

Introduced by: _____

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF PASADENA ADDING TITLE 5, CHAPTERS 5.80 AND 5.82, TO THE PASADENA MUNICIPAL CODE REGARDING RECALL PROVISIONS FOR CERTAIN WORKERS LAID OFF DURING THE COVID-19 PANDEMIC AND RECALL PROVISIONS FOR CERTAIN WORKERS WHEN A CHANGE OF OWNERSHIP OR CONTROL OCCURS RESULTING FROM THE COVID-19 PANDEMIC

The People of the City of Pasadena ordain as follows:

SECTION 1. This ordinance, due to its length and corresponding publication costs, will be published by title and summary as permitted by Section 508 of the Charter of the City of Pasadena. The approved summary of this ordinance is as follows:

“Summary

Ordinance No. _____. This ordinance adds Pasadena Municipal Code Title 5, Chapter 5.80 “COVID-19 Right of Recall” and Chapter 5.82 “COVID-19 Worker Retention Ordinance.” Ordinance No. _____ shall take effect upon publication by title and summary. The full text of the ordinance is on file in the Clerk’s Office.”

SECTION 2. Pasadena Municipal Code Title 5, Chapter 5.80 – COVID-19 Right of Recall is added to read as follows:

"Chapter 5.80 COVID-19 Right of Recall.

5.80.010 Purpose.

As a result of the COVID-19 pandemic and "Safer at Home" orders by California Governor Gavin Newsom and the City's Health Officer, issued to protect the public health and welfare, many workers in the City of Pasadena are facing significant job and economic insecurity. Workers in the hospitality industry are especially impacted by lay-offs as a result of the pandemic because travel has been severely halted and businesses in the industry cannot easily adjust to the lack of patronage during the crisis. To ensure fair employment practices during the economic upheaval resulting from the pandemic and to reduce the demand for government-funded social services, the City hereby enacts legal protections for laid off workers.

5.80.020 Definitions.

For purposes of this chapter, the following definitions shall apply:

- A. "City" means the City of Pasadena.**
- B. "Employer" means an owner, operator or manager of a residential building in the City designated or used for public lodging or other related service for the public and either contains 50 or more guestrooms or has earned gross receipts in 2019 exceeding \$5 million. An Employer includes the owner, operator, manager or lessee of any restaurant physically located on hotel premises.**
- C. "Laid Off Worker" means any person who, in a particular week, performs at least two hours of work within the geographical boundaries of the City for an Employer, has a Length of Service with the Employer of six months or more, and whose most recent separation from active employment by the Employer occurred on or after March 4, 2020, as a result of a lack of business, a reduction in work force or other economic, non-disciplinary reason. This ordinance creates a rebuttable presumption that any termination occurring on or after March 4, 2020, was due to a non-disciplinary reason.**
- D. "Length of Service" means the total of all periods of time during which a Worker has been in active service to an Employer, including periods of time when the Worker was on leave or vacation.**

Section 5.80.030 Right of Recall.

A. Priority for Priority for Laid Off Workers. An Employer shall make the offer to a Laid Off Worker, in writing, to the last known mailing address, electronic mail, and text message phone number, of any position which is or becomes available after the effective date of this chapter for which the Laid Off Worker is qualified. A Laid Off Worker is qualified - and must be offered a position in the order of priority below - if the Laid Off Worker: (1) held the same or similar position at the same site of employment at the time of the Laid Off Worker'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 worker hired into that position. If more than one Laid Off Worker is entitled to preference for a position, the Employer shall offer the position to the Laid Off Worker with the greatest Length of Service in (1) and then (2) with the Employer at the employment site.

B. Time Limit. A Laid Off Worker who is offered a position pursuant to this chapter shall be given no less than five (5) business days in which to accept or decline the offer.

Section 5.80.040 Enforcement.

A. A Laid Off Worker may bring an action in the Superior Court of the State of California against an Employer for violations of this chapter and may be awarded the following by the court:

- 1. Hiring and reinstatement rights pursuant to this chapter.**
- 2. All actual damages (including, but not limited to, lost pay and benefits) suffered by the Laid Off Worker and for statutory damages in the sum of \$1,000, whichever is greater.**
- 3. Punitive damages, pursuant to California Civil Code Section 3294.**
- 4. The court shall award reasonable attorneys' fees to (a) a Laid off Worker who prevails in any such enforcement action; and (b) an Employer who prevails and obtains a court determination that the Laid Off Worker's lawsuit was frivolous.**

B. A civil action by a Laid Off Worker alleging a violation of any provision of this chapter shall commence only after the following requirements have been met.

