement you also have to have an existing neutrality agreement. That wouldn't make sense if your collective bargaining agreement already contains a no-strike clause. But that no-strike

clause is a quid pro quo for the existence of the contract, which expires. Most contracts are three or four years, two years in parts of Los Angeles.

Chair Richardson: So what is it that you are suggesting, or what is your concern?

Ms. Fernandez: There's a significant gap in the understanding of how your labor peace agreement provision of the ordinance would apply in those situations.

Chair Richardson: Mr. Shannon?

City Attorney: I don't know how I can explain it anymore than I have.

Chair Richardson: Thank you for your comments. Would anyone like to speak to this issue?

Andrew Kahn, Attorney, Davis, Cowell & Bowe, LLP: I represent UNITE HERE, Local 681 as well as a lot of other unions that live under labor peace requirements and neutrality agreements. I can just confirm that what the City Attorney is telling you is accurate. What would happen at the end of an existing collective bargaining agreement, if it was in the middle of the City lease, is that there would be a period of negotiations. And in 97% of occasions that results in a new no-strike agreement without any labor dispute. When it's not possible to do that then the parties typically enter into an arbitration agreement whereby they have a third party arbitrator settle the terms of their agreement; again, without the need to resort to strikes or lockouts. So in that way, we protect the City's proprietary interests and don't cause any headaches for the hotels or it's customers.

Chair Richardson: Are there any other comments on this question?

CouncilwomanGabelich: I would just like to add that I would interpret that as being holding the hotels feet to the fire; actually every two or three or four years. Every time their contract is about to expire. So that doesn't seem quite right to me. Just a comment...

Chair Richardson: Well, what do you mean by that?

Councilwoman Gabelich: Well, if every time the contract expires they have to go back and re-negotiate a no-strike clause while they're getting ready to negotiate their contract it puts the proprietor of the hotel at a disadvantage, I think.

Chair Richardson: Sure, go ahead.

Mr. Elmendorf: I would like to speak to that point Councilmember. That's really at the hotel's option. If a hotel wanted to ensure that it had a long-term no-strike pledge it could perfectly well put that on the table as part of any negotiations. I think we're talking about there are four hotels, I think, that are on public land. As I understand it, two have collective bargaining agreements, and neither of them have leases coming up. So the scenario that Ms. Fernandez is describing-- a scenario in which a lease expires in the next few years at one of those two hotels, during that time a collective bargaining agreement exists, it expires at some point after that, and in those many years none of those hotels have had the opportunity to see how could we get a long-term agreement for a no-strike pledge. The issue is simply the same with any negotiations. If there's not a collective bargaining agreement and the hotel needs to seek a no-strike pledge it could choose, if they wanted to, to seek a short-term no-strike pledge, in which case, they would have to re-negotiate it every couple of years as you are describing; or they could choose to seek a long-term no-strike pledge for the duration of the lease. And that would really be at the hotel's option and subject to the negotiations between the hotel and the union, which represents them.

Councilwoman Gabelich: So it would become another bargaining point, correct?

Mr. Elmendorf: Well, that's the discussion, exactly. It's the nature of any negotiations. The City is simply saying, assuming it were to pass this ordinance, a no-strike pledge must exist during the lease. The hotel can choose if it wanted to, to re-negotiate a no-strike pledge every 24-hours. That would be clearly insane, but they could do so. They could also choose to establish a long-term no-strike pledge, which would give them security with the City in terms of knowing they would meet the obligations that they were placing upon them. Really, this is an issue that exists, setting aside any labor issues, there's lots of conditions of leases and a hotel could decide to meet those conditions in a short-term way, knowing they might put themselves in a bad situation, or they could decide to meet them in a long-term way. For example, the City might say we want to make sure the hotel on this land is a four-star hotel and meets a certain standard. So the leaseholder could decide, in order to do that, we're going to sign a short-term lease with a Ritz Carlton, or whoever, that meets that four-star standard. And then know they might have to find a new person or re-negotiate with Ritz Carlton every two or three years. Or they could sign a long-term arrangement with Ritz Carlton, which would last for twenty-five years, and know that they have met the City's obligation. And that would really be at the option of the leaseholder.

Councilwoman Gabelich: Thank you.

Chair Richardson read question #3 from City Attorney's memo dated February 9, 2006.

Does a "labor peace" agreement require employers to release personal employee information to the union?

Answer from the City Attorney: The two proposed ordinances do not specify the terms that must be contained in the labor peace agreement other than the requirement that the agreement contain a "no-strike" pledge. If either ordinance passes, it will be up to the Hospitality Operation and the labor Organization to agree on the core terms of the agreement.

Chair Richardson: Mr. Shannon.

City Attorney: The answer is, no.

Chair Richardson: Okay. Are there any comments?

Mr. Kahn: I think what the question does is confuse the labor peace agreement that's required by the City's policy under the proposed ordinance and the eventual terms of the card-check neutrality agreement. That might be worked out with a non-union property to describe the organizing process. All I can tell you, having been involved in negotiating those agreements, that they are all over the map as to what information the union gets about employees. But I would also point out to you by way of background, that if the union chose to go through the NLRB election representation process it would be provided, in all cases, a list of names, address, and job classifications. So what unions seek in neutrality agreements is really not different than they would get from the NLRB, at any rate. So I think the issue of personal privacy is misplaced here.

Ms. Fernandez: I would like to comment on that. That is absolutely incorrect that there is no difference. At the point where the NLRB requires an employer to turn over confidential information concerning its personnel, employees have freely chosen, at least 30 percent of those have freely chosen to engage the NLRB to go forward with a secret ballot election. So there is at least 30 percent showing of interest among the employees that they wish to be organized. The difference in this ordinance is that employees who have not made that showing of interest are now having their information disclosed.

Councilwoman Gabelich: Do the employees have a right to request that their information not be provided? Can anybody answer that?

Mr. Kahn: The ordinance doesn't speak to it. This is a subject of negotiations. If the hotels want to put on the table a request to the union that it not get a list until 30 percent have signed, that's something the union will have to take into serious consideration. I have seen card-check neutrality agreements where the personal information is not disclosed if the employee objects.

