


11/10/2020

item 4




City Council Meeting

Item 4 –
Action on Emergency Ordinance
to Add Chapter 9.70 to enact
COVID-19 Worker Recall
Protections for Building Service,
Food Service and Hotel Service
Workers (RTC# 20-1138)

November 10, 2020

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City of Santa Clara
The Center of What's Possible

Background

- On Oct. 27, 2020, City Council considered the adoption of an emergency ordinance to add a COVID-19 Right of Recall to the City Code (Emergency Ordinance)
- Council continued consideration of the Emergency Ordinance to the Nov. 10, 2020 Council meeting to allow staff time to review and refine the language in the proposed Emergency Ordinance based on public testimony

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POST MEETING MATERIAL

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COVID-19 Right of Recall Ordinance

Applicability

- Any entity in Santa Clara with more than 25 employees in the State of California that enter into contracts for building services and/or food service
- Entertainment/convention venues with a capacity of at least 8,000
- Any entity that operates a Hotel with fifty (50) or more guest rooms
- City of Santa Clara contracts and to contracts with the City's related entities such as SOSA, Stadium Authority etc.
- Other governmental entities are exempt



COVID-19 Right of Recall Ordinance

Contracts Subject to Ordinance

- Contracts in excess of \$25,000 with a term three months or longer for regularly scheduled building services and/or food services



COVID-19 Right of Recall Ordinance

Covered Employees

- **Full or part time employees (8 hours a week or more)** whose regular place of work is in Santa Clara and have 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 16, 2020, as a result of a lack of business, a reduction in work force or other economic, non-disciplinary reason
- Not included are managerial, supervisory, or confidential employees

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COVID-19 Right of Recall Ordinance

Notification and Recall Procedures

- Employers are required to 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 the Emergency Ordinance for which the laid off worker is qualified

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COVID-19 Right of Recall Ordinance

Notification and Recall Procedures cont.

- Laid off workers 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) can be qualified for the position with the same training that would be provided to a new worker hired into that position

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COVID-19 Right of Recall Ordinance

Notification and Recall Procedures cont.

- 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
- A laid off worker who is offered a position shall be given no less than five (5) business days in which to accept or decline the offer
- Workers covered by a collective bargaining agreement would continue to be exempt from the provisions of the ordinance.

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COVID-19 Right of Recall Ordinance

Enforcement and Retaliation

- A violation of the Emergency Ordinance can be enforced as a civil action in court. Remedies include hiring and reinstatement rights, actual damages, punitive damages and attorney's fees.

Retaliation is prohibited against workers that:

- Seek to enforce their rights;
- Participate in proceedings related to an enforcement of the Emergency Ordinance;
- Mistakenly, but in good faith, allege non-compliance with the Emergency Ordinance.

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Revisions from proposed Ordinance

"Employer" means any a Covered Entity who hires or retains a food service contractor for the provision of food services at a business facility or entertainment/convention venue within the City, or the City if it hires or retains a food service contractor for an entertainment/convention venue, any person who hires or retains a building service contractor for the provision of building services at a business facility or entertainment/convention venue within the City, or any entity that operates a Hotel with fifty (50) or more guest rooms, or the operator of a Hotel, and in addition includes any person operating any contracted, leased, or sublet premises and services connected to or operated in conjunction with the Covered Entity, including food preparation facilities, concessions, janitorial services, maintenance services, security services, ushering and ticket taking services, retail stores, restaurants, bars, and structured parking facilities.

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Revisions (continued)

"Hotel" means a residential building that is designated or used for lodging and other related services for the public, and containing 50 or more guests rooms, or suites of rooms (adjoining rooms do not constitute a suite of rooms). "Hotel" also includes any contracted, leased or sublet premises connected to or operated in conjunction with the building's purpose, or providing services at the building.

