

Date: November 1, 2021

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 90-Day Update**

On May 12, 2020, the City Council adopted two Ordinances: the COVID-19 Citywide Worker Retention Ordinance (LBMC, Chapter 5.53) and the COVID-19 Citywide Worker Recall Ordinance (Long Beach Municipal Code (LBMC), Chapter 5.55) to provide protections to workers in high-contact, high-risk industries during the COVID-19 emergency. Both Ordinances became effective on June 22, 2020.

On May 19, 2020, 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 so the City Council may determine the sunset date of each Ordinance based on relevant information contained in the 90-day reports. The City Council received the [first 90-day update](#) on September 29, 2020, the [second 90-day update](#) on December 8, 2020, the [third 90-day update](#) on February 26, 2021, and the [fourth 90-day update](#) on May 14, 2021.

The purpose of this memorandum is to provide the fifth 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 the City Council's consideration and to recommend a sunset date of December 31, 2021 for all three Ordinances. This recommendation is based on the following rationale: (a) State and local public health orders related to COVID-19 have been lifted or relaxed; (b) significant improvements in local COVID-19 infection, hospitalization, and vaccination rates; and, (c) business activities in the affected sectors—particularly activities related to the events at Long Beach Convention Center—have been allowed to reopen with limited restrictions.

BACKGROUND

As a result of the COVID-19 pandemic "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 were forced to close and furlough workers, exposing many workers in Long Beach 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, on April 14, 2020, the City Council requested the City Attorney to prepare the following three emergency Ordinances:

- Adding Chapter 5.53, relating to COVID-19 worker retention;
- Adding Chapter 5.55, relating to COVID-19 worker recall; 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 as to 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 Retention Ordinance (LBMC 5.53)

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, as well as 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, 2020, 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 six 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, 2020, and prior to the execution of the business transfer agreement. It should be noted that protections included in the Citywide Worker Retention Ordinance, 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 six months after the business is open to the public under the operation of the new Employer.

COVID-19 Citywide Worker Recall Ordinance (LBMC 5.55)

In addition to the impacts described previously, the COVID-19 pandemic caused hospitality and janitorial service employers in Long Beach 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, 2020, the City Attorney presented a [recommendation](#) to declare an Ordinance amending the LBMC by adding [Chapter 5.55](#), to establish a Citywide Worker Recall Ordinance in response to the COVID-19 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 Paid Supplemental Sick Leave Ordinance (LBMC 8.110)

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 was 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, 2020, 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 19th, 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. The first 90-day update was provided to the City Council via written memorandum on September 29, 2020, the second 90-day update was provided on December 8, 2020, the third 90-day update was provided on February 26, 2021, and the fourth 90-day update was provided on May 14, 2020. 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

The public health emergency caused by COVID-19 has begun to abate. As of today, in Long Beach, there have been 65,141 recorded COVID-19 cases, and 1,038 people have died from the virus. However, progress has been made against COVID-19 to protect workers in the sectors covered by the Ordinances, including:

- Daily hospitalizations due to COVID-19 have fallen from nearly 600 per day in January 2021 to approximately 40 per day in Long Beach area hospitals;
- Confirmed new daily cases have fallen to approximately 11 per day;
- Positivity rates have fallen to just under 2 percent;
- Vaccination rates have significantly improved since the last update with over 80 percent of residents over 18 years old now vaccinated;
- More than 312,000 residents who have been fully vaccinated and more than 378,000 vaccines administered; and,
- Additional vaccination details are available on the [COVID-19 Digital Dashboard](#).

Progress against COVID-19 in the State of California was so significant that on June 15, 2021, the Governor ended the tiered Blueprint tracking system and reopened the economy statewide.

This was reportedly due to the factors that (a) there was enough vaccine supply for Californians 16 years and older to be vaccinated, and (b) hospitalization rates remained stable and low, especially among fully vaccinated Californians. Although COVID-19 infections are down across much of California and the majority of residents are now vaccinated, new variants of the virus have the potential to cause disruptions to the community and the economy. Additionally, there continue to be residents and visitors who refuse to receive the vaccination, and the cooler holiday season caused a significant spike in transmission, infection, and hospitalization in Long Beach last year in 2020.

Updated Stay at Home Order

On September 17, 2021, pursuant to guidance issued by the State, the City's Health and Human Services Department issued an updated [Health Order](#) requiring proof of vaccination in select high-risk settings starting October 7, 2021, implementing protocols for youth sports, providing updates to the blanket quarantine and isolation orders in alignment with Los Angeles County's order, and acknowledging that vaccination is the primary strategy to reduce the burden of COVID-19 and protect all members of the community. This includes the following regulations impacting business and recreational activities in the city:

