



Agenda Report

20-1050

Agenda Date: 10/27/2020

REPORT TO COUNCIL

SUBJECT

Action on (1) Emergency Ordinance to Add Chapter 9.70 to enact COVID-19 Worker Recall Protections for Building Service, Food Service and Hotel Service Workers; and (2) Introduction of an Ordinance to Add Chapter 9.65 to provide Hotel Service Workers Retention Rights

COUNCIL PILLAR

Promote and Enhance Economic, Housing and Transportation Development

BACKGROUND

The City of Santa Clara has been severely impacted by the ongoing COVID-19 Public Health Emergency (COVID-19) and proclaimed a Local State of Emergency on March 11, 2020. Further, 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, which ultimately resulted in building service, food service and hotel employers in the City to discharge, layoff and furlough workers at a massive scale.

Many thousands of building service, food service and hotel workers have been separated from their jobs during the pandemic, and many more are expected to face separation in the coming months. While federal, state, and local programs 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. This will help ensure Santa Clara's building service, food service and hotel employers honor their former employees' right to return and will speed the transition back to a functioning labor market, lessening the damage to the City's economy.

Further, it has also become increasingly likely that a change of hotel ownership or operation during the COVID-19 pandemic may occur and existing employees should have a chance to retain their jobs. Mayor Lisa M. Gillmor submitted a written petition to add an agenda item for discussion by the full Council to modify the City's current Worker Retention Ordinance, Ordinance No. 1964, by 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.

The written petition was discussed and acted upon at the October 13, 2020 City Council meeting. City Council ultimately directed the City Attorney to:

1. Prepare an emergency ordinance adding Worker Recall protections; and to
2. Amend the existing City Worker Retention Ordinance to add hotel workers as an additional class of covered employees.

DISCUSSION***Emergency Ordinance to Add COVID-19 Right of Recall Protections***

Per Council's direction, the City Attorney has drafted an emergency ordinance (Attachment 1), which would add a new Chapter 9.70 to Title 9 of the Code of the City of Santa Clara, California" ("SCCC") to add a COVID-19 Right of Recall (Emergency Ordinance). This Emergency Ordinance was modeled after a similar worker recall ordinance in the City of Los Angeles. The Emergency Ordinance, if approved, would provide for the following:

Timing: The Emergency Ordinance would go into effect immediately following Council action.

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.
- 3) any entity that operates a Hotel with fifty (50) or more guest rooms.

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, and to Hotels with (50) or more guest rooms. 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 that, in a particular week, perform at least eight hours of work within the geographical boundaries of the City 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, confidential employees or a person who performs as their primary job responsibility sponsorship sales for an event center employer.

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.
- 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.

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.

Enforcement: 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.

Ordinance Amending Current Worker Retention Ordinance

Per City Council's direction, the City Attorney has drafted an ordinance (Attachment 2) that would amend the current Worker Retention Ordinance to add Chapter 9.65 "Hotel Service Worker Retention" (Amended Ordinance).

The proposed Ordinance would include the following provisions:

Applicability: The proposed Ordinance would apply to any hotel with fifty (50) or more guest rooms

Covered Employees: Consistent with the existing Worker Retention Ordinance, the proposed ordinance would apply to full or part time workers (8 hours a week or more) 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 for at least 90 days prior to the execution of the transfer document. Not included are managerial, supervisory, or confidential employees.

Notification and Retention Procedures:

Consistent with the existing Worker Retention Ordinance, the proposed ordinance would require:

- Within 15 days after the execution of a transfer document, the incumbent hotel employer shall provide to the successor hotel employer the name, address, date of hire and employment classification of each hotel worker.
- Successor hotel employer shall maintain a preferential hiring list of hotel workers identified in the list provided by the incumbent hotel employer 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.

- 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.
- Successor hotel employer shall retain each hotel worker hired for no fewer than 90 days following the hotel worker's employment commencement date. During these 90 days, 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.
 - If the successor hotel employer determines that it requires fewer hotel workers than were required by the incumbent hotel employer, it will retain hotel workers by seniority within each job classification to the extent that comparable job classifications exist.
 - During the 90-day transition employment period, the successor hotel employer shall not discharge a hotel worker without cause.
 - 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. 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.
- 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. Notice shall include the name of the incumbent hotel employer and its contact information, the name of the successor hotel employer and its contact information, and the effective date of the change in control. The notice shall be posted in a place at the hotel to be viewed by hotel workers, other employees, and applicants for employment.

This proposed Ordinance was prepared per Council direction. Council action on the proposed ordinance would serve as the first reading.

The original worker retention ordinance as adopted in 2017 was approved by Council after significant outreach was conducted with stakeholder groups. Consistent with City Council Pillar to "Enhance

Community Engagement and Transparency”, staff recommended in its October 13, 2020 report to Council that Council direct staff to conduct stakeholder engagement and outreach with potentially affected businesses/employers and employees to seek input and feedback before acting on a permanent change to the Worker Retention Ordinance. The staff report also suggested that adding hotel workers retention to an emergency ordinance could address any immediate concerns due to the current COVID-19 health crisis while allowing time for staff to engage the community prior to a long term change to the City Code.

After further consultation with the City Attorney’s Office, adoption of an Emergency Ordinance to add hotel workers as a covered employee under the existing Worker Retention Ordinance is problematic as it would require the Council to make a finding that there is likely to be a change in ownership of a covered hotel within the next 45 days.

There are several alternatives that Council may direct regarding the proposed Ordinance adding hotel workers to the Worker Retention Ordinance:

1. Approve the proposed Ordinance amending the Worker Retention Ordinance and direct staff to bring back the Ordinance for a second reading at the next Council meeting without a community engagement process
2. Approve the proposed Ordinance amending the Worker Retention Ordinance and direct staff to bring back the Ordinance for a second reading after an engagement process is complete.

It should be noted however that if after the engagement process is complete and modifications to the proposed Ordinance are recommended, the proposed Ordinance would return to Council to be re-introduced (i.e., first reading);

3. Take no action on the proposed Ordinance and direct staff to complete a community engagement process prior to the introduction an Ordinance amending the Worker Retention Ordinance to add hotel workers.

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>>.

ALTERNATIVES

1. Adopt the Emergency Ordinance to add Worker Recall Protections.
2. Do not adopt the Emergency Ordinance to add Worker Recall Protections
3. Approve the proposed Ordinance to add hotel workers as covered employees under the Worker Retention Ordinance and set a date for the second reading of the Amended Ordinance to add hotel workers as covered employees under the Worker Retention Ordinance
4. Approve the proposed Ordinance to add hotel workers as covered employees under the Worker Retention Ordinance and direct staff to complete a community engagement process prior to setting a date for the second reading of the proposed Ordinance
5. Take no action on the proposed Ordinance to add hotel workers as covered employees under the Worker Retention Ordinance and direct staff to complete a community engagement process
6. Any other alternative as approved by Council

RECOMMENDATION

Alternatives 1 and 4:

1. Approve the adoption of the Emergency Ordinance to add Worker Recall Protections; and
4. Approve the proposed Ordinance to add hotel workers as covered employees under the Worker Retention Ordinance and direct staff to complete a community engagement process prior to setting a date for the second reading of the proposed Ordinance.

Reviewed by: Brian Doyle, City Attorney and Ruth Mizobe Shikada, Assistant City Manager

Approved by: Deanna J. Santana, City Manager

ATTACHMENTS

1. Emergency Ordinance Adding Worker Recall Protections
2. Ordinance Extending Worker Retention Protections to Hotel Workers