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Recommendation

- Alternative 1 :
 - Adopt the Emergency Ordinance to add Worker Recall Protections

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The seal of the City of Santa Clara, California, is circular. It features a central illustration of a mission-style building with a red roof and a bell tower, set against a blue sky with clouds and green hills. The year "1852" is inscribed below the building. The outer ring of the seal contains the text "CITY OF SANTA CLARA CALIFORNIA" at the top and "THE MISSION CITY" at the bottom, separated by small dots.

City Council Meeting

**Item 4 –
Action on Emergency Ordinance
to Add Chapter 9.70 to enact
COVID-19 Worker Recall
Protections for Building Service,
Food Service and Hotel Service
Workers (RTC# 20-1138)**

November 10, 2020

11-10-20

ITEM #4
EMERGENCY
RECALL ORDINANCE

ORDINANCE NO. _____

AN EMERGENCY ORDINANCE OF THE CITY OF SANTA CLARA, CALIFORNIA, TO ADD A NEW CHAPTER 9.70 ("COVID-19 WORKER RECALL PROTECTION") TO TITLE 9 ("PUBLIC PEACE, MORALS, AND WELFARE") OF "THE CODE OF THE CITY OF SANTA CLARA, CALIFORNIA" TO ADD A COVID-19 RIGHT OF RECALL FOR AFFECTED FOOD SERVICE, BUILDING SERVICE, AND HOTEL EMPLOYEES

BE IT ORDAINED BY THE CITY OF SANTA CLARA AS FOLLOWS:

WHEREAS, Labor Code Section 1064 allows local jurisdictions to enact greater standards than, or establish additional enforcement provisions to the standards and provisions of the Displaced Janitor Opportunity Act;

WHEREAS, Santa Clara Charter Section 811 authorizes the adoption of an emergency ordinance to protect the public peace, health or safety, where there is a declaration of the facts constituting the urgency; and,

WHEREAS, international, national, state and local health and governmental authorities are responding to an outbreak of respiratory disease caused by a novel coronavirus now known as COVID-19; and,

WHEREAS, on March 11, 2020, pursuant to "The Code of the City of Santa Clara, California" ("SCCC") section 2.140.060, City Manager Deanna Santana, as the City's Director of Emergency Services, signed a Proclamation of Local Emergency to help ensure the City's continuity of essential operations and services available for the City of Santa Clara to respond to the COVID-19 emergency; and,

WHEREAS, on March 16, 2020, the County of Santa Clara joined Contra Costa, Marin, San Francisco, San Mateo counties and the City of Berkeley on a legal order directing

their respective residents to shelter at home for three weeks beginning March 17, 2020 ("Shelter-in-Place Order"). The Shelter-in-Place Order also requires all businesses except essential businesses as described in the Order to cease all activities at facilities located within the County except minimum basic operations and prohibits all public and private gatherings of any number of people except for limited purposes as well as all non-essential travel; and,

WHEREAS, on March 19, 2020, California Governor Gavin Newsom issued Executive Order N-33-20, ordering, with limited exceptions, all individuals living in the state of California to stay at home or at their place of residence, until further notice; and,

WHEREAS, on May 4, 2020, California Governor Gavin Newsom issued Executive Order N-60-20, which directed individuals living in the state of California to continue staying at their home or place of residence, until further notice; and,

WHEREAS, the COVID-19 pandemic has increased the likelihood that buildings and hotels will be sold or foreclosed upon; and,

WHEREAS, the COVID-19 pandemic has caused building service, food service and hotel employers in the City to discharge, layoff and furlough workers at a massive scale; and,

WHEREAS, many thousands of building service, food service and hotel workers have been separated from their jobs already during the pandemic, and many thousands more are expected to face separation in the coming months; and,

WHEREAS, while federal, state, and local programs, and efforts have provided a modicum of support to Santa Clara's building service, food service and hotel workers in

the short-term, what these workers need most is the promise of a return to their previous jobs as the pandemic recedes and business returns; and,

WHEREAS, ensuring that Santa Clara's building service, food service and hotel employers honor their former employees' right to return will speed the transition back to a functioning labor market and will lessen the damage to the City's economy.

