

Iraheta, Alba

Subject: FW: Emergency Action Proposals from Hospitality Workers
Attachments: City of Pasadena Emergency Action Proposals from Hospitality Workers.pdf; ATT00001.htm; Pasadena - Hospitality Workplace Protection Ordinance - 3-13-20 - Draft for Circulation (2).pdf; ATT00002.htm

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Begin forwarded message:

From: Steve Madison <stevemadison@quinnemanuel.com>
Date: March 17, 2020 at 2:49:51 PM PDT
To: "Jomsky, Mark" <mjomsky@cityofpasadena.net>
Cc: "Mermell, Steve" <smermell@cityofpasadena.net>
Subject: FW: Emergency Action Proposals from Hospitality Workers

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Please circulate to council and appropriate executive committee members. Thx.

03/17/2020
Item 3

Hospitality Workplace Protection Ordinance

1__00 Definitions.

(a) “Adverse employment action” means an action that detrimentally and materially affects the terms, conditions, or privileges of employment, including, but not limited to, any act to discharge, reduce in compensation, reduce work hours, alter established work schedules, increase workload, impose fees or charges, or change duties of a hospitality worker.

(b) “Affected hospitality facility” means: (1) in the event of a change in control as defined in subsection (c)(1) below, the hospitality facility or discrete portion of the hospitality facility that has been the subject of the change in control and remains in operation following the change in control; or (2) in the event of a change in control as defined in subsection (c)(2) or (c)(3) below, the hospitality facility that remains in operation following the change in control of that hospitality facility.

(c) “Change in control” means: (1) any sale, assignment, transfer, contribution, or other disposition of all or substantially all of the assets used in the operation of a hospitality facility or a discrete portion of the hospitality facility that continues in operation as a hospitality facility; (2) any sale, assignment, transfer, contribution, or other disposition of a controlling interest (including by consolidation, merger, or reorganization) of a hospitality employer or any person who controls a hospitality employer; or (3) any other event or sequence of events (including a purchase, sale, lease, or termination of a management contract or lease) that causes the identity of the hospitality employer at a hospitality facility to change. For purposes of this Article, a change in control shall be defined to occur on the date of execution of the document effectuating the change in control.

(d) “City” means the City of Pasadena.

(e) “Eligible hospitality worker” means a hospitality worker employed by an incumbent hospitality employer at the time of a change in control and who has been so employed for at least two (2) months prior to the change in control.

(f) “Event center” means a stadium, arena, concert hall, club, convention center, or like venue with a total capacity of at least 1,000 people that hosts concerts, shows, conventions, or sporting events.

(g) “Hospitality employer” means any person who owns, controls, or operates a hospitality facility in the City, and includes any person or contractor who, in a managerial, supervisory, or confidential capacity, employs workers to provide services at a hospitality facility in conjunction with the hospitality facility’s purpose.

(h) “Hospitality facility” means a hotel, event center, or private university cafeteria in the City.

(i) “Hospitality worker” means any person who is employed by a hospitality employer to provide services at a hospitality facility. “Hospitality worker” does not include a managerial, supervisory or confidential employee.

(j) “Hospitality worker retention period” means the period of time beginning on the date of a change in control and extending to ninety (90) days from the first date that an affected hospitality facility is open to the public after a change in control.

(k) “Hotel” means an establishment that provides temporary lodging in the form of overnight accommodations in guest rooms to transient patrons who maintain a permanent place of residence elsewhere for payment for periods of thirty (30) consecutive calendar days or less, and

may provide additional services, such as conference and meeting rooms, restaurants, bars, or recreation facilities available to guests or to the general public. "Hotel" includes motor lodges, motels, apartment hotels, and tourist courts meeting the definition set forth above. "Hotel" also includes any contracted, leased or sublet premises operated in conjunction with a hotel or that is used for the primary purpose of providing services at a hotel. "Hotel" does not include a hostel, which is a lodging facility primarily characterized by dormitory-style accommodations, shared bathrooms, and reservations of beds rather than rooms. "Hotel" also does not include corporate housing, rooming houses, boarding houses, or private residential clubs, single-room occupancy housing, vacation rentals, or bed and breakfast establishments within a single-unit residence.

(l) "Hotel employer" means any person who owns, controls, or operates a hotel in the City, and includes any person or contractor who, in a managerial, supervisory, or confidential capacity, employs workers to provide services at a hotel in conjunction with the hotel's purpose.