Councilwoman Gabelich: In certain cases. It's not a general requirement.

Mr. Kahn: Card-check agreements vary. There's no one form that they follow.

Councilwoman Gabelich: When I met with UNITE HERE they did state that the concessions they asked for often include getting a list of the names, addresses and phone numbers of all of the employees even prior to the beginning of any organizing drive. Is that accurate? Okay.

Councilmember O'Donnell: I just want to do a check here on where we are in our questioning. So as far as I have heard here today thus far within this ordinance there is no requirement for unionization of hotels. I have heard that, right?

City Attorney: Right.

Councilmember O'Donnell: There's no--and City Attorney weigh in at any time, there's no requirement for employee's information to be released to unions?

City Attorney: Right.

Councilmember O'Donnell: Basically, what I'm picking up is this requires both entities to negotiate a no-strike clause with regard to leases on City land. Very simply put, thus far in our conversation. Is that accurate?

City Attorney: Yes. If I could just cut to the chase here, we're happy to go through all of these questions, but really what the two sides are arguing here is not what the Labor Peace Agreement says, what they are arguing is, what will effectively result if the Labor Peace Agreement is put into effect. And those are arguments that both sides can give. I'm not going to put myself into the middle of it. But I can tell you, purposely, just as with the City of Los Angeles, the requirements of the Labor Peace Agreement are very vague. They are designed to simply ensure that City property is not subject labor to disruptions, which affect the ability of the City to raise the revenue that it needs. Each side will argue that not withstanding the benign terms of the ordinance it doesn't really say all that much. It effectively results in consequence A, B and C; and that's the argument. Ultimately you do have to consider that. The City Attorney's office is not going to opine on that. These two disagreeing parties are going to have to tell you what they believe to be the effective result of a Labor Peace Agreement.

Councilmember O'Donnell: Thank you.

Chair Richardson: Are there any other comments regarding #3? Okay, #4.

Chair Richardson read question #4 from City Attorney's memo dated February 9, 2006.

Which hotels does a "labor peace" agreement affect?

Answer from the City Attorney: If either ordinance passes it could affect any hotel or motel located on City owned property. As of this date the existing hotels are: 1) The Coast Long Beach Hotel, 2) Hyatt Regency Long Beach, 3) Long Beach Marriott, and 4) Queen Mary.

City Attorney: I would also add, although there is no hotel on the property, the Naga site is in negotiation, it is City owned land. If a hotel were built on that property it would apply to that site.

Ms. Fernandez: Point of clarification?

Chair Richardson: Sure.

Ms. Fernandez: It is my understanding that the Naga site has an executed lease agreement in place already.

City Attorney: That's correct, I'm told.

Ms. Fernandez: The point of clarification would be that the ordinance would not apply to that site. Is that correct, Mr. Shannon?

City Attorney: The lease has been signed; it's currently in effect. That's correct, not until there is an amendment depending on which ordinance is signed or a new lease. That's correct.

Ms. Fernandez: Thank you, Mr. Shannon.

Chair Richardson: Is there anyone else?

Councilwoman Gabelich: How long is the lease on the Naga site?

Assistant City Attorney Mike Mais: September 2071.

Councilwoman Gabelich: 2071? How nice of that, huh? How about the Dorsey Hotel? Isn't that part of City land? Would that fall under this as well?

Assistant City Attorney: No.

Mr. Murchison: Councilwoman, it's twenty-five percent property still owned by the RDA, seventy-five percent still owned by the private entity. But it's twenty-five percent RDA.

Councilwoman Gabelich: Thank you.

Chair Richardson: Are there any other comments? Okay. We'll go to Number five.

Chair Richardson read question #5 from Mr. Shannon's memo dated February 9, 2006.

Will a "labor peace" agreement come into play each year a hotel on City-leased land adjusts its rent?

Answer from the City Attorney: If Ordinance A were to pass a rent adjustment would not be triggered because it would apply only to "new" leases on City owned property. If Ordinance B were to pass as written an annual rent adjustment could trigger the requirement for a labor peace agreement. However, the City Attorney has opined that Ordinance B would be subject to legal challenge due to the fact that it would violate the terms of already existing contracts. (See City Attorney Memo dated January 12, 2006)

City Attorney: Ordinance A is the City of Los Angeles Ordinance.

Chair Richardson: Are there any comments?

Mr. Elmendorf: My understanding of Ordinance B is that it sort of depends on what's meant by adjustment. If the lease calls for an annual adjustment, my understanding is that would not qualify it as either an amendment or an assignment. So if a rental adjustment means that the City and the leaseholder must negotiate over rent, or any other terms of the amendment, then that would trigger a labor peace agreement under Ordinance B. Where as if the lease, where is often the case, calls for the rent to escalate every five years or whatever by a standard amount that would not qualify, at least in our view, as either an amendment or any kind of change that would trigger a labor peace agreement.

City Attorney: He is correct.

Mr. Elmendorf: To me that also partially changes the concerns the City Attorney may have about legal issues because the fundamental question here is, if there is a subject of negotiations between the lease holder and the lease then the City can say that they want to put new terms into the lease. If, however, there is an existing lease the reason the labor peace ordinance could not apply to an existing lease is the City can't just arbitrarily say, even though you have a lease for 50 more years we are just going to tell you, you have to add something new into that lease. But if on the other hand there were some negotiations then that could be included.

Chair Richardson: So are we hearing you correctly, and Mr. Shannon could you clarify then, that both versions or I should say, Ordinance A and B, neither would be triggered by a rent increase. Is that correct?

City Attorney: Ordinance A would clearly not be triggered by a rent increase. Ordinance B could be triggered by a rent increase if the rent increase isn't written into the lease itself. That would put it in the simplest terms. What he is saying is if the lease itself calls for rent increases, in other words, if it calls for a specific increase in rent there is no need to amend the lease and therefore Ordinance B doesn't kick in.

Chair Richardson: Wouldn't that be negative though from a business perspective because we would then be forcing a business to have to automatically increase their rent, when they may not chose to do so.

City Attorney: This assumes that's already written into the lease as it stands.