**NOW THEREFORE, BE IT FURTHER ORDAINED BY THE CITY OF SANTA CLARA
AS FOLLOWS:**

SECTION 1: That Title 9 of the City Code of the City of Santa Clara is hereby amended to add a new Chapter 9.70 to read as follows:

"Chapter 9.70

COVID-19 WORKER RECALL PROTECTIONS

Sections:

9.70.010 Definitions.

9.70.020 Right of Recall.

9.70.030 Enforcement.

9.70.040 Retaliatory Action Prohibited.

9.70.050 Relationship to Employment Contracts and Agreements.

9.70.060 No waiver of rights.

9.70.010 Definitions

The defined terms in Chapter 9.60 shall have the same meaning when used in this Chapter. In addition, for purposes of this Chapter, the following terms shall have the following meanings:

(a) “Employer” means a Covered Entity, or the operator of a Hotel, and in addition includes any person operating any contracted, leased, or sublet premises and services connected to or operated in conjunction with the Covered Entity, including food preparation facilities, concessions, janitorial services, maintenance services, security services, ushering and ticket taking services, retail stores, restaurants, bars, and structured parking facilities.

(b) “Hotel” means a residential building that is designated or used for lodging and other related services for the public, and containing 50 or more guests rooms, or suites of rooms (adjoining rooms do not constitute a suite of rooms). “Hotel” also includes any contracted, leased or sublet premises connected to or operated in conjunction with the building’s purpose, or providing services at the building.

(c) “Laid Off Worker” means any employee who, in a particular week, performed 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 17, 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 17, 2020, was due to a non-disciplinary reason. For purposes of this Chapter, a Laid Off Worker does not include a manager, supervisor, confidential employee or a person who performs as their primary job responsibility sponsorship sales for an Event Center Employer.

(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.

9.70.020 Right of Recall

(a) Priority for Laid Off Workers.

(1) 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. Where 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 for the covered enterprise.

(b) Time Limit.

(1) A Laid Off Worker who is offered a position pursuant to this Chapter shall be given no less than five (5) business days from the date the offer is first received in which to accept or decline the offer. An Employer may make simultaneous conditional

offers of employment to Laid Off Workers, with the final offer of employment conditioned on application of the priority system set forth in Santa Clara City Code 9.70.020.

(c) An Employer that declines to recall a Laid Off Worker on the grounds of lack of qualifications and instead hires someone other than a Laid Off Worker shall provide the Laid Off Worker a written notice within 30 days identifying those hired in lieu of such recall, along with all reasons for such decision.

9.70.030 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:

(1) reinstatement to his or her former position at no less than the last wage rate and benefits that the Laid Off Worker received.

(2) back pay, including the value of benefits, for each day during which the violation continues, which shall be calculated at a rate of compensation per day not less than the higher of:

(i) the average regular rate of pay received by the Laid Off Worker, during the last six months of the worker's employment, times the average hours worked per work day by the worker during the last six months of the worker's employment in that job classification; or

(ii) the final regular rate of pay received by the Laid Off Worker at the time of separation times the average hours worked per work day by the worker during the last six months of the worker's employment in that job classification; and

(3) if the court determines that the Employer's violation was willful, it shall order treble back pay.

(4) Punitive damages, pursuant to California Civil Code § 3294.

(b) The Court shall award reasonable attorneys' fees and costs to a Laid Off Worker who prevails in any such enforcement action. 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 the Chapter alleged to have been violated;
and,
- (2) The Employer is provided 15 days from receipt of the written notice to cure any alleged violation.

