

CITY OF OAKLAND
COUNCIL AGENDA REPORT

TO: Oakland City Council
FROM: Councilmember Brunner and Council President De La Fuente
DATE: May 11, 2004
RE: **AN ORDINANCE REGARDING WORKER RETENTION AT LARGE-SCALE HOSPITALITY BUSINESSES**

SUMMARY OF ORDINANCE

This report recommends that the City Council adopt the attached Ordinance regarding the retention of workers at large-scale hospitality businesses. This Ordinance would add the following requirement to the operation of for-profit hotel or food service operations in Oakland that employ more than 150 people:

- If a new operator takes over such a business or a portion of such a business, all of the employees of the previous operator shall be offered employment and not be discharged without just cause for 120 days.
- If fewer employees are needed to perform certain work, lay offs must be performed on the basis of seniority. The new operator must also keep a hiring list of laid off employees for at least one year.

There is also a provision that prevents retaliation or discrimination against those asserting their rights under this statute.

By adopting this Ordinance, the City is under no obligation to enforce its terms. The Ordinance creates a cause of action in Municipal or Superior Court for those who claim violation of the Ordinance.

Much like the Federal Worker Adjustment and Retraining Notification Act (WARN), which requires prior notice of plant closings and mass layoffs, the intent of this Ordinance is to provide protection to workers, their families and Oakland's tourism sector by requiring employers to provide notification of major management changes.

Additionally, new operators are required to offer employment to the employees of the previous operator, instead of laying off experienced workers and hiring completely new staff. With the passage of Measure I in 2002, the voters of the City of Oakland adopted a similar worker retention provision for aviation and maritime businesses at the Port of Oakland.

FISCAL IMPACTS

There are no immediate fiscal impacts associated with the acceptance of this Ordinance. The City assumes no obligation to enforce the terms of the Ordinance.

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The intent of the Ordinance is to minimize the negative economic impact of sudden unemployment and large-scale turnover in Oakland's tourism sector. By striving to avoid such disruption, this Ordinance may help Oakland avoid declines in tourism-related sales tax revenues and Hotel Occupancy Tax revenue.

ACTION REQUESTED OF THE CITY COUNCIL

We request that the City Council approve the attached Ordinance.

OAKLAND CITY COUNCIL

REVISED

RESOLUTION No. _____ C.M.S.

DRAFT

INTRODUCED BY COUNCILMEMBER _____

WORKER RETENTION AT LARGE-SCALE HOSPITALITY BUSINESSES

WHEREAS, the City Council finds that the public welfare has been and can again be adversely impacted by large hospitality businesses letting go of large numbers of workers without economic necessity for such actions;

WHEREAS, such mass terminations and their impact on tourism can cause substantial disruption to the tourist industry and economically impact affected workers, severely disrupting the local economy;

WHEREFORE, the Municipal Code of the City of Oakland is hereby amended to add the following section:

WORKER RETENTION AT LARGE-SCALE HOSPITALITY BUSINESSES

1. Scope and Definitions.

The following definitions shall apply throughout this Ordinance:

A. "Hospitality Business" means any for-profit hotel or food service operation within the City which has employed more than 150 persons during any payroll period during the prior year. For these purposes "hotel" also includes any related facilities such as pools, restaurants, or spas which hotel guests may use.

B. For purposes of determining the number of employees under the preceding section, the number of employees of separately-incorporated businesses operating within the same facility shall be aggregated if such businesses share any ownership or control.

C. "Employee" does not include any person employed in a supervisory or managerial capacity.

D. "New Operator" includes, but is not limited to, any purchaser or new management company, contractor, subcontractor, lessee, sublessee, or other person or entity which will take over as an employer at the facility where a Hospitality Business

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has been located.

2. Preventing Unemployment

A. If a New Operator takes over any Hospitality Business or portion thereof, it shall offer employment to all Employees of the preceding operator and not discharge them without just cause during the first 120 days of employment. If the New Operator determines that fewer Employees are needed to perform certain work, then the least senior Employee performing such work may be laid off.

B. The New Operator shall keep a hiring list of laid off employees for at least one year.

3. Retaliation and discrimination barred; no waiver of rights.

A. No person shall discharge or otherwise discriminate against anyone for making a complaint, participating in any City proceeding, or using any civil remedy to enforce his or her rights, or for otherwise asserting his or her rights under this Ordinance.

B. Any waiver by an individual of any of the provisions of this Ordinance shall be deemed contrary to public policy and shall be void and unenforceable, except that Employees shall not be barred from entering into a written, valid collective bargaining agreement waiving any provision of this Ordinance, if such waiver is set forth in clear and unambiguous terms.

4. Enforcement

A. The City assumes no obligation to enforce the terms of this Ordinance, and nothing herein shall be construed as creating a cause of action against the City.

B. The City Manager may, in his or her discretion, develop regulations interpreting this Ordinance and/or establishing complaint procedures within the City related to enforcement of this Ordinance. Pursuit of any such complaint procedure shall not be a prerequisite for asserting a claim hereunder in a court of law.

C. Any person claiming a violation of this Ordinance may bring an action in the Municipal Court or Superior Court of the State of California, as appropriate, to enforce the provisions of this Ordinance. Violations of this Ordinance are declared to irreparably harm the public and covered employees generally.

D. The Court shall award reasonable attorney's fees, witness fees and costs to any plaintiff who prevails in an action to enforce this Ordinance.

E. Section 2 of this Ordinance shall apply, to the fullest extent

permitted by law, to any discharge, layoff or hiring decision made by any person after receipt of notice of the pendency of this Ordinance.

5. Severability

If any provision or application of this Ordinance is declared illegal, invalid or inoperative, in whole or in part, by any court of competent jurisdiction, the remaining provisions and portions thereof and applications not so declared shall remain in full force and effect.

In Council, Oakland, California, _____

Passed By The Following Vote:

AYES- BROOKS, BRUNNER, CHANG, NADEL, QUAN, REID, WAN AND
PRESIDENT DE LA FUENTE

NOES-

ABSENT-

ABSTENTION-

ATTEST: _____

CEDA FLOYD
City Clerk and Clerk of the Council
of the City of Oakland, California

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