



## Agenda Report

20-927

Agenda Date: 10/13/2020

### REPORT TO COUNCIL

#### **SUBJECT**

Discussion and Direction on Mayor Gillmor's Request Regarding Worker Retention and Recall Protections During COVID-19 Pandemic [Council Pillar: Promote and Enhance Economic, Housing and Transportation Development]

#### **BACKGROUND**

At its August 18, 2020 meeting, Council approved a written petition submitted by Mayor Lisa M. Gillmor (Attachment 1) to place an item on the October 13, 2020 Council agenda to discuss modifications to the City's Worker Retention Ordinance adding hotel workers as a covered employee group and to add a recall provision for building service, food service and hotel employees laid off due to the COVID-19 pandemic.

This report provides a summary of:

- Santa Clara Worker Retention Ordinance;
- Information about other cities which have implemented similar ordinances; and,
- Discussion about possible parameters to include in an ordinance should Council direct staff to bring back an emergency ordinance for its consideration at the October 27, 2020 Council meeting.

#### **DISCUSSION**

##### ***Worker Retention Ordinance***

If the Council directs staff to prepare an ordinance to protect hotel workers and add worker recall provisions to address the impacts of the COVID-19 pandemic, staff recommends amending the existing worker retention ordinance on an emergency basis.

The City of Santa Clara adopted Worker Retention Ordinance - No. 1964, on April 4, 2017 (Attachment 2) and has been codified in Chapter 9.60 of the City Code.

The current Worker Retention Ordinance requires that when the City or one of its associated government entities or facilities managers changes contractors for certain types of workers, the new contractor must hire the existing workers.

**Applicability:** The ordinance applies to:

- 1) any entity in the City of Santa Clara with more than 25 employees in the State of California that enter into contracts for building services and/or food service, and

2) entertainment/convention venues with a capacity of at least 8,000.

The ordinance applies to City of Santa Clara contracts and to contracts with all of the City's related entities such as SOSA, Stadium Authority etc. Other governmental entities such as the County, Santa Clara Unified School District or Mission College are exempt.

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.

Covered Employees: Full or part time employees (8 hours a week or more) whose regular place of work is in the City of Santa Clara during the 90 days prior to a contract transition. Not included are managerial, supervisory, or confidential employees.

Notification and Retention Procedures:

- No less than 15 calendar days before terminating a food service or building service contracted, the terminated contractor must provide a list of each food service or building worker to the successor contractor.
- The successor contractor must retain the employees of terminated contractor for a 90-day transition period. The successor contractor cannot substantially change the effected employees' work shift or place of work. The successor contractor must post a notice of the applicable provisions of worker's rights under the ordinance.
- During the 90-day transition period, the successor contractor cannot terminate an employee except: (1) for cause or (2) if the successor contractor determines that fewer employees are required to perform services. In the event of a workforce reduction, the successor contractor must retain employees by seniority within job classification.
- At the end of the 90-day transition period, the successor contractor must complete a written performance evaluation for each employee. If performance is satisfactory, the contractor shall offer the employee continued employment.

### **Worker Recall Ordinances**

Staff is seeking Council direction to expand its worker protection regulations to include other types of worker and to add a new right: the *right to be rehired* after being laid off due to the economic effects of the COVID-19 pandemic.

Several other cities have enacted temporary emergency worker recall and retention ordinances as a result of the COVID-19 pandemic.

Worker Retention ordinances protect workers from job loss due to a sale, merger, foreclosure or other transfer of their employer. Worker Right to Recall ordinances protect laid off workers by requiring employers to offer laid off employees their jobs back in order of seniority.

On July 21, 2020, the Oakland City Council adopted Ordinance 13607 (Attachment 3) which provides that certain employees (airport hospitality/service, event center, hotel, restaurant) that were laid-off due to the COVID-19 pandemic must be recalled by seniority in a classification and that protections for these same covered workers would also apply to applicable businesses that had a change of ownership.