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

9.70.040 Retaliatory Action Prohibited

No Employer shall refuse to employ, terminate, reduce in compensation, or otherwise take any adverse action against any person for seeking to enforce his or her rights under this Chapter by any lawful means, for participating in proceedings related to this Chapter, for opposing any practice proscribed by this Chapter, or for otherwise asserting rights under this chapter. This Section shall also apply to any Laid off Worker who mistakenly, but in good faith, alleges noncompliance with this Chapter.

9.70.050 Relationship to Employment Contracts and Agreements

This Chapter applies to all Laid Off Workers as defined herein regardless whether they are represented for purposes of collective bargaining or are covered by a collective bargaining agreement. Nothing in this Chapter shall be construed to invalidate or limit the rights, remedies and procedures of any contract or agreement that provides greater or equal protection for employees than are afforded by this Chapter. The provisions of this Chapter may only be waived in a collective bargaining agreement if the waiver is explicitly set forth in the agreement in clear and unambiguous terms.

9.70.060 No Waiver of Rights

Except for a collective bargaining agreement provision made pursuant to Section 9.70.050, 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 2: Savings clause. The changes provided for in this ordinance shall not affect any offense or act committed or done or any penalty or forfeiture incurred or any right established or accruing before the effective date of this ordinance; nor shall it affect any prosecution, suit or proceeding pending or any judgment rendered prior to the effective date of this ordinance. All fee schedules shall remain in force until superseded by the fee schedules adopted by the City Council.

SECTION 3: Effective date. This ordinance shall take effect immediately in accordance with the requirements of Section 811 of "The Charter of the City of Santa Clara, California."

FINALLY PASSED AND ADOPTED this ____ day of October, 2020, by the following vote:

AYES: COUNCILORS:

NOES: COUNCILORS:

ABSENT: COUNCILORS:

ABSTAINED: COUNCILORS:

ATTEST:

NORA PIMENTEL, MMC
ASSISTANT CITY CLERK
CITY OF SANTA CLARA

Attachments incorporated by reference: None.

11-10-20

ITEM #4
EMERGENCY RECALL
ORDINANCE -
REDLINED

ORDINANCE NO. _____

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WHEREAS, international, national, state and local health and governmental authorities are responding to an outbreak of respiratory disease caused by a novel coronavirus now known as COVID-19; and,

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their respective residents to shelter at home for three weeks beginning March 17, 2020 (“Shelter-in-Place Order”). The Shelter-in-Place Order also requires all businesses except essential businesses as described in the Order to cease all activities at facilities located within the County except minimum basic operations and prohibits all public and private gatherings of any number of people except for limited purposes as well as all non-essential travel; and,

WHEREAS, on March 19, 2020, California Governor Gavin Newsom issued Executive Order N-33-20, ordering, with limited exceptions, all individuals living in the state of California to stay at home or at their place of residence, until further notice; and,

WHEREAS, on May 4, 2020, California Governor Gavin Newsom issued Executive Order N-60-20, which directed individuals living in the state of California to continue staying at their home or place of residence, until further notice; and,

WHEREAS, the COVID-19 pandemic has increased the likelihood that buildings and hotels will be sold or foreclosed upon; and,

WHEREAS, the COVID-19 pandemic has caused building service, food service and hotel employers in the City to discharge, layoff and furlough workers at a massive scale; and,

WHEREAS, many thousands of building service, food service and hotel workers have been separated from their jobs already during the pandemic, and many thousands more are expected to face separation in the coming months; and,

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9.70.040 Retaliatory Action Prohibited.