(m) "Incumbent hospitality employer" means a hospitality employer who owns, controls, or operates a hospitality facility prior to a change in control of the hospitality facility or of a discrete portion of the hospitality facility that continues to operate as a hospitality facility after the change in control.

(n) "Private university cafeteria" means a facility that provides food and beverage services to students, staff, faculty, and/or employees at a private four-year university within the City.

(o) "Short-term rental cleaning contractor" means a person or business entity of any kind that provides cleaning services to one or more hosts at short-term rental facilities, as defined in Section 12.22(A)(32) of this Code, and which employs or contracts five (5) or more persons to perform such cleaning work.

(p) "Room attendant" means any person who is employed by a hotel employer to provide services at a hotel whose principal duties are to clean and put in order guest rooms in a hotel.

(q) "Successor hospitality employer" means a hospitality employer who owns, controls, or operates a hospitality facility after a change in control.

1__01 Fair Discharge and Recall of Workers.

(a) Fair Discharge.

A hospitality employer shall not discharge a hospitality worker except for a bona fide economic reason or just cause.

(i) Discharges for Bona Fide Economic Reasons.

(1) The hospitality employer shall promptly provide a written explanation to any discharged employee of the precise bona fide economic reason(s) for the discharge.

(2) A discharge shall not be considered to be based on bona fide economic reasons unless supported by the hospitality employer's business records showing a reduction in revenue or profit.

(3) Discharges based on bona fide economic reasons shall be done in reverse order of length of service within each job classification at the hospitality facility where the discharge is to occur, computed in accordance with subsection (4) of this section, so that employees most senior in length of service shall be retained the longest.

(4) Length of service shall be computed from the first date of employment, unless such

service has been interrupted by an absence from the payroll of more than six months, in which case length of service shall be computed from the date of restoration to the payroll. Length of service of a hospitality worker shall be deemed not to have been interrupted if such absence was the result of military service, illness, educational leave, leave authorized by law, or discharge in violation of any local, state or federal law.

(ii) Discharges for Just Cause.

(1) In determining whether a hospitality worker has been discharged for just cause, the fact finder shall consider, in addition to any other relevant factors, whether:

- (a) The hospitality worker violated the hospitality employer's policy, rule or practice;
 - (b) The hospitality worker knew or should have known of the hospitality employer's policy, rule or practice;
 - (c) The hospitality worker provided relevant and adequate training to the hospitality worker;
 - (d) The hospitality worker's policy, rule or practice was reasonable and applied consistently;
- and
- (e) The hospitality worker undertook a fair and objective investigation prior to discharging the employee.

(2) A discharge shall not be considered based on just cause unless the hospitality employer has utilized progressive discipline; provided, however, that the hospitality employer may not rely on discipline issued more than one year before the purported just cause discharge as a step in progressive discipline.

(3) The hospitality employer shall promptly provide a written explanation to any discharged hospitality worker of the precise reasons for the just cause discharge.

(4) The hospitality employer shall bear the burden of proving just cause by a preponderance of non-hearsay evidence in any proceeding brought pursuant to this Article.

(5) The requirements to satisfy just cause as set forth in this subsection 1.01(a)(ii) shall apply only to hospitality workers employed by the hospitality employer for three (3) months or more at the date of discharge. Just cause shall be presumed in the case of employees with fewer than three (3) months of tenure.

(b) Preference for Qualified Discharged Employees.

A hospitality employer shall offer in writing, to the last known address of hospitality workers discharged for reasons other than just cause, all positions which are or become available after the effective date of this Article for which the discharged workers are qualified. This obligation shall apply irrespective of whether a worker was discharged before or after the effective date of this Article.

(iii) Determination of Qualified Employees.

A discharged employee is qualified for a position if the employee: (1) held the same or similar position at the same site of employment at the time of the employee's most recent separation from active service with the employer; or (2) is or can be qualified for the position with the same training that would be provided to a new employee hired into that position. The employer shall offer positions to eligible discharged employees in an order of preference corresponding to

categories (1) and (2) in the preceding sentence. Where more than one employee is entitled to preference for a position, the employer shall offer the position to the employee with the greatest length of service with the employer at the hospitality facility.

(iv) Time Limit.

A hospitality worker discharged for bona fide economic reasons who is offered a position pursuant to this Article shall be given no less than ten days in which to accept or decline the offer.

1__02 Hospitality Worker Retention.

(a) Requirement of Notice of Change in Control.