1. The Laid Off Worker provides written notice to the Employer of the provisions of this chapter alleged to have been violated and the facts to support the alleged violation; and

2. The Employer is provided 15 days from receipt of the written notice to cure any alleged violation.

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

Section 5.80.050 Exemption For Collective Bargaining Agreement.

A collective bargaining agreement in place on the effective date of this chapter that contains a right of recall provision shall supersede the provision this chapter. When the collective bargaining agreement expires or is otherwise open for renegotiation, the provisions of this chapter may only be waived if the waiver is explicitly set forth in the agreement in clear and unambiguous terms. If a collective bargaining agreement is in place on the effective date of this chapter but the agreement does not include a right of recall provision, this chapter applies. A collective bargaining agreement may be amended at any time to explicitly waive with clear and unambiguous terms the provisions of this chapter.

Section 5.80.060 No Waiver of Rights.

Except for a collective bargaining agreement provision made pursuant to Section 5.80.050, any waiver by a worker of any or all provisions of this chapter shall be deemed contrary to public policy and shall be void and unenforceable. Other than in connection with the bona fide negotiation of a collective bargaining agreement, any request by an Employer to a worker to waive rights given by this chapter shall constitute a violation of this chapter.

Section 5.80.070 Severability.

If any subsection, sentence, clause or phrase of this chapter is for any reason held to be invalid or unconstitutional by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this chapter. The City Council hereby declares that it would have adopted this chapter and each and every subsection, sentence, clause and phrase thereof not declared

invalid or unconstitutional, without regard to whether any portion of the chapter would be subsequently declared invalid or unconstitutional.

Section 5.80.080 Report.

No later than one year after the City Council terminates its declaration of local emergency related to COVID-19, staff shall provide a written report to the City Council on the effectiveness of the provisions of this chapter in protecting workers' stability of employment, recommendations for additional protections that further the intent of this chapter, and whether the provisions of the chapter are still necessary based on the City's recovery from the impacts of the COVID-19 pandemic.

Section 5.80.090 Retaliatory Action Prohibited.

No Employer shall discharge, reduce in compensation, or otherwise discriminate against any worker for opposing any practice proscribed by this chapter, for participating in proceedings related to this chapter, for seeking to exercise his or her rights under this chapter by any lawful means, or for otherwise asserting rights under this chapter.

Section 5.80.100 Rules and Regulations.

The City Manager may adopt guidelines, rules, and regulations that will be updated when necessary consistent with this chapter for clarifying any of the provisions of this chapter. A copy of all adopted administrative rules and regulation shall be on file in the City Manager's office.

SECTION 3. Pasadena Municipal Code Title 5, Chapter 5.82 – COVID-19 Worker Retention Ordinance is added to read as follows:

"Chapter 5.82 COVID-19 Worker Retention Ordinance.

5.82.010 Purpose.

As a result of the COVID-19 pandemic and "Safer at Home" orders by California Governor Gavin Newsom and the City's Health Officer, issued to protect the public health and welfare, many workers in the City of Pasadena are facing significant job and economic insecurity. Workers in the hospitality industry are especially impacted by lay-offs as a result of the pandemic because travel has been severely halted and businesses in the industry cannot easily adjust to the lack of patronage during the crisis. To ensure fair employment

practices during the economic upheaval resulting from the pandemic and to reduce the demand for government-funded social services, the City hereby enacts legal protections for workers when a business changes ownership.

5.82.020 Definitions.

For purposes of this chapter, the following definitions shall apply:

A. **“Business” means an owner, operator or manager of a hotel or residential building in the City designated or used for public lodging or other related service for the public and either contains 50 or more guestrooms or has earned gross receipts in 2019 exceeding \$5 million. A “Business” includes the owner, operator, manager, or lessee of any restaurant physically located on hotel premises.**

B. **“Change in Control” means any sale, assignment, transfer, contribution, or other disposition of all or substantially all of the assets used in the operation of a Business, or a discrete portion of a Business that continues to operate as the same type of Business of the Incumbent Business Employer, or any Person who controls the Incumbent Business Employer.**

C. **“City” means the City of Pasadena.**

D. **“Employment Commencement Date” means the date on which a Worker retained by the Successor Business Employer pursuant to this chapter commences work for the Successor Business Employer in exchange for compensation under the terms and conditions established by the Successor Business Employer or as required by law.**

E. **“Incumbent Business Employer” means the Person who owns, controls, or operates a Business prior to the Change in Control.**

F. **“Length of Service” means the total of all periods of time during which a Worker has been in active service to an Employer, including periods of time when the Worker was on leave or vacation.**

G. **“Person” means an individual, corporation, partnership, limited liability company, business trust, estate, trust, association, joint venture, agency, instrumentality, or any other legal or commercial entity, whether domestic or foreign.**

H. “Successor Business Employer” means the Person who owns, controls, or operates a Business after the Change in Control.

