

Date: September 29, 2020

To: Thomas B. Modica, City Manager 

From: John Keisler, Director of Economic Development 

For: Mayor and Members of the City Council

Subject: **COVID-19: Worker Protection Ordinances Update**

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At its May 12, 2020 meeting, the City Council adopted two ordinances - the COVID-19 Citywide Worker Recall Ordinance (Long Beach Municipal Code (LBMC), Chapter 5.55) and a the COVID-19 Citywide Worker Retention Ordinance (LBMC, Chapter 5.53) - to provide protections to workers in high-contact, high-risk industries during the COVID-19 emergency. The second reading for both ordinances was May 19, 2020, and they became effective on June 22, 2020.

At its May 19, 2020 meeting, the City Council adopted the COVID-19 Paid Supplemental Sick Leave Ordinance (LBMC, Chapter 8.110) on an emergency and regular basis to gap-fill the federal supplemental sick leave benefits provided in response to the COVID-19 pandemic. As an emergency ordinance, the COVID-19 Paid Supplemental Sick Leave Ordinance became effective immediately upon its adoption on May 19, 2020.

All three ordinances included a requirement to report back to the City Council every 90 days regarding the status of the ordinances thereafter, so that, the City Council may determine the sunset date of the ordinance based on relevant information contained in the 90-day reports. The purpose of this memorandum is to provide the first 90-day report on the COVID-19 Citywide Worker Retention Ordinance, COVID-19 Citywide Worker Recall Ordinance, and the COVID-19 Supplemental Sick Leave Ordinance (Ordinances) for City Council's consideration and to recommend a continuation of the Ordinances until the State and local public health emergency declaration related to COVID-19 has expired.

## **BACKGROUND**

As a result of the COVID-19 pandemic and "Stay at Home" order issued by California Governor Gavin Newsom and the "Safer at Home" order (health orders) issued by the City of Long Beach (City) to protect the public health and welfare, many businesses have been forced to close and furlough workers, exposing many workers in the City to significant job and economic insecurity. To address some of these uncertainties in the most impacted sectors, including hotel, food worker, and commercial property businesses, the City Council, on April 14, 2020, requested the City Attorney to prepare the following three emergency Ordinances:

- Adding Chapter 5.55, relating to COVID-19 worker recall;
- Adding Chapter 5.53, relating to COVID-19 worker retention; and,
- Adding Chapter 8.110, relating to COVID-19 paid supplemental sick leave.

Below please find an analysis of the purpose, definition, and effectiveness of the Ordinances in protecting worker stability of employment; and, a recommendation whether the provisions of each

Ordinance are still necessary based on the City's recovery from the impacts of the COVID-19 pandemic.

#### *COVID-19 Citywide Worker Recall Ordinance*

The COVID-19 pandemic caused hospitality and janitorial service employers in the City to discharge, layoff and furlough workers at a massive scale. Many hotel and janitorial service workers at hotel and non-residential commercial property businesses have already been separated from their jobs during the pandemic and thousands more are expected to face separation in the coming months. While federal, state, and local programs, and efforts by certain nonprofits, have provided some support to hotel and janitorial service workers in the short-term, the purpose of the COVID-19 Citywide Worker Recall Ordinance is to provide the promise of a return to their previously held jobs as the pandemic begins to recede and business activity resumes.

On May 12<sup>th</sup>, the City Attorney presented a [recommendation](#) to declare an Ordinance amending the LBMC by adding [Chapter 5.55](#), to establish a COVID-19 Citywide Worker Recall Ordinance in response to the Pandemic; declaring the urgency thereof to make the Ordinance effective immediately as an emergency measure; and read the first time and laid over to the next regular meeting of the City Council for final reading.