Mr. Elmendorf: It's quite common, if I may, Councilwoman, quite common in leases and I don't know these particular leases, but in such leases to establish rents. Say the lease was signed in 1980 and it's a fifty-year lease, the Council at the time may well have established for a process that every certain number of years the rent would increase based on the cost of living changes. So, that you would see improvements in the revenue that the City was earning. That's particularly true because often when the lease is signed at the beginning it's signed at the lower rental rate because the assumption was it was necessary for City land to get the hotel to operate effectively. So the assumption was the hotel wouldn't do that well at the beginning. So the City is in some sense subsidizing it. So that's a type of lease where they might say in year five we go up one percent, year ten we go up two percent. In that case, that wouldn't be an adjustment, but that's something that's already been agreed upon by the leaseholder and the City.

Chair Richardson: Ms. Fernandez, would you agree with that? Is that standard in most of your leases?

Ms. Fernandez: In the hotel industry it is not so common to have written in rental adjustments. Certainly, there are lots of contingencies that are not written into leases, expansion plans, renovations and such. As I understand the comments from Mr. Shannon, any such change of that nature including renovation and expansion plans that require subsequent negotiation with the City would be an amendment or modification of the lease that would require—that would trigger the ordinance. Is that right, Mr. Shannon?

City Attorney: That's correct. I want to make it very clear that it's our legal opinion that Ordinance B should not be passed by this Body and you should only be considering Ordinance A.

Councilmember O'Donnell: I think it's important that we understand at what point would this ordinance be triggered with regard to existing leases. I just want to make sure I'm clear on this. As I understand it, in our leases we have a built in CPI index. Is that Correct?

City Attorney: Nothing would trigger Ordinance A until a new lease is entered into. An amendment or an adjustment to the lease, a rent adjustment, even if it were not called for in the lease would not trigger a labor peace agreement. Only a new lease would.

Councilmember O'Donnell: Okay, Ordinance A would be prospective, that is it would be applicable to new leases and not those that are existing, unless those existing leases expire?

City Attorney: No, it's not the difference between prospective and non-prospective. The distinction is between entering into a wholly new lease versus amending an existing lease. Ordinance B contemplates that if an existing lease is amended then the requirement of a no-strike pledge would kick in; that's Ordinance B. Ordinance A, if an existing lease is amended, but there is no new lease, simply an amended lease, a no-strike pledge would be required. In other words, Ordinance A is far less restrictive on the employer than Ordinance B.

Councilmember O'Donnell: So what I'm hearing you say is that if a hotel decides to add on, add one-hundred rooms, maybe remodel, Ordinance A would not trigger the....

City Attorney: Yes.

Councilmember O'Donnell: Okay.

Councilwoman Gabelich: That was the same question I had because I know that the Marriott had planned to add about one-hundred and fifty rooms and if they did that, that would not trigger this negotiation. Is that correct?

City Attorney: Yes, that is correct.

Assistant City Attorney: If I could add one thing in regards to the issue of the rent adjustments and whether or not that would trigger a labor peace agreement under Ordinance B. For our existing hotels, here in Long Beach, it would not trigger it because for each of those hotels there is already written in the lease a mechanism for increasing the rent. That's automatically in the lease. There are

different mechanism in each lease, but they would be in essence automatic increases, so there would be no amendment to the lease simply because we increase the rent in five to ten year intervals.

Chair Richardson: And then my follow up question was, have we thought about preparing something that would say when would a City leased amendment apply? Like is there a list of if you did two hundred and fifty rooms, what would be the trigger point that causes the lease to be an amendment or an adjustment or a...

City Attorney: It would depend on the terms of the lease. Any variance from the terms of an existing lease, if one party or the other wants to change the terms, then a negotiation would be entered into; anything that requires a change in the actual terms of the document.

Chair Richardson: Well, is there a list of what those variances would be? I would assume that Councilmembers are going to want to know the answer to that question.

City Attorney: Well, that's really a business question.

Chair Richardson: It's an important one because...

City Attorney: I'm not saying it's not important.

Chair Richardson: No, I understand. The reason why I'm asking that question is because I can see someone making whatever change and then it coming forward and saying, No, that was an amendment to your lease. So we need to clearly understand when that trigger point would occur. I think everybody would need to clearly understand that.

Assistant City Attorney: A typical example that you see in the City from time to time is a situation where the owner of the leasehold wants to extend the lease for financing purposes, or some other reason, anytime the lease would have to come back to you for approval would be an amendment to the lease. So any significant term changes would require that it come back to the Council. So that would be an amendment to the lease that requires your approval and that would trigger Ordinance B, but not Ordinance A. There's so many types of reasons why a lease might come back to you for amendment you couldn't really put a list together of the types of things. It would just be every time a significant change was requested, by the lessee that would require Council approval, that would be an amendment.

Chair Richardson: What I would like to suggest, and then I'll turn to Councilmember Gabelich, what I would like to suggest is maybe the hotel

industry submit a list of when you think it could potentially apply; UNITE HERE and any other interested parties, submit a list. That way our City Attorney and whoever else can review that; and if there's anything else we would like to add. Also understanding that, that would not be an all inclusive list, but I think it's going to be a very important question that Councilmembers are going to want to at least have some idea of the trigger point. I'm hearing from you any substantial financial change. If that's all that it is, then we all need to know that.

Councilwoman Gabelich: I guess my question goes back to the Marriott scenario where if they wanted to add the one-hundred and fifty rooms I would think that, that would somehow be coming back to Council. Would it, or not?

City Attorney: Yes.

Councilwoman Gabelich: Okay. So that means that they would have to re-negotiate their lease?

City Attorney: Yes, if you adopt Ordinance B.

Councilwoman Gabelich: But if you adopt Ordinance A, then it would not.

City Attorney: Somebody just said that it's already been done, so, of course, it wouldn't apply to something that's already happened.

Councilwoman Gabelich: It's already been done?

Michael Conway, Manager, Community Development, Property Services Bureau: Correct.

Councilwoman Gabelich: It's already been approved?

Mr. Conway: June 15, 2004 Council approved that lease for expansion of the Marriott.

Councilwoman Gabelich: Okay. Then, let's just use that as a scenario. Let's say that had not happened. If the hotel had not already had that passed it would have come back to the Council, it would have required a change in their lease and in this case it would have determined that a labor peace agreement would be necessary if this Ordinance was passed.