I. “Transfer Document” means the purchase agreement or other documents creating a binding arrangement to effect the Change in Control.

J. “Worker” means an individual employed by the Incumbent Business Employer: (1) who has a Length of Service with the Incumbent Business Employer for six months or more; (2) whose primary place of employment is a Business subject to a Change in Control; (3) who is employed or contracted to perform work functions directly by the Incumbent Business Employer, or by a Person who has contracted with the Incumbent Business Employer to provide services at the Business subject to the Change in Control; and (4) who worked for the Incumbent Business Employer on or after March 4, 2020, and prior to the execution of the Transfer Document. “Worker” does not include a managerial, supervisory, or confidential employee.

Section 5.82.030 Business Worker Retention.

A. Business Employer’s Responsibilities.

1. The Incumbent Business Employer shall, within 15 days after execution of a Transfer Document, provide to the Successor Business Employer the name, address, date of hire, and occupation classification of each Worker.

2. The Successor Business Employer shall maintain a preferential hiring list of Workers identified by the Incumbent Business Employer as set forth in Subsection A(1) of this section, and shall be required to hire from that list for a period beginning upon the execution of the Transfer Document and continuing for six months after the Business is open to the public under the Successor Business Employer.

3. If the Successor Business Employer extends an offer of employment to a Worker, the Successor Business Employer shall retain written verification of that offer for no fewer than three years from the date the offer was made. The verification shall include the name, address, date of hire, and occupation classification of each Worker.

B. Transition Employment Period.

1. A Successor Business Employer shall retain each Worker hired pursuant to this chapter for no fewer than 90 days following the Worker's Employment Commencement Date. During the 90-day transition employment period, a Worker shall be employed under reasonable terms and conditions of employment or as required by law. The Successor Business Employer shall provide a Worker with a written offer of employment for the transition period. This offer shall remain open for at least ten business days from the date of the offer.

2. If, within the period established by Section 5.82.030(A)(1), the Successor Business Employer determines that it requires fewer Workers than were required by the Incumbent Business Employer, the Successor Business Employer shall offer the position to the Worker in the same occupational classification with the greatest Length of Service with the Incumbent Business Employer.

3. During the 90-day transition employment period, the Successor Business Employer shall not discharge without cause a Worker retained pursuant to this chapter.

4. At the end of the 90-day transition employment period, the Successor Business Employer shall perform a written performance evaluation for each Worker retained pursuant to this chapter. If the Worker's performance during the 90-day transition employment period is satisfactory, the Successor Business Employer shall consider offering the Worker continued employment under the terms and conditions established by the Successor Business Employer or as required by law. The Successor Business Employer shall retain a record of the written performance evaluation period of no fewer than three years.

C. Notice of Change in Control.

1. The Incumbent Business Employer shall post written notice of the Change in Control at the location of the affected Business within five business days following the execution of the Transfer Document. Notice shall remain posted during any closure of the Business and for six months after the Business is open to the public under the Successor Business Employer.

2. Notice shall include, but not be limited to, the name of the Incumbent Business Employer and its contact information, the name of the Successor Business Employer and its contact information, and the effective date of the Change in Control.

3. Notice shall be posted in a conspicuous place at the Business visible to Workers, other employees, and applicants for employment.

Section 5.82.040 Retaliatory Action Prohibited.

No Incumbent or Successor Business Employer employing a Worker shall discharge, reduce in compensation, or otherwise discriminate against any Worker for opposing any practice proscribed by this chapter, for participating in proceedings related to this chapter, for seeking to exercise his or her rights under this chapter by any lawful means, or for otherwise asserting rights under this chapter.

Section 5.82.050 Enforcement.