(i) Within five days of a change in control, a successor hospitality employer shall post written notice of the change in control at the location of the affected hospitality facility. This written notice shall remain posted during any closure of the affected hospitality facility and for six months following the first date on which the affected hospitality facility is open to the public under the successor hospitality employer.

(ii) This written notice shall include, but not be limited to, the name and contact information of the incumbent hospitality employer, the name and contact information of the successor hospitality employer, and the effective date of the change in control.

(iii) This written notice shall be posted in a conspicuous place at the affected hospitality facility and shall be readily visible to eligible hospitality workers, other employees, and applicants for employment.

(b) Retention of Employees following Change in Control.

(i) Within fifteen days of a change in control, or within fifteen days of the effective date of this Article if the change in control occurred prior to the Article's effective date, an incumbent hospitality employer shall provide a successor hospitality employer with a list of eligible hospitality workers. This list shall include the name, date of hire, and job classification of each eligible hospitality worker. A successor hospitality employer shall be required to maintain and hire from this list during the hospitality worker retention period.

(ii) A successor hospitality employer shall, during the hospitality worker retention period, offer each eligible hospitality worker employment for no less than ninety days, except that:

(1) A successor hospitality employer shall not be required to offer employment to an eligible hospitality worker if the successor hospitality employer has documented evidence that the eligible hospitality worker was terminated for just cause as defined in section 1__01 of this Article while employed by the incumbent hospitality employer; and

(2) If a successor hospitality employer determines during the hospitality worker retention period that it requires fewer hospitality workers than were required by the incumbent hospitality employer, the successor hospitality employer shall retain eligible hospitality workers pursuant to the terms of a relevant collective bargaining agreement, if any, or by seniority and experience within each job classification to the extent that comparable job classifications exist.

(iii) An eligible hospitality worker retained pursuant to this Section shall be employed under terms and conditions established by the successor hospitality employer as required by law and shall not be discharged except for just cause as defined in section 1__01 of this Article.

(iv) An offer of employment made pursuant to subsection (b) shall be made in writing and shall remain open for at least ten (10) business days from the date of the offer.

(v) A successor hospitality employer shall retain written verification of each offer of employment made pursuant to subsection (b). This verification shall include the name, address, date of hire, and job classification of the eligible hospitality worker to whom the offer was made. A successor hospitality employer shall retain the required verification for no less than three (3) years from the date the offer is made.

(vi) At the end of the hospitality worker retention period, a successor hospitality employer shall provide each hospitality worker retained pursuant to this Section with a written performance evaluation. If the hospitality worker's performance was satisfactory, the successor hospitality employer shall consider offering the hospitality worker continued employment under the terms and conditions established by the successor hospitality employer and as required by law. A successor hospitality employer shall retain the written performance evaluation required under this subsection for no less than three years from the date it is issued.

(vii) The rights to retention set forth in this Section do not apply to any managerial, supervisory, or confidential employee and do not include the right to retain any supervisory or management responsibility.

(viii) A successor hospitality employer shall comply with the obligations to retain eligible hospitality workers as set forth in this Section irrespective of whether a change in control occurred prior to or after the effective date of this Article.

1__.03 Public Hygiene Training Requirement.

(a) The City Administrative Officer, or designee, shall establish a process whereby the City will certify and designate a "Public Hygiene Training Organization." The certification and designation of the Public Hygiene Training Organization shall be carried out by the City Administrative Officer, or designee, subject to ratification by the City Council.

(b) In order to become certified as the designated Public Hygiene Training Organization, the organization shall meet requirements set forth by the City Administrative Officer, or designee, that shall include, but not be limited to, the following:

(1) The Public Hygiene Training Organization must have experience providing training to hospitality workers or immigrant low-wage workers, utilize interactive teaching strategies that engage across multiple literacy levels, and provide trainers and educators who are culturally competent and fluent in the language or languages that workers understand.

(2) The Public Hygiene Training Organization shall offer a "Public Hygiene Training Program" that includes no less than six hours of training, including live and interactive instruction, on the following elements, except that the City Administrative Officer, or designee, may determine that any element below is separately and sufficiently required by State or local law, in which case the element may be eliminated and the total training time reduced accordingly:

(A) Best practices for effective cleaning techniques to prevent the spread of viral and bacterial disease, including spread of the COVID-19 Coronavirus and like diseases;

(B) Best practices for identifying and avoiding insect or vermin infestations;

(C) Best practices for identifying and responding to suspected instances of human trafficking, domestic violence, or violent or threatening conduct;

(D) Best practices for identifying and responding to the presence of other potential criminal activity;

(E) Worker rights and employer responsibilities under this Article and Articles 4, 6, 8, and 9 of Chapter XVIII of this Code.