City Attorney: Again, if you passed Ordinance B, not if you passed Ordinance A.

Councilwoman Gabelich: Okay, thank you

Tim Cameron, 3292 E. Spring Street, representing the Long Beach Marriott: When it comes down to an amendment anything that requires an agreement between the landlord and the tenant is going to require an amendment. As Mr. Shannon said, it's built into the lease. If we wanted to increase, or reduce our parking by one space, that would require an amendment it's anything. Also even if you do have built in rental adjustments that are specific, a lot of leases, and I don't recall whether the Marriott or the other ones have it, a lot of times they require the parties to execute an amendment to specify what the new rent is even if it's an adjustment for the cost of living. It's on a case-by-case basis. You would have to look at the leases. I think the most important thing to remember is anything that's not in the lease that requires an agreement between the landlord and the tenant, that's an amendment to the lease, and it can be the most minuet thing.

Chair Richardson: Thank you. Again, if you could submit any of those potential ideas in writing.

City Attorney: May I respectfully suggest that with both parties indicate what we are really talking about here is the frequency and the likelihood that there will be an amendment; whatever that amendment might be. Perhaps they could argue to the point of how often can we expect in the normal course of the life of a lease that there be amendments whatever the subjects be. I suspect what you are going to find is that it's a very frequent occurrence.

Chair Richardson: Mr. Shannon brought up a very important point. When you submit that, just to clarify again what he said, please include how often, typically, would that amendment occur in a normal hotel, a business, so we can get a sense of is this once in it's lifetime or every five years, to get a better idea. Okay. Is there anybody else? Number 6.

Chair Richardson read question #6 from City Attorney's memo dated February 9, 2006.

How many hotels are on City-leased land?

Answer from the Attorney: There currently are 4 existing hotels on City owned property: Coast Long Beach Hotel, Hyatt Regency Long Beach, Long Beach Marriott and the Queen Mary. A fifth potential site would be added if the Naga lease is negotiated and executed.

City Attorney: I think we already answered that one. That's four existing hotels, and I named them. We refer to a fifth potential site, but apparently the lease has already been negotiated.

Chair Richardson: But it's still on City leased land?

City Attorney: Right.

Chair Richardson: So the answer would apply. Okay, are there any other questions? What about the site over there by the Marina? I understand, but that would be, potentially in our mind, City leased land?

City Attorney: As Mr. Mais points out very correctly, that during the lifetime of this ordinance it would apply to any future hotel or hotel site that maybe right now is not even contemplated.

Chair Richardson: But the Alamitos section is on City leased land? Or I should say City land.

Assistant City Attorney: It's not now on leased land. As far as I know, that project—the application is no longer pending. It was at one time, and I think the idea was to do some kind of a land swap to allow a hotel to go down on Alamitos Bay. But potentially, as Mr. Shannon pointed out, it could apply if someone were to reinitiate that type of arrangement. Or there's other land in the City, I believe, out by the Airport that is currently zoned for a hotel purpose, although, there is no application for a hotel to go in there, but that's another potential site. That site could remain zoned for hotel or the zoning could change and it could go to some other Airport use. That's another potential one.

Chair Richardson: Even though it's been taken off of the table at this time, that particular area, is it City owned land?

Assistant City Attorney: Yes.

Councilmember O'Donnell: Madame Chair. Just for point of clarification, people are talking about that Marina deal like it's something—that was many years ago. It's a pretty sensitive site and I don't think we should just assume that it's going to become a hotel.

Chair Richardson: Oh, I'm certainly not assuming that. I am in complete agreement. What I'm trying to avoid happening is when we brought this issue forward before, it was like there was a lot of things thrown out. Various Councilmembers were being approached with all sorts of information. And what I'm hoping this Committee will be able to do is that we'll be able to present the Council with as much information as possible that answers all of these questions, so people can make an effective decision. But I am not assuming that in any way, suggesting it or encouraging it. Okay, question #7.

Chair Richardson read question #7 from City Attorney's memo dated February 9, 2006.

How many motels are on City-leased land, and if there are any, how are they impacted?

Answer from the City Attorney: There currently are no "motels" located on City owned property. However, if such a motel did exist it would be subject to the provisions of either Ordinance "A" or "B" if either were adopted.

City Attorney: There are none now, but I want to emphasize that the ordinance makes no distinction between hotel and motel. So that's a distinction that is not recognized in the ordinance. So it really doesn't matter if you call it a motel or a hotel.

Chair Richardson: Okay. Are there any comments on that? All right, so we have just completed agenda item #2. Any members of the Council, are there any remaining questions that you have? Okay. Are there any members of the public that would like to speak to agenda item #3 that we just went through other than what has been said. Okay, seeing none then let's go to agenda item #3.

Recommendation to review communication from Marta M. Fernandez of Jeffer, Mangels, Butler & Marmaro LLP, submitting questions on behalf of the Long Beach Hospitality Alliance, regarding the Labor Peace Agreement.

Chair Richardson: Okay, this memorandum is dated February 9, 2006 for members of the public; hopefully you have a copy of these questions.

Chair Richardson read question #9 from City Attorney's memo dated February 9, 2006.

The proposed ordinance does not define "labor peace agreement." What is a labor peace agreement?

Answer from the City Attorney: The precise terms of any Labor Peace Agreement are left to the parties so that an agreement can be reached that contains a "no-strike" pledge and is fully compliant with the provisions of the National Labor Relations Act of 1935.

City Attorney: As I've indicated, and as Mr. Mais has indicated the precise terms of the labor peace agreement are purposely left to the parties so that an agreement can be reached that contains a "no-strike" pledge and is compliant and at the same time is fully compliant with the provisions of the NLRB Act of 1935.

Chair Richardson: How would you generally summarize it, if you can?