A. A Worker may bring an action in the Superior Court of the State of California against an Incumbent Business Employer or Successor Business Employer for violations of this chapter and may be awarded the following by the court:

1. Hiring and reinstatement rights pursuant to this Chapter. For a Worker, the 90-day transition employment period begins on the Worker's Employment Commencement Date with the Successor Business Employer.

2. Front or back pay for each day the violation continues, which shall be calculated at a rate of compensation not less than the higher of:

a. The average regular rate of pay received by the Worker during the last three years of their employment in the same occupation classification; or

b. The most recent regular rate received by the Worker while employed by either the Business, Incumbent Business Employer, or the Successor Business Employer.

3. Value of the benefits the Worker would have received under the Successor Business Employer's benefits plan.

B. A civil action by a Worker alleging a violation of any provision of this chapter shall commence only after the following requirements have been met.

1. The Worker provides written notice to the Incumbent Business Employer and/or the Successor Business Employer of the provisions of this

chapter alleged to have been violated and the facts supporting the alleged violation; and

2. The Incumbent Business Employer and/or the Successor Business Employer is provided 15 days from receipt of the written notice to cure any alleged violation.

C. The court shall award reasonable attorneys' fees to (a) a Worker who prevails in any such enforcement action; and (b) a Business employer who prevails and obtains a court determination that the Worker's lawsuit was frivolous.

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

Section 5.82.060 Exemption For Collective Bargaining Agreement.

A collective bargaining agreement in place on the effective date of this chapter that contains a worker retention provision shall supersede the provision this chapter. When the collective bargaining agreement expires or is otherwise open for renegotiation, the provisions of this chapter may only be waived if the waiver is explicitly set forth in the agreement in clear and unambiguous terms. If a collective bargaining agreement is in place on the effective date of this chapter but the agreement does not include a worker retention provision, this chapter applies. A collective bargaining agreement may be amended at any time to explicitly waive with clear and unambiguous terms the provisions of this chapter.

Section 5.82.070 No Waiver of Rights.

Except for a collective bargaining agreement provision made pursuant to Section 5.82.050, any waiver by a Worker of any or all provisions of this chapter shall be deemed contrary to public policy and shall be void and unenforceable. Other than in connection with the bona fide negotiation of a collective bargaining agreement, any request by a Business employer to a Worker to waive rights given by this chapter shall be a violation of this chapter.

Section 5.82.080 Severability.

If any subsection, sentence, clause or phrase of this chapter is for any reason held to be invalid or unconstitutional by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this chapter. The City Council hereby declares that it would have adopted this chapter

and each and every subsection, sentence, clause and phrase thereof not declared invalid or unconstitutional, without regard to whether any portion of the chapter would be subsequently declared invalid or unconstitutional.

Section 5.82.090 Report.

One year after the lifting of the City's declaration of emergency related to COVID-19, staff shall report to the City Council and Mayor on the effectiveness of the provisions of this chapter in protecting workers when a business changes ownership, recommendations for additional protections that further the intent of this chapter, and whether the provisions of the chapter are still necessary based on the City's recovery from the impacts of the COVID-19 pandemic.

Section 5.82.100 Rules and Regulations.

The City Manager may adopt guidelines, rules, and regulations that will be updated when necessary consistent with this chapter for clarifying any of the provisions of this chapter. A copy of all adopted administrative rules and regulation shall be on file in the City Manager's office.

SECTION 4. The adoption of this ordinance is not subject to the California Environmental Quality Act (CEQA) pursuant to the State CEQA Guidelines, California Code of Regulations, Title 14, Chapter 3, Section 15061(b)(3) under the common sense exemption because the activity has no potential for causing a significant effect on the environment and because there is no possibility that the adoption of this ordinance may have a significant adverse effect on the environment.

SECTION 5. This ordinance shall take effect upon publication.

Signed and approved this _____ day of _____, 2020.

Terry Tornek
Mayor of the City of Pasadena

I HEREBY CERTIFY that the foregoing ordinance was adopted by the City Council of the City of Pasadena at its meeting held this ____ day of _____, 2020, by the following vote:

AYES

NOES

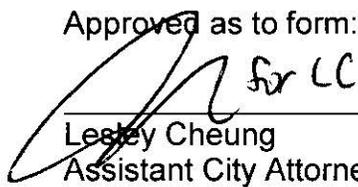
ABSENT

ABSTAIN

Date Published:

Mark Jomsky, CMC
City Clerk

Approved as to form:

 for LC

Lesley Cheung
Assistant City Attorney