

## ORDINANCE NO. 2023

AN ORDINANCE OF THE CITY OF SANTA CLARA, CALIFORNIA, TO ADD CHAPTER 9.65 ("HOTEL SERVICE WORKER RETENTION") TO TITLE 9 ("PUBLIC PEACE, MORALS AND WELFARE") OF "THE CODE OF THE CITY OF SANTA CLARA, CALIFORNIA" TO REQUIRE RETENTION OF HOTEL SERVICE WORKERS UNDER CERTAIN CIRCUMSTANCES

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

**SECTION 1:** That Chapter 9.65 (entitled "Hotel Service Worker Retention") is added to Title 9 (entitled "Public Peace, Morals and Welfare") of "The Code of the City of Santa Clara, California" ("SCCC") to read as follows:

### **"Chapter 9.65**

#### **Hotel Service Worker Retention**

Sections:

- 9.65.010 Definitions.
- 9.65.020 Hotel employers' responsibilities.
- 9.65.030 Transition employment period.
- 9.65.040 Notice of change in control.
- 9.65.050 Enforcement.
- 9.65.060 Exemption for collective bargaining agreement.
- 9.65.070 No waiver of rights.

#### **9.65.010 Definitions.**

The following definitions shall apply to this chapter:

- (a) "City" means the City of Santa Clara.
- (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 Hotel or a discrete portion of the Hotel that continues in operation as a Hotel, or a controlling interest (including by consolidation, merger, or reorganization) of the Incumbent Hotel Employer or any Person who controls the Incumbent Hotel Employer.

(c) "Employment Commencement Date" means the date on which a Hotel Worker retained by the Successor Hotel Employer pursuant to this chapter commences work for the Successor Hotel Employer in exchange for benefits and compensation under the terms and conditions established by the Successor Hotel Employer or as required by law.

(d) "Hotel" means an establishment consisting of one building or a group of attached or detached buildings containing lodging accommodations, a majority of which are designed for use by transients, travelers, or temporary guests. Facilities provided may include maid service, laundering, meal and beverage service, meeting rooms, incidental merchandise sales, barber and beauty shops, kitchens, and other incidental services and facilities.

(e) "Hotel Worker" means any individual (1) whose primary place of employment is at a Hotel subject to a Change in Control, (2) who is employed directly by the Incumbent Hotel Employer, or by a Person who has contracted with the Incumbent Hotel Employer to provide services at the Hotel subject to a Change in Control, and (3) who has worked for the Incumbent Hotel Employer on a full- or part-time basis (eight hours or more a week) during the ninety (90) days immediately preceding any transition to the execution of the Transfer Document. "Hotel Worker" does not include a managerial, supervisory, or confidential employee.

(f) "Incumbent Hotel Employer" means the Person that owns, controls, and/or operates a Hotel subject to a Change in Control prior to the Change in Control.

(g) "Person" means an individual, corporation, partnership, limited partnership, limited liability 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 Hotel Employer" means the Person that owns, controls, and/or operates a Hotel subject to a Change in Control after the Change in Control.

(i) "Transfer Document" means the purchase agreement or other document(s) creating a binding agreement to effect the Change in Control.

**9.65.020 Hotel employers' responsibilities.**

(a) The Incumbent Hotel Employer shall, within 15 days after the execution of a Transfer Document, provide to the Successor Hotel Employer the name, address, email address, phone numbers, date of hire, and employment occupation classification of each Hotel Worker.

(b) The Successor Hotel Employer shall maintain a preferential hiring list of Hotel Workers identified by the Incumbent Hotel Employer as set forth in Subsection (a) 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 Hotel is open to the public under the Successor Hotel Employer.

(c) If the Successor Hotel Employer extends an offer of employment to a Hotel Worker, the Successor Hotel 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 employment occupation classification of each Hotel Worker.