City Attorney: Well, this goes back to what I originally said. It's not by coincidence that this ordinance does not attempt to specifically define terms. It leaves it to the parties to negotiate the specifics of any particular agreement. All it demands is, and I'm reading now from the purpose of the ordinance, "the City has further found that the City can only protect its investment by requiring hotel operations to sign contracts with the labor organizations it represents in the hospitality industry. These contracts will prohibit the labor organizations and its members from engaging in picketing, work stoppages, boycotts and other economic interference with the business of the hospitality operators for the duration of their lease". So whatever labor peace agreement comports with that standard will be sufficient for the purposes of this ordinance, and that's all this ordinance says.

Gary Frahm, 6481 Bixby Hill Road: Where does this leave third party contractors in this labor peace agreement; by the way, which has been over-ruled by the Seventh District Appeals Court? Mr. Shannon?

City Attorney: I have no answer to that, I don't know. Where does it leave them?

Mr. Frahm: Most of these contracts contain a union shop type of thing were you have to go to the union in order to hire the people. How about the companies that supplies the hotels with labor on a part-time basis, where do they stand in this labor peace agreement?

City Attorney: It does not address that issue.

Mr. Frahm: Well, I think it should.

City Attorney: And it does not impose any requirements on any third parties. The requirements are imposed upon the two contracting parties.

Mr. Frahm: But two contracting parties have the restricting agreement.

Chair Richardson: Sir, please don't argue with our City Attorney.

Mr. Frahm: I'm not. I'm pointing out that this union over here has a restrictive agreement with the hotels to not hire anybody outside their union. So where does that leave the employees of my company, Event People, in this labor peace agreement?

Chair Richardson: Okay, we will add that to one our questions for our next meeting and hopefully be able to provide you with some information on that. Thank you.

Councilmember O'Donnell: Does he want them included, the third party?

Mr. Frahm: Under their current contract, we won't be included at all. We will be locked out of those hotels. I think that is a real issue here because there are a lot of your constituents that depend on those jobs for their livelihood. A lot of them don't want to be union members. They want the freedom of our company where they can choose when, where and how they want to work and in what categories. So what you're basically doing is signing an agreement with another company, so to speak.... (Tape change)

Mr. Elmendorf: A labor peace ordinance does not make requirements having to do with terms of employment or any issues that are described there. The labor peace requirement is quite simple; it says that the hotel must obtain a no-strike pledge. Any other terms of that agreement could be subject to anything and it could perfectly well include all sorts of different issues. It doesn't have to have any impact on a company or not. So that's really not a relevant issue. There's a range of employment issues that could be addressed and we would urge the Council not to attempt to address them because frankly, we think that, that is ultimately up to the employees. The last thing that I would say is that, just to remind the Council, that the no-strike pledge and the labor peace agreement does not require that employees join a union, or that the employer recognize the union. Ultimately the decision to join a union, or not to join a union is always up to the employees themselves. If they chose to do so, they will.

Chair Richardson: Okay. Sir, if you could please summarize because this is not the question that we have before us.

Mr. Frahm: I understand. Based upon what he said and based upon how the ordinance is written we're not in that peace agreement. We're not anywhere in it right now. So we would have no standing whatsoever.

Chair Richardson: Thank you, we understand. We will bring this one back at our next meeting. We were coming back to—were there any other clarifications that anyone felt needed to be provided regarding defining what is a labor peace agreement? All right. Next question.

Chair Richardson read question #10 from City Attorney's memo dated February 9, 2006.

How long is the employer/lessee required to maintain a labor peace agreement with the union?

Answer from the City Attorney: As long as the Hospitality Operation remains on a City owned leasehold.

Chair Richardson: Are there any questions? Okay. Next question.

Chair Richardson read question #11 from City Attorney's memo dated February 9, 2006.

If by "labor peace agreement" the ordinance means a neutrality agreement between the employer/lessee and a union for purposes of union organizing, how long does the union have to recruit employees before the neutrality agreement expires? What if employees do no want to be represented by a union?

Answer from the City Attorney: The precise terms of any agreement are left to the parties to negotiate within the parameters of the national Labor Relations Act of 1935.

City Attorney: Again, the labor peace agreement, the ordinance does not reference a "neutrality agreement", does not require a "neutrality agreement", in fact, leaves it to the two parties to bargain an agreement that's acceptable to the parties, of course, and at the same time meets the provisions ordinance as proposed.

Chair Richardson: Any questions or comments? Okay, next one.

Chair Richardson read question #12 from City Attorney's memo dated February 9, 2006.

What if more than one union wishes to represent the employees of the employer/lessee?

Answer from the City Attorney: If there was more than one union organization then the Hospitality Operation would be required to enter into multiple labor peace agreements in order to insure that a "no-strike" pledge was in effect as to each involved labor organization.

City Attorney: Again, that's not addressed and we take no position on it.

Chair Richardson: Any comments? Okay, next question.

Chair Richardson read question #13 from City Attorney's memo dated February 9, 2006.

Can the employer/lessee bargain with the union over the terms of the labor peace/neutrality agreement? If so, what happens to the City lease in the interim? What happens if agreement cannot be reached?

Answer from the City Attorney: Either of the proposed ordinances contemplates that the parties will negotiate the terms of the Labor Peace Agreement. Under either proposed ordinance the City could not execute a new lease until the Labor Peace Agreement was in place.

City Attorney: The ordinance requires agreement and agreement would have to be reached, or they will be in breach of the lease. It's just that simple.

Chair Richardson: And if they are in breach, what happens?

City Attorney: Well, whatever legal steps the City wished to take to revoke the lease.

Chair Richardson: Okay. Are there any questions, or comments?

Mr. Elmendorf: I do have one clarification because I think that's fundamentally right. However the ordinance does say that, since the obligation is on the lease holder to seek the agreement, if they believe the union, which they are negotiating, is some way being arbitrary or capricious, then they could come to the Council and say look we've done it, we've made our best faith efforts. So we appeal to you to waive this requirement upon us. So that would always be at the option of the Council.

City Attorney: Yes, that is correct. That is in the ordinance.

Chair Richardson: All right, next question.

Chair Richardson read question #14 from City Attorney's memo dated February 9, 2006.

How is an employer/lessee to ensure that the no-strike pledge remains in place upon expiration of labor agreements reached with a union?

Answer from the City Attorney: This would be the subject of negotiation between the Hospitality Operation and the Labor Organization.