To ensure fair employment practices during the economic upheaval resulting from the pandemic and to reduce the demand on government-funded services, the City Council enacted legal protections for an individual employed by a hotel or commercial property business (Worker), who in a particular week: (a) performed at least 2 hours of work for a period of 6 months or more, within the geographical boundaries of Long Beach, for a hotel or commercial property employer (Employer) with 25 or more employees (Employees); and, (b) whose most recent separation from active employment occurred on or after March 4, 2020, as a result of a lack of business, a reduction in workforce, bankruptcy, or other economic, non-disciplinary reason. During the COVID-19 emergency, the Citywide Worker Recall Ordinance provides laid-off Employees priority in the re-hiring process and further defines the process by which an Employer must notify a laid-off Worker of all job positions that become available after the effective date of the Ordinance for which the laid-off Worker is qualified.

#### *COVID-19 Citywide Worker Retention Ordinance*

In conjunction with the Citywide Worker Recall Ordinance described above, the COVID-19 pandemic has caused hotel and janitorial service employers in Long Beach to discharge, layoff and furlough thousands of workers due to a significant reduction in demand for hotel and non-residential commercial property rental. While federal, state and local programs, and efforts by certain nonprofits, have provided some support to hotel and janitorial service workers in the short-term, the purpose of the Citywide Worker Retention Ordinance is to provide existing workers with the opportunity of retaining their jobs in the event of a business failure, sale, merger, or other transfer of ownership.

On May 12<sup>th</sup>, the City Attorney presented a [recommendation](#) to declare an Ordinance amending the LBMC by adding [Chapter 5.53](#), to establish a Citywide Worker Retention Ordinance during COVID-19; declaring the urgency thereof to make the Ordinance effective immediately as an

emergency measure; and read the first time and laid over to the next regular meeting of the City Council for final reading.

To ensure fair employment practices during the economic upheaval resulting from the pandemic and to reduce the demand on government-funded social services, the Citywide Worker Retention Ordinance provides support to a Worker: (a) who has a length of service with the Employer for 6 months or more; (b) whose primary place of employment is a business subject to a transfer of ownership or change in control; (c) who is employed or contracted to perform work functions directly by the Employer or by a person who has contracted with the Employer to provide services at the business subject to the change in control; and (d) who worked for the Employer on or after March 4<sup>th</sup>, and prior to the execution of the business transfer agreement. It should be noted that included in the Citywide Worker Retention Ordinance, these protections do not cover a person employed as a manager, supervisor, or confidential employee. During the COVID-19 emergency, the Citywide Worker Retention Ordinance requires the new Employer to: (a) maintain a preferential hiring list of Workers identified by the previous Employer as set forth by the Ordinance; and, (b) hire from that list for a period beginning upon the execution of the transfer agreement and continuing for 6 months after the business is open to the public under the operation of the new Employer.

#### *COVID-19 Paid Supplemental Sick Leave Ordinance*

The COVID-19 pandemic presented both health and economic emergencies for the Long Beach community. To ensure that Long Beach workers do not need to choose between the health and wellness of their community and the economic welfare of their families, the provision of paid supplemental sick leave to be used for COVID-19 related purposes is a priority. While the federal COVID-19 Paid Supplemental Sick Leave provided under the Families First Coronavirus Response Act provides paid supplemental sick leave to some workers, other workers remained without this important benefit.

On May 12<sup>th</sup>, the City Attorney presented a [recommendation](#) to declare an Ordinance amending the LBMC by adding [Chapter 8.110](#), relating to COVID-19 Paid Supplemental Sick Leave; declaring the urgency thereof to make the Ordinance effective immediately as an emergency measure; and read the first time and laid over to the next regular meeting of the City Council for final reading. However, after considering the Ordinance as written, the City Council requested that the Ordinance be amended to include an exemption for Employers that have a paid leave or paid time off policy that provides a minimum of 160 hours of paid leave annually. On May 19<sup>th</sup>, the City Attorney presented a revised [recommendation](#) and the Ordinance was adopted on an emergency basis thereby making it effective immediately. The Ordinance was also adopted on a regular basis. The Ordinance includes the requirement in Section [8.110.130](#), that the City Manager report back to the City Council and Mayor on the effectiveness of the provisions and whether the provisions are still necessary based on the City's recovery from the health and economic impacts of the COVID-19 pandemic so that the City Council may determine the sunset date.