9.70.050 Relationship to Employment Contracts and Agreements.

9.70.060 No waiver of rights.

9.70.010 Definitions

The defined terms in Chapter 9.60 ~~and 9.65~~ shall have the same meaning when used in this Chapter. In addition, for purposes of this Chapter, the following terms shall have the following meanings:

- (a) "Employer" means ~~any a~~ Covered Entity ~~who hires or retains a food service contractor for the provision of food services at a business facility or entertainment/convention venue within the City, or the City if it hires or retains a food~~

~~service contractor for an entertainment/convention venue, any person who hires or retains a building service contractor for the provision of building services at a business facility or entertainment/convention venue within the City, or any entity that operates a Hotel with fifty (50) or more guest rooms, or the operator of a Hotel, and in addition includes any person operating any contracted, leased, or sublet premises and services connected to or operated in conjunction with the Covered Entity, including food preparation facilities, concessions, janitorial services, maintenance services, security services, ushering and ticket taking services, retail stores, restaurants, bars, and structured parking facilities.~~

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(c) “Laid Off Worker” means any ~~employee~~ person who, in a particular week, ~~performed~~ 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 17, 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 17, 2020, was due to a non-disciplinary reason. For purposes of this Chapter, a Laid Off Worker does not include a manager,

supervisor, confidential employee or a person who performs as their primary job responsibility sponsorship sales for an Event Center Employer.

(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.

9.70.020 Right of Recall

(a) Priority for Laid Off Workers.

(1) 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. Where 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 for the covered enterprise.

(b) Time Limit.

(1) A Laid Off Worker who is offered a position pursuant to this Chapter

shall be given no less than five (5) business days from the date the offer is first received in which to accept or decline the offer. An Employer may make simultaneous conditional offers of employment to Laid Off Workers, with the final offer of employment conditioned on application of the priority system set forth in Santa Clara City Code 9.70.020.

(c) An Employer that declines to recall a Laid Off Worker on the grounds of lack of qualifications and instead hires someone other than a Laid Off Worker shall provide the Laid Off Worker a written notice within 30 days identifying those hired in lieu of such recall, along with all reasons for such decision.

9.70.030 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:

(1) reinstatement to his or her former position at no less than the last wage rate and benefits that the Laid Off Worker received.

(2) back pay, including the value of benefits, for each day during which the violation continues, which shall be calculated at a rate of compensation per day not less than the higher of:

(i) the average regular rate of pay received by the Laid Off Worker, during the last six months of the worker's employment, times the average hours worked per work day by the worker during the last six months of the worker's employment in that job classification; or

(ii) the final regular rate of pay received by the Laid Off Worker at the time of separation times the average hours worked per

work day by the worker during the last six months of the worker's employment in that job classification; and

(3) if the court determines that the Employer's violation was willful, it shall order treble back pay.

(4) Punitive damages, pursuant to California Civil Code § 3294.

(b) The Court shall award reasonable attorneys' fees and costs to a Laid Off Worker who prevails in any such enforcement action. 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 the Chapter alleged to have been violated; and,
- (2) The Employer is provided 15 days from receipt of the written notice to cure any alleged violation.

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

9.70.040 Retaliatory Action Prohibited

No Employer shall refuse to employ, terminate, reduce in compensation, or otherwise take any adverse action against any person for seeking to enforce his or her rights under this Chapter by any lawful means, for participating in proceedings related to this Chapter, for opposing any practice proscribed by this Chapter, or for otherwise

asserting rights under this chapter. This Section shall also apply to any Laid off Worker who mistakenly, but in good faith, alleges noncompliance with this Chapter.

9.70.050 Relationship to Employment Contracts and Agreements

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9.70.060 No Waiver of Rights

Except for a collective bargaining agreement provision made pursuant to Section 9.70.050, 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."

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date of this ordinance. All fee schedules shall remain in force until superseded by the fee schedules adopted by the City Council.

SECTION 3: Effective date. This ordinance shall take effect immediately in accordance with the requirements of Section 811 of "The Charter of the City of Santa Clara, California."

FINALLY PASSED AND ADOPTED this ____ day of November, 2020, by the following vote:

AYES: COUNCILORS:

NOES: COUNCILORS:

ABSENT: COUNCILORS:

ABSTAINED: COUNCILORS:

ATTEST:

NORA PIMENTEL, MMC
ASSISTANT CITY CLERK
CITY OF SANTA CLARA

Attachments incorporated by reference: None.