City Attorney: As indicated in my paper, this would be the subject of negotiation between the Hospitality Operation and the Labor Organization.

Chair Richardson: Are there any comments, or questions?

Councilwoman Gabelich: I'm sorry I don't remember your name, isn't that what you were asking prior, right....

Ms. Fernandez: I believe we had a discussion over that. It's our position that in fact the Labor Peace Agreement really is no different than a requirement that employers enter into neutrality agreements, with the unions by which unions can then organize the employer to engage in collective bargaining. That's the ultimate goal of neutrality agreements. Once those collective bargaining units are in place ninety-nine percent of the time they do contain no-strike clause, but like all agreements, labor agreements expire too. So no-strike clauses expire. Otherwise, there wouldn't' be strikes in the hotel industry, right? So the question is what happens in the interim. It was answered, not satisfactorily from the point of the view from the Hotel Alliance, but I understand the position that Mr. Shannon has stated.

City Attorney: Well, let me pose a question to you. How would you propose that the ordinance be articulated to take care of that problem?

Ms. Fernandez: We think the ordinance, as a whole, is in appropriate.

City Attorney: Well, see that's the Catch 22. You posed a question, you posed a problem, and I'm asking you, specifically, how do you solve the problem of the interim gap period? Propose to us something that would be acceptable to this body that takes care of that partial problem. I understand that you are against the whole ordinance.

Ms. Fernandez: It certainly should not trigger a breach of the ordinance, because in practice the parties may spend many months negotiating over a new contract.

City Attorney: Okay, then my suggestion is that you propose some good faith exception to the terms of the ordinance. That would resolve that particular problem.

Ms. Fernandez: I'm happy at your suggestion to propose that language. Thank you.

Councilwoman Gabelich: I have another question. It was a questioned I asked the last time we met and I don't believe I got an answer to it. Does the no-strike pledge only have to do with the organizing of a union, or does it carry over into the negotiations of their contract. Do you understand?

City Attorney: Well, it purports only to address the negotiation of the contract because it contemplates that the term of the contract will be a no-strike pledge. If you say it effectively requires organization then that's an argument one way or the other for or against the ordinance. The ordinance itself only addresses the contractual relationship between the employer and the organization. And again, it indicates there must be a no-strike pledge in existence.

Councilwoman Gabelich: My question is, does a no-strike pledge only have to do with the period of time that the unions are trying to organize in a hotel, or does it also have to do with the period of time that they are negotiating a contract.

City Attorney: It doesn't address that issue. It addresses the period of time in which the lease is in existence. In other words, let's take Ordinance A if the leases comes to the City and says I want to enter into a lease, there has to be in existence at that time, a no-strike pledge. How that no-strike pledge came about or came to be is not addressed by the ordinance.

Councilwoman Gabelich: Okay, that's the City side of it, so maybe my question should really be directed to you, sir.

Mr. Elmendorf: Well, it is fundamentally a City question. The City is saying to the leaseholder, you have to have a no-strike pledge. That no-strike pledge must last for the term of the lease. And so, therefore, not only must the no-strike pledge exist during organizing, it must also exist during the contract negotiations, during a contract, and if there is no organizing at all. If, for example, the unions did not organize the hotel, or attempted to organize, and the workers decided not to join the union, it would none-the-less the no-strike pledge would remain in effect. So fifty years from now if there was a no-strike pledge the union still could not attempt to strike or boycott or do any of those things, even if the workers were not represented by that union.

Councilwoman Gabelich: Okay, I'm still not getting the answer. I will tell you that I asked that when UNITE HERE was in my office. In our meeting Glen indicated that the no-strike pledge only applied to the organizing campaign and not to the organizing bargain process.

Mr. Elmendorf: That's incorrect.

City Attorney: The no-strike pledge would remain in existence during the life of the lease with the City. Once it kicked in there would be a no-strike pledge or there would be a requirement that there be a no-strike pledge in existence for the entire life of the lease.

Councilwoman Gabelich: I understand that in Milwaukee County, their ordinance, which is being heard by an appellate court, states specifically that the no-strike pledge applies in relation to an organizing campaign only and not to strikes over terms of a collective bargaining agreement. And actually, I think, Mr. Shannon, you commented on that.

City Attorney: Yes, we addressed that. The law is not, I don't think anybody in this room claims that the law is totally clear on these ordinances. We went into

that in some detail in my January 12th memo. One circuit has found such an ordinance, unconstitutional; another circuit has found it constitutional. Really the bottom line is, until such time that the Supreme Court rules on it, the law is going to be somewhat question mark.

Councilwoman Gabelich: Thank you.

Chair Richardson: Okay.

Mr. Kahn: I am happy to address questions concerning the Seventh Circuit Court of Appeals opinion just to assure you that the draft, you have been provided by your City Attorney is quite different. It does not go into details about what the employer should do in response to an organizing drive in contrast to what was involved in Milwaukee. Also in Milwaukee it was specific to just the organizing process and left the agency unprotected after the organizing from the negative affects of strikes and boycotts. The proposed ordinances you have would leave you completely protected. For that reason I don't think there would be any question that would be upheld by the courts.

Councilwoman Gabelich: I have another question on that.

Mr. Frahm: Let me say on that, that I have been in contact with the NLRB and the regional director, and they have directed me to inform them that if either A or B passes because they want to send it on to Washington D.C. for prosecution or whatever you want to call it.

Chair Richardson: Thank you, sir.

Councilwoman Gabelich: Okay, one more. If the no-strike pledge is in effect for the duration of the lease then I have a legal question, and that's for you, please. How can the union sign away the right to strike to employees that you don't even represent today?

Mr. Kahn: We would only be signing away the right of those employees once we represented them. We could only speak for ourselves, if we haven't yet organized the workforce. We can only say that union itself won't picket for the duration of this lease. Once workers chose to have union representation they then would be bound by that agreement, but as a practical matter, Madame Councilwoman, and as I've indicated before, the simple solution for all this that protects the City, and the hotels, and the workers, is an interest arbitration provision that settles up the terms of new collective bargaining agreements so that there aren't strikes that interfere with the City.

Councilwoman Gabelich: Thank you.

Chair Richardson: Okay, next question.