**9.65.030 Transition employment period.**

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

(b) If, within the period established in § 9.65.020(b), the Successor Hotel Employer determines that it requires fewer Hotel Workers than were required by the Incumbent Hotel Employer, the Successor Hotel Employer shall retain Hotel Workers by seniority within each job classification to the extent that comparable job classifications exist.

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

(d) At the end of the 90-day transition employment period, the Successor Hotel Employer shall perform a written performance evaluation for each Hotel Worker retained pursuant to this Chapter. If the Hotel Worker's performance during the 90-day transition employment period is satisfactory, the Successor Hotel Employer shall consider offering the Hotel Worker continued employment under the terms and conditions established by the Successor Hotel Employer or as required

by law. The Successor Hotel Employer shall retain a record of the written performance evaluation for a period of no fewer than three years.

**9.65.040 Notice of change in control.**

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

(b) Notice shall include, but not be limited to, the name of the Incumbent Hotel Employer and its contact information, the name of the Successor Hotel Employer and its contact information, the effective date of the Change in Control, and the rights provided by Section 9.65.030.

(c) Notice shall be posted in a conspicuous place at the Hotel so as to be readily viewed by Hotel Workers, other employees, and applicants for employment.

**9.65.050 Enforcement.**

(a) Hotel Workers may bring an action in the Superior Court of the State of California against the Incumbent Hotel Employer or the Successor Hotel Employer for violations of this Chapter and may be awarded:

(1) Hiring and reinstatement rights pursuant to this Chapter, with the 90-day transition employment period not commencing until the Hotel Worker's Employment Commencement Date with the Successor Hotel Employer.

(2) Front Pay or back pay for each day during which 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 Hotel Worker during the last three years of the Hotel Worker's employment in the same occupation classification; or

(B) The most recent regular rate received by the Hotel Worker while employed by either the Incumbent Hotel Employer or the Successor Hotel Employer.

(3) If a Hotel Worker is the prevailing party in any legal action taken pursuant to this section, the court shall award reasonable attorney's fees and costs as part of the costs recoverable.

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

#### **9.65.060 Exemption for collective bargaining agreement.**

All of the provisions of this Chapter, or any part thereof, may be waived in a bona fide collective bargaining agreement, but only if the waiver is explicitly set forth in the agreement in clear and unambiguous terms. Unilateral implementation of terms and conditions of employment by either party to a collective bargaining relationship shall not constitute, or be permitted, as a waiver of all or any part of the provisions of this Chapter.

#### **9.65.070 No waiver of rights**

Except for bona fide collective bargaining agreements, any waiver by a Hotel

Worker of any or all of the provisions of this Chapter shall be deemed contrary to public policy and shall be void and unenforceable. Any attempt by an Incumbent or Successor Hotel Employer to have a Hotel Worker 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.

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**SECTION 3: Effective date.** This ordinance shall take effect thirty (30) days after its final adoption; however, prior to its final adoption it shall be published in accordance with the requirements of Section 808 and 812 of "The Charter of the City of Santa Clara, California."

PASSED FOR THE PURPOSE OF PUBLICATION this 27<sup>TH</sup> day of October, 2020, by the following vote:

AYES: COUNCILORS: Chahal, Davis, Hardy, O'Neill, and  
Watanabe and Mayor Gillmor

NOES: COUNCILORS: None

ABSENT: COUNCILORS: None

ABSTAINED: COUNCILORS: None

ATTEST:



NORA PIMENTEL, MMC  
ASSISTANT CITY CLERK  
CITY OF SANTA CLARA

**FINALLY PASSED AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF SANTA CLARA**  
this 12<sup>TH</sup> day of JANUARY, 2021, by the following vote:

AYES: COUNCILORS: Becker, Chahal, Hardy, Jain, Park, and  
Watanabe and Mayor Gillmor

NOES: COUNCILORS: None

ABSENT: COUNCILORS: None

ABSTAINED: COUNCILORS: None

ATTEST:



NORA PIMENTEL, MMC  
ASSISTANT CITY CLERK  
CITY OF SANTA CLARA

Attachments incorporated by reference: None.