- Vaccination verification or a negative test result for participants within 72 hours prior to attending outdoor mega-events of 10,000 people or more that are ticketed or held in a defined space with controlled points of entry (attendees of indoor mega events of 1,000 or more people were already required to show proof of vaccination or a negative test result prior to entry).
- Vaccine verification for customers and employees at indoor portions of bars, wineries, breweries, nightclubs, and lounges (establishments without a permitted kitchen).
 - Proof of at least one dose of the vaccine required by October 7, 2021 and proof of full vaccination required by November 4, 2021.
 - Exemption with required weekly screening for a qualifying medical reason or a religious belief.
 - While not required, vaccine verification for service within indoor portions of restaurants is strongly recommended.
 - Masking required in all indoor public settings, venues, gatherings, and businesses.
- Effective September 25, 2021, youth recreational sports required to operate in accordance with the [Protocol for Youth Recreational Sports](#) to enhance safety for participants, coaches, and communities and lower the risk of COVID-19 transmission with their teams.
- Required masking indoors and routine screening testing, presuming adequate COVID-19 diagnostic testing capacity and supplies, and offers best practices for youth sports leagues (including school sports teams) based in Long Beach.
- Strong recommendation that all student athletes ages 12 and older, coaches, and team staff are fully vaccinated.
- Updates to the blanket [Quarantine](#) and [Isolation](#) Orders in alignment with the latest guidance from the Centers for Disease Control and Prevention (CDC) and the California Department of Public Health (CDPH).

- Mandatory quarantine for at least 7 days and up to 14 days after COVID-19 exposure for unvaccinated individuals who had close contact with a suspected or confirmed COVID-19 positive person. Discontinued quarantine within the timeframes below if they remain asymptomatic (i.e., do not develop symptoms):
 - After Day 10 from the date of the last exposure. Testing 5 to 7 days after exposure is strongly recommended but not required; or
 - After Day 7 if the individual tests by having a diagnostic specimen collected on or after Day 5 from the date of last exposure and the test is negative.

Status of State and Federal Sick Leave Laws

In addition to the lifting of health orders, the federal Families First Coronavirus Response Act (FFCRA) expired on December 31, 2020, and the State of California 2021 COVID-19 Supplemental Paid Sick Leave law expired on September 30, 2021. Pursuant to the American Rescue Plan Act (ARPA), effective January 1, 2021, FFCRA paid leave became optional. Covered employers were not required to participate, but under the ARPA, employers would continue to receive tax credits for the payments made to employees on leave for covered reasons. The payroll tax credits were set to expire on September 30, 2021.

Economic Impacts

The economic emergency caused by COVID-19 has also begun to abate. Although there are still some restrictions on large gatherings and conventions that bring visitors to Long Beach for business and leisure travel, hospitality, and entertainment, the lifting of health orders has allowed large entertainment events to resume, resulting in businesses, including hotels, restaurants, and other visitor services covered by the Ordinances, to begin recalling employees for training, preparation, and reopening. This has significantly improved the economic outlook for these workers from the time the Ordinances were adopted in May 2020. For example, the:

- Long Beach Convention Center reopened and began hosting large events in mid-August;
- Long Beach Grand Prix hosted over 180,000 guests in late-September;
- Citywide hotel occupancy rate has risen from 43 to 66 percent;
- Unemployment rate fell by 9 points from 19 percent to 10 percent;
- Number of unemployed residents fell by 39 percent from 41,000 to 24,000; and,
- Number of local jobs have increased by 20 percent from a low of 176,000 jobs when the Ordinances were adopted to over 211,000 in the last month data was reported (August 2021).

Although there is still a long way to go before the local economy is expected to return to pre-COVID-19 levels, it appears that both the public health and economic emergencies that prevented workers from working in the sectors covered by the temporary Ordinances have abated. The following recommendation is based on the key indicators, among others, that are listed above.

RECOMMENDATION

It is recommended that the City Council sunset the three Worker Protection Ordinances (COVID-19 worker retention, worker recall, and paid supplemental sick leave) effective December 31, 2021, given that both State and local health orders related to COVID-19 have been lifted or relaxed, that state and federal COVID-19 sick leave laws have expired, that many high-contact industries including hospitality, hotels, janitorial, and food services have been allowed to resume operation, and that large local event venues such as the Convention Center and the Grand Prix have been allowed to resume activities. This will allow workers covered by the Ordinances to prepare for the transition and for impacted employers to properly notice employees of their rights under the Ordinances. Additionally, this transitional period will allow for community feedback and provide time for the City Council to explore the impacts of ending the Ordinances.

It is important to note that when an Ordinance sunsets it will end the Ordinance. If the desire is to adopt the Ordinance permanently, the Ordinance should not sunset and a recommendation to amend the Ordinance to reflect the permanent extension should be made.

CONCLUSION

The full impact of COVID-19 on the Long Beach economy may not be known for months or years to come. While staff recommend the sunset of these COVID-related Ordinances, the City is undertaking many other efforts and programs to address the impacts of COVID-19 on the Long Beach community. To jump-start the economic recovery in the coming months, staff will continue to closely work with business owners, workers, and residents to implement over \$30 million in economic support programs approved by the City Council as part of the Long Beach Recovery Act and backed by the federal ARPA stimulus bill.

This proactive and visionary community-based plan should help Long Beach recover more quickly than cities or regions that have not taken such an aggressive approach to economic support. 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 or (562) 570-5282.

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