Chair Richardson read question #15 from City Attorney's memo dated February 9, 2006.

If the ordinance is to apply to new leases, what will the process require in terms of timing? In other words, will the employer/lessee be required to sign a Labor Peace Agreement with a union before negotiating a lease with the City? Alternatively, will the employer/lessee be permitted to enter into a lease and then have a period of time thereafter to enter into a Labor Peace Agreement?

Answer from the City Attorney: Under either version of the proposed ordinances the City would not execute a new lease until the Hospitality Operation has entered into a Labor Peace Agreement with a labor organization.

Chair Richardson: Okay, are there any comments or questions?

Ms. Fernandez: One last comment, which is in follow-up to the earlier questions concerning the strike issue. It's clear from the comments of Council for the union that you simply can't have, under the law, a no-strike agreement unless the union represents the employees. So it is not consistent to say that this ordinance does not require the union to represent anybody. Because the requirement is that there is a no-strike clause. And by the unions admission there cannot be a no-strike clause unless they represent the employees. They cannot bargain away employees rights to strike into the future, as I think Council for the union has, between them, has inconsistently suggested. One Council said that you cannot bargain away those rights, and I agree with that, unless you represent the employees. The other Council said, well, the no-strike clause would exist even in the future with employees who are not represented by us. Well that simply can't be the case.

Councilmember O'Donnell: As I understand this ordinance is permissive. You have to fall under a collective bargaining unit for it to apply, correct? If there were no collective bargaining unit then it would not apply. Is that correct?

Mr. Elmendorf: No that is not correct. Just to clarify the union would sign an agreement with the leaseholder, in which it would say, the union will not boycott, the union will not call a strike, the union will not picket. An individual worker who is not a member of a union could do that on their own. So that's the distinction that's being drawn. If the hotel is not represented by the union then the union is saying, well, we will not undertake these things. As part of an organizing process or otherwise, we will not boycott, we will not strike, and we will not do these other things. If there is a collective bargaining relationship then clearly all the members of the union, and thus the employees of that hotel would be bound by it. But

fundamentally the union speaks for itself. If workers at the hotel are members of that union then they are bound by those commitments, if they are not, they are not.

Councilmember O'Donnell: So a new hotel is built, there's no collective bargaining unit thus far, what happens?

Mr. Elmendorf: So you are saying if there is a Labor Peace Agreement in place?

Councilmember O'Donnell: Yes.

Mr. Elmendorf: Well, I think the question you are asking me is, I'm not sure what you mean by what happens, but the union could not call a strike, the union could not seek a boycott.

Councilmember O'Donnell: There would be no union there.

Mr. Elmendorf: Right. But the union has the ability to call a boycott on a hotel, or not. The union has the ability to picket or not.

Councilmember O'Donnell: Those are totally separate exercises from this ordinance.

Mr. Elmendorf: This ordinance would say to the leaseholder that you must seek an agreement from the union, which organizes hotel workers to prevent them from doing these things.

Councilmember O'Donnell: First they have to be organized?

Mr. Elmendorf: No. So if the union signs an agreement which says we will not boycott, whether the workers are members of the union or not the union cannot call a boycott, because it has signed an agreement to say that. So the union is agreeing not to call a boycott.

Councilmember O'Donnell: How are they going to find a union to sign an agreement with? It's a new hotel. Who are they going to sign it with?

Mr. Elmendorf: They are going to sign an agreement with unions that represent hotel workers as we described earlier. In this case it's UNITE HERE. If there were another union in the future that seeks to represent hotel workers then that would be a union they would need to sign an agreement with. But at the moment it's UNITE HERE.

Councilwoman Gabelich: Are you saying that you can take your union members from another hotel and you could go strike one of our hotels if they didn't have—if they weren't allowing you to come on....

Mr. Elmendorf: Well, not strike because what strike means is for the hotels—of employees of a given place to...

Councilwoman Gabelich: Okay. March...

Mr. Elmendorf: ...to walk off the job...

Councilwoman Gabelich: Boycott, cause havoc. You could do that?

Mr. Elmendorf: Yes. I wouldn't use the term cause havoc, but certainly. If the union decided to picket at any place, it has a free speech right to picket. And that's true of any group whether it's a union or a community group or you as an individual. If you want to go picket the Hyatt, you can. So in this case if the Hyatt needed to seek a Labor Peace Agreement with you then you would be agreeing not to picket.

Councilwoman Gabelich: So, I have a question. Have you chosen to use that method as you have been going across the country to unite?

Mr. Elmendorf: You mean has the union picketed or boycotted non-union hotels where it does not represent workers?

Councilwoman Gabelich: Yes, sir.

Mr. Elmendorf: Yes.

Councilwoman Gabelich: Thank you.

Mr. Elmendorf: Just to say, there have been strikes at a number of non union hotels in the Southern California area in recent years by those workers who are there. They are not members of the union, but they have chosen to strike.

Councilwoman Gabelich: But there may be members; there may be employees at those hotels that aren't choosing to be part of your union.

Mr. Elmendorf: As part of the organizing process. For example, at the Los Angeles Airport Hilton within recent months roughly 80 percent of the workers have taken short-term job actions that would be covered by this kind of labor peace agreement.

Councilwoman Gabelich: Okay then a follow up question is, and then in the hotels that you have been organizing is part of your negotiations to say that all future employees of those hotels must be union members?

Mr. Elmendorf: Well, any worker must decide on their own whether to join a union. The union certainly believes that employers should remain neutral to any organizing effort and has sought that in negotiations.

Councilwoman Gabelich: But would the negotiations say that a hotel must only hire--if they hire you, that you must become a member of a union?

Mr. Elmendorf: At a particular hotel for example, if you are saying if hotel X is a unionized hotel are all the members of that hotel union?

Councilwoman Gabelich: Correct.

Mr. Elmendorf: Yes.

Councilwoman Gabelich: Thank you.