(3) The Public Hygiene Training Organization may coordinate with a hospitality employer to ensure that training content aligns where appropriate with the hospitality employer's policies and procedures. Ultimate discretion regarding training content shall remain with the Public Hygiene Training Organization, subject to requirements set forth by the City Administrative Officer, or designee.

(4) The Public Hygiene Training Organization shall administer a "Public Hygiene Examination" to workers who complete its training program. The Public Hygiene Examination shall test basic proficiency in the required training elements.

(5) The Public Hygiene Training Organization shall promptly issue a "Public Hygiene Certificate" to any person who successfully completes its Public Hygiene Training Program and Public Hygiene Examination. A Public Hygiene Certificate shall be valid for a period of five years.

(6) The Public Hygiene Training Organization shall offer a right of review to an individual who completes the Public Hygiene Training Program but does not successfully complete the Public Hygiene Examination.

(c) Each hospitality employer and each short-term rental cleaning contractor shall contract with the certified Public Hygiene Training Organization to, no less than annually, conduct a Public Hygiene Training Program, administer a Public Hygiene Examination, and issue a Public Hygiene Certificate to each person who has successfully completed the Public Hygiene Training Program and Public Hygiene Examination. Each hospitality employer and each short-term rental cleaning contractor shall document compliance with the training requirement set forth in this Section by completing and signing a form as required by the City to certify that the training was conducted. The Public Hygiene Training Organization that provides such a training shall submit a report to the City within five (5) days of the training to document the date on which the training was held and the names of all workers who received Public Hygiene Certificates.

(d) No hospitality employer shall employ a hospitality worker for more than one hundred twenty (120) days unless the hospitality worker presents the hospitality employer with a valid Public Hygiene Certificate.

(e) No Host, as defined in Section 12.22(A)(32) of this Code, shall contract with a short-term rental cleaning contractor unless the short-term rental cleaning contractor presents the Host with a valid Public Hygiene Certificate for each person performing or expected to perform cleaning services for the Host.

(f) This subsection shall become effective ninety (90) days from the effective date of the ordinance codified in this Article.

(g) Each hospitality employer and each short-term rental cleaning contractor shall retain records sufficient to demonstrate compliance with this Section, including a copy of a valid Public Hygiene Certificate for each hospitality worker.

1__04 Measures to Facilitate Handwashing.

(a) Every hospitality employer shall authorize and permit all hospitality workers to take a total of at least fifteen (15) minutes per four (4) hours, or major fraction thereof, worked, in addition to the rest periods to which they are entitled under applicable California Industrial Commission Orders, during which they may wash their hands or attend to other matters of hygiene. Such hygiene-related periods shall be counted as hours worked for which there shall be no deduction from wages. Nothing in this section shall be interpreted as an attempt to modify employees' rights under California Industrial Commission Orders to take rest periods or the purposes for which such rest periods may be taken.

(b) Room attendants employed by hotel employers shall adhere to the following rules to promote public health and hygiene: (1) No room attendant shall be penalized for failing to meet a room quota reflecting the total number of rooms she must clean during the course of a work shift; (2) Hotel employers shall ensure that room attendants are able to wash their hands with soap after cleaning each hotel room or public area within a hotel; (3) Hotel employers shall reduce room quotas assigned to hotel room attendants by one (1) room credit if the room quota in place before the outbreak of the COVID-19/Coronavirus was sixteen (16) or fewer room credits and by two (2) rooms credits if the room quota in place before the outbreak of the COVID-19/Coronavirus was seventeen (17) or more room credits, where one (1) room credit is equivalent to one standard guest room.

1__.05 Notice.

A hospitality employer shall provide written notice of the hospitality workers' rights set forth in this Article to each hospitality worker at the time of hire or on the effective date of the ordinance codified in this Article, whichever is later. Such written notice shall be provided in English, Spanish and any other language spoken by five percent or more of the hospitality workers employed by the hospitality employer.

1__.06 Supersession by Bona Fide Collective Bargaining Agreement.

The provisions of Sections 1__.01 and 1__.02, or any part thereof, may be waived pursuant to a bona fide collective bargaining agreement, but only if the waiver is expressly set forth in clear and unambiguous written terms. Neither party to a collective bargaining relationship may waive or supersede any provision of this Article by means of unilaterally imposed terms and conditions of employment.