On April 29, 2020, the Los Angeles City Council adopted Ordinance 186602 (Attachment 4) which provides that 1) certain employers (hotel, airport, event center, and commercial property) must recall workers laid-off because of COVID-19 pandemic and rehire based upon seniority in a position classification and 2) businesses that change ownership must offer to hire or rehire covered workers. The Los Angeles City Council will re-evaluate the continuation of the ordinance by March 1, 2022.

### ***Direction to Staff on Parameters to Include in an Emergency Ordinance***

Timing - If Council would like to consider modifications to the existing Worker Retention Ordinance, staff recommends making the modifications on an emergency ordinance basis. Upon adoption, the ordinance would become effective immediately. The cities of Los Angeles, Oakland and San Francisco have adopted their respective ordinances on an emergency basis to specifically address the impacts of COVID-19. The original Worker Retention Ordinance included an outreach process and community meetings, to allow for specific feedback on a permanent ordinance.

Applicability - The Mayor's request includes the addition of an additional class of covered employees, hotel workers. In that regard, staff recommends that consistent with other cities that have enacted similar ordinances, covered business would include hotels with 50 or more guest rooms.

Protections - The Mayor's request included consideration of worker recall provisions. With Council direction, staff would prepare an ordinance for the October 27 agenda that would include recall provisions for building and food service workers at entities currently identified in the Worker Retention Ordinance and add hotel workers. Eligibility of covered workers would be consistent with the existing Worker Retention Ordinance - full or part time employees (8 hours a week or more) whose regular place of work is in the City of Santa Clara during the 90 days prior to a contract transition or lay off.

The Mayor's request added hotel workers to the covered employees under the Worker Retention Ordinance provisions. This modification would provide that if there is a change of hotel ownership/operation during the COVID-19 pandemic, the new operator would be required to rehire covered employees at their same classification for a period of 90 days.

Workers covered by a collective bargaining agreement would continue to be exempt from the provisions of the ordinance.

Duration - As stated above, adoption of an emergency ordinance to address the impacts of the State of Emergency in the City of Santa Clara due to the COVID-19 health crisis allows for the ordinance to become effective immediately. The provisions of the emergency ordinance would be in place for the duration of the emergency declaration. If Council wants to direct staff to propose a similar ordinance on a longer-term basis (beyond the emergency period), staff recommendation is to do so with an outreach process to potentially affected businesses/employers and employees to seek input and feedback.

**ENVIRONMENTAL REVIEW**

The action being considered does not constitute a “project” within the meaning of the California Environmental Quality Act (“CEQA”) pursuant to CEQA Guidelines section 15378(b)(5) in that it is a governmental organizational or administrative activity that will not result in direct or indirect changes in the environment.

**FISCAL IMPACT**

There is no fiscal impact other than administrative staff time.

**COORDINATION**

This report has been coordinated with the City Attorney’s office.

**PUBLIC CONTACT**

Public contact was made by posting the Council agenda on the City’s official-notice bulletin board outside City Hall Council Chambers. A complete agenda packet is available on the City’s website and in the City Clerk’s Office at least 72 hours prior to a Regular Meeting and 24 hours prior to a Special Meeting. A hard copy of any agenda report may be requested by contacting the City Clerk’s Office at (408) 615-2220, email [clerk@santaclaraca.gov](mailto:clerk@santaclaraca.gov) <<mailto:clerk@santaclaraca.gov>>.

**ALTERNATIVES**

1. Direct the City Attorney and City Manager to prepare an Emergency Ordinance for Worker Recall and Retention with the parameters discussed in this Report to Council and return to Council on October 27 for consideration
2. Note and file this report and take no further action
3. Any other alternative as approved by Council

**RECOMMENDATION**

Staff has no recommendation and is seeking Council direction and feedback on possible amendments to the Worker Retention Ordinance.

Reviewed by: Ruth Mizobe Shikada, Assistant City Manager

Approved by: Deanna J. Santana, City Manager

**ATTACHMENTS**

1. Written Petition by Mayor Gillmor
2. Ordinance No. 1964
3. City of Oakland Right to Recall Ordinance
4. City of Los Angeles Right to Recall Ordinance