Ada Briceno, President, Unite Here, Local 681, 13252 Garden Grove Blvd, Suite 200, Garden Grove, 92843: I just wanted to speak to Councilmember O'Donnell's question. Currently we are leafleting and we do hold boycotts throughout our nation with different struggles that we have within the hotel industry. Currently, here in Long Beach we are leafleting and that labor peace would preclude us in those areas. But right now even though we don't represent the workers it's very common that when we do have a struggle to support another hotel that is unionized or in a unionizing effort as James mentioned; and we do, do that. So just so you know we've done it in the past here, in Orange County and in Long Beach and we'll continue. It's part of our efforts to organize. Thank you.

Chair Richardson: Okay, I would like to do a little time check here. Could we have everyone who spoke come down and please state your name and address for the record? If we could just take care of that first.

My name is James Elmendorf, my address is 464 Lucas Avenue, Los Angeles, 90017.

Ada Briceno, 10412 Rambowood Drive, Stanton, 90680

Marta Fernandez of Jeffers, Mangles, Butler and Marmaro, 1900 Avenue of the Stars, Los Angeles.

Andrew Kahn, Davis, Cowell & Bowe, 595 Market Street, Suite 1400, San Francisco, 94105

Chair Richardson: What I would like to suggest is a couple of things because we only have about nine minutes left. For anyone who did not receive notification of this meeting and you would like notification of future meetings could you please come over here to our Clerk and give her your name and address and we can make sure you are properly notified of any upcoming meetings. The second thing I would like to suggest is that we stop here at Question #15 and we want to make sure that any members of the public who would like an opportunity to speak about what we have talked about so far, or anything else relating to this particular issue, we need to make sure that we give enough time to do so. So if there's no disagreement, I would like to stop at this time to do that. And while we are doing that, if you could please let the Clerk know if you would like to be notified of any upcoming meetings. And when you come down, please again state your name and address for the record. There's no one from the public who wants to speak? Wow? Okay.

At this time there was discussion as to when the next meeting would be held.

Chair Richardson: What we would cover is the last three questions, and most of them went through pretty quickly, and then what I would also like to suggest is that we have, and Mr. Shannon recommended to us last time, and I think everyone's been in agreement to this, I haven't heard any disagreement, is that we have a representative from LA Inc. come down and tell us what they did in LA, how they implemented, how it's worked, how it has not worked, so just give us that perspective. LA Inc, was formerly known as LA Convention and Visitors Bureau. So it's the group that was actually involved in this process in Los Angeles, which is what has been discussed. Mr. Shannon recommended that we have someone speak to that, so I think we could cover those three questions and have his presentation.

City Attorney: Could I make an additional suggestion, and of course, you are free to disregard it. My feeling in listening to this is you may want to channel the argument on either side of this issue and as I indicated earlier, what you might want to suggest to each party is they present to you in writing, and of course, have the opportunity to argue their point orally, two basic issues. The first issue is, what is the effective result of the passage of this ordinance; and whatever that effective result will be, will that result be unacceptable? To give you an example, the hotels are arguing, in essence, the effective result of this ordinance is that it will require the employer to be unionized. The other side indicates, no, that's not true. So that argument should be gone into. Then if you decide that the effective result is, in fact, that the employer be unionized, is that an acceptable result? That's really the core of the argument here. What is the effective result; and whatever you decide is the effective result, is that result acceptable to you?

Again, this is just my suggestion, if you suggest that the argument be channeled into answering those specific questions we might make a little more progress.

Chair Richardson: Well that would actually be question 19, Mr. Shannon. Also I did want to say Councilman O'Donnell offered that we could meet on Monday, the 22nd, which I'm not opposed to. Councilmember, Gabelich would that be a problem for you?

City Attorney: There may be a Redevelopment Agency meeting that night.

Councilmember O'Donnell: My only issue with holding the two meetings on the same day is I'm very concerned about handling the CDBG issue and I want it handled right. We're not voting on it that night, I hope? We're having a study session only.

Chair Richardson: I have no idea.

There was further discussion to agree on a date for the next meeting.

Chair Richardson: So if we are clear on this for everyone we will have our next meeting on Monday, May 22nd at 3:00 P.M. in this same location. The items we will discuss are questions on Mr. Shannon's memo Numbered 16, 17 and 18; and we are now adding a 19th question, which is what is the effective result of this ordinance and is that acceptable. We're asking that the Hospitality Alliance, as well as the labor organizations represented submit in writing, their responses to that question. So that's our meeting thus far.

Mr. Murchison: Councilwoman, did you also want to include LA coming down that day too?

Chair Richardson: Yes, I'm sorry, I meant to say that. It was those four questions and the representative from Los Angeles that would come down to testify.

Mr. Murchison: Did you also want those comments submitted by the hotel industry as it relates to what is consideration in terms of expansion and all of that, the issues?

Chair Richardson: Yes. And thank you for recapping that as well. On both ends, if you could submit to us what is your idea of when an amendment or change will apply.

Mr. Murchison: Is the anticipation in that hour one that we will be able to accomplish all of that?

Chair Richardson: Yes, I think so. If everything is submitted a head of time, sure.

Mr. Murchison: And you want us to submit it to....?

Chair Richardson: Submit it to the Clerk, who will submit it to the rest of us.

Mr. Murchison: Okay.

Chair Richardson: Is that appropriate, Mr. Shannon?

City Attorney: That's fine.

Ms. Fernandez: Madame Councilwoman, just a matter of clarification, I believe question number 8 was skipped, is that included in the four remaining questions.

Chair Richardson: Actually, I thought we did mention hotels versus motels.

Ms. Fernandez: Question number 8 relates to the Boston Harbor case.

Chair Richardson: Okay so we will do question Number 8, thank you very much. We will do 8, 16. 17, 18, 19, the presentation from Los Angeles, and we will also, prior to that, receive information regarding what would cause the trigger point for any changes to the amendment.

Mr. Frahm: And how about my questions that you said you would answer?

Chair Richardson: Yes, and I'm sorry, sir, we did also agree to get final clarification from our City Attorney regarding your question.

Mr. Frahm: You wouldn't mind if I submitted some formal written question also, right?

Chair Richardson: You may submit them but that doesn't mean we will cover them. It needs to be pertinent to what we are talking about.

Mr. Frahm: Well, it is pertinent. I will make sure they are pertinent.

Chair Richardson: Okay, thank you very much. All right, thank you very much everyone for coming and for your participation.

The meeting was adjourned.