



Agenda Report

20-1138

Agenda Date: 11/10/2020

REPORT TO COUNCIL

SUBJECT

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

COUNCIL PILLAR

Promote and Enhance Economic, Housing and Transportation Development

BACKGROUND

An item requesting Council consideration on the adoption of an emergency ordinance that 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) was on the October 27, 2020 Council agenda.

During the public testimony, several public speakers requested that the City's Emergency Ordinance be tighten in the area around enforcement measures and requested staff to review the recently passed City of San Diego Worker Recall Ordinance (Attachment 1). Council continued consideration of the Emergency Ordinance to the November 10, 2020 Council meeting to allow staff time to review and refine the language in the proposed Emergency Ordinance.

DISCUSSION

As a follow up to the October 27 Council discussion, the City Attorney reviewed the City of San Diego Worker Recall ordinance and other supporting material provided by UNITE HERE. Based on this review, the City Attorney has made revisions to the proposed Emergency Ordinance (Attachment 2) to include additional notification procedures and clarification on enforcement actions and pre-emption issues as regards collective bargaining agreements. The Emergency Ordinance was also revised to add a new section to address retaliation.

The Emergency Ordinance, if approved, would provide for the following (updates to the provisions in the proposed emergency ordinance are noted in *italics*):

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 business entities that hire covered employees as well as 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 17, 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.

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.

- 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.
- *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 must provide written notice within 30 days identifying those hired along with all reasons for such decision.*

- *Workers are covered by the Emergency Ordinance regardless of whether they are covered by a collective bargaining agreement. The Emergency Ordinance will not invalidate or limit the rights, remedies and procedures of any contract or agreement that provides greater or equal protection for workers. The provisions of the Emergency Ordinance may only be waived in a collective bargaining agreement if the waiver is explicitly set forth in the agreement in clear and unambiguous terms.*

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. *Additional information surrounding reinstatement rights and actual damages were added.*

Retaliation: *Retaliation is prohibited against workers that:*

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

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. Any other alternative as approved by Council

RECOMMENDATION

Alternative 1:

Adopt the Emergency Ordinance to add Worker Recall Protections.

Reviewed by: Brian Doyle, City Attorney

Reviewed by: Ruth Mizobe Shikada, Assistant City Manager

Approved by: Deanna J. Santana, City Manager

ATTACHMENTS

1. City of San Diego Worker Recall Ordinance
2. Emergency Ordinance Adding Worker Recall Protections