1__.07 Retaliatory action prohibited.

No person shall take an adverse employment action against a hospitality worker for exercising rights protected under this Article. There shall be a rebuttable presumption that an adverse employment action taken against a hospitality worker within ninety days of the hospitality worker's exercise of rights under this Article was taken in retaliation for the exercise of such rights.

1__.08 Administrative regulations.

The City Administrative Officer, or designee, is authorized to adopt administrative regulations that are consistent with and in furtherance of the provisions of this Article. Violations of the administrative regulations adopted pursuant to this Section shall constitute violations of this Article and shall subject the violator to the penalties set forth in this Article.

1__.09 Civil remedies.

(a) **Civil Action.** The City or any aggrieved person may enforce the provisions of this Article by means of a civil action.

(b) **Injunction.** Any person who commits an act, proposes to commit an act, or engages in any pattern or practice that violates this Article may be enjoined therefrom by a court of competent jurisdiction. An action for injunction under this subsection may be brought by any aggrieved person, by the City Attorney, or by any person or entity who will fairly and adequately represent the interests of an aggrieved person or persons.

(c) **Damages and Penalties.** Any person who violates the provisions of this Article is liable for any actual damages suffered by any aggrieved person or for statutory damages up to the amount of one hundred dollars per aggrieved person per day, except that statutory damages for failure to maintain records shall not exceed one thousand dollars per day in total. For willful violations, the amount of monies and penalties to be paid under this subsection shall be trebled.

(d) **Attorneys' Fees and Costs.** In a civil action brought under this Section, the court shall award a prevailing plaintiff reasonable attorneys' fees and costs, including expert witness fees.

(e) **Cumulative Remedies.** The remedies set forth in this Article are cumulative. Nothing in this Article shall be interpreted as restricting, precluding, or otherwise limiting a separate or concurrent criminal prosecution under this Code or State law.

1__.10 Effective Date.

This Article shall become effective on _____.

CITY OF PASADENA EMERGENCY ACTION PROPOSALS FROM HOSPITALITY WORKERS RESPONDING TO THE CORONAVIRIS OUTBREAK

1. PREVENTION: HAND WASHING AND SICK DAYS

- Mandate that all Event Center and Hotel employers give employee an extra 15 minutes of break time every 4 hours for washing hands and sanitizing.
- In hotels, housekeepers should have an affirmative reduction in workload equivalent to 30 minutes of work (typically one “room credit”), and must not be penalized if they do not complete daily room cleaning quotas, so that they are able to perform thorough cleaning and have time to frequently wash their hands. Together, this means three legislative actions: A. Suspend room quotas for hotel housekeepers until further notice, B. mandate that all housekeepers be given a break after each room to wash their hands and disinfect, C. permanently reduce room quotas by 1 credit if the room quota is normally 16 or less, and by two credits if the room quota is more than 16.
- Event Center and Hotel employers should provide a minimum of 10 sick days per year to employees, which the Cities of Los Angeles and Santa Monica already have (LA has 12 and Santa Monica has 9).

2. CONTROL LAYOFFS

- Protect workers with fair layoff and recall by seniority rights, so laid off workers are ensured a job when the crisis subsides. *See Santa Monica Municipal Code Section 4.66.10 et seq.*
- Adopt a “just cause” provision to prevent unscrupulous managers from trumping up reasons to fire workers. *See Philadelphia Municipal Code Section 9-4700 et seq.*
- Adopt worker retention to protect workers through bankruptcy and subcontracting. *See Santa Monica Municipal Code Chapter 4.67.050; Los Angeles Municipal Code Section 183.00 et seq.*

3. TRAINING: CENTRALIZE PUBLIC HEALTH TRAINING FOR HOSPITALITY WORKERS

- All housekeepers and cooks in Event Centers and Hotels should be trained on public health by a single non-profit authority not controlled by employers. A model is the “public housekeeping” training law adopted last year by the City of Santa Monica. *See Santa Monica Municipal Code Section 4.67.060*

4. ENFORCE THE CITY’S SHORT TERM RENTAL LAW, STARTING WITH MULTI-UNIT BUILDINGS AND RENT CONTROLLED APARTMENTS

- Public safety measures in the hospitality industry are not meaningful if a significant part of our hotel units are being run through illegal, unregulated operators. This is especially true when short-term rental businesses occupy entire buildings or multiple units in a building and take over rent controlled units, which are often in larger, denser buildings.