The purpose of the COVID-19 Paid Supplemental Sick Leave Ordinance is to ensure public health and safety and fair employment practices during the economic upheaval resulting from the COVID-19 pandemic; and, sets forth paid sick leave requirements for Employers with 500 or more Workers nationally that are not required, in whole or in part, to provide paid sick leave benefits

under the federal Emergency Paid Sick Leave Act. By extending supplemental paid sick leave to Long Beach Workers not protected by the federal Emergency Paid Sick Leave Act, it is more likely that Workers will care for themselves, care for their dependents, stay home if necessary, and minimize the spread of COVID-19 in the community. Covered Workers under the COVID-19 Paid Supplemental Sick Leave Ordinance include Workers who perform any work within the geographic boundaries of Long Beach. A full description of the supplemental sick leave [requirements](#), [number of hours](#), and [scope of benefits](#) can be found online. Additionally, there are both [exceptions](#) and [exemptions for collective bargaining](#), as well as a description of the [enforcement](#) process via private action in the Superior Court of California for Employees claiming a violation of the COVID-19 Paid Supplemental Sick Leave Ordinance.

## **EFFECTIVENESS OF THE ORDINANCES**

As part of the Ordinances, every 90 days, the City Manager is required to provide a report to the Mayor and City Council on the effectiveness of the provisions and whether the provisions are still necessary based on the City's recovery from the health and economic impacts of the COVID-19 pandemic. To date, City staff have not received any feedback from impacted Employers or Workers regarding the effectiveness of the Ordinances. Additionally, staff are unable to report on any violations of the Ordinances given that the enforcement process requires private action in the Superior Court of California and these formal complaints are not reported to the City.

## **STATUS OF COVID-19**

Although the State of California recently introduced a new framework for a safe progression of opening more businesses and activities, the COVID-19 pandemic continues to be an evolving situation and both the City and County of Los Angeles (County) must move through a series of measures, based on indicators that capture disease burden, testing, and health equity before they may move to a less restrictive tier. Currently, both the City and County are classified by the State as "Widespread" and "Substantial" risk for continued community disease transmission. Per the State framework, it will be a minimum of 2-3 weeks before the City and County may move into the "Substantial" and "Moderate" tiers of the framework and potential months before, both may demonstrate public health measures—including case rate and positive test rate—that would qualify for the State definition of "Minimal" risk community disease transmission. Given this status of COVID-19 in the City and County, it is unlikely that the City's economy will stabilize sufficiently within the next 90-day period to provide financial certainty for Employers and economic stability and diminished health concerns for the Workers the Ordinances are intended to protect.

## **RECOMMENDATION**

The intended protections and benefits provided by the Ordinances are still required as much today as they were on the day each Ordinance was adopted. Given that both State and local health orders related to COVID-19 remain in place; and, given that many high-contact industries including hospitality, hotels, janitorial, and food services are still restricted from resuming full operations; it is recommended that the City Council continue the Ordinances for another 90-day period or until the public health emergency declaration has expired and businesses in these impacted industries are allowed to fully reopen.

The next 90-day report to the City Council regarding the need and effectiveness of the Ordinances will be provided at the end of November in advance of the December 6, 2020 deadline.

## **CONCLUSION**

The full impact of the health and economic emergencies on the Long Beach economy and community as a result of the COVID-19 pandemic may not be known for months or years to come. Our residents and businesses are fortunate to have City leaders that recognize the significance of the economic and health emergencies presented by this novel public health crisis and will benefit from the collective action and collaboration of government, nonprofit, and private sectors working together.

For any questions regarding these matters, please contact John Keisler, Economic Development Director, at [john.keisler@longbeach.gov](mailto:john.keisler@longbeach.gov) or (562) 570-5282.

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