

INTRODUCED BY COUNCILMEMBERS SHENG THAO,
NOEL GALLO, AND DAN KALB


CITY ATTORNEY'S OFFICE

Updated Version to the Version That Was Amended During the June 29, 2020 Community & Economic Development Committee Meeting.

OAKLAND CITY COUNCIL

ORDINANCE NO. 13607 C.M.S.

**ORDINANCE (1) ESTABLISHING A TRAVEL AND HOSPITALITY
WORKER RIGHT TO RECALL; (2) AMENDING CHAPTER 2.44 OF THE
OAKLAND MUNICIPAL CODE TO INCLUDE ENFORCEMENT OF
RIGHT TO RECALL AS PART OF THE DUTIES OF THE DEPARTMENT
OF WORKPLACE AND EMPLOYMENT STANDARDS**

WHEREAS, COVID-19 (also known as the “Coronavirus Disease”) is a respiratory disease which was first detected in China and has now spread across the globe, with multiple confirmed cases in California, including the Bay Area; and

WHEREAS, on January 31, 2020, the United States Secretary of Health and Human Services declared a public health emergency based on the threat caused by COVID-19, and the President of the United States issued a Proclamation Declaring a National Emergency Concerning COVID-19 beginning March 1, 2020; and

WHEREAS, on March 1, 2020, Alameda County Interim Health Officer Erica Pan, MD, MPH, FAAP declared a Local Health Emergency; and

WHEREAS, on March 4, 2020, California Governor Gavin Newsom proclaimed that a State of Emergency exists in California as a result of the threat of COVID-19 (Executive Order N-25-20); and

WHEREAS, the World Health Organization announced on March 11, 2020, that it has characterized COVID-19 as a pandemic; and

WHEREAS, on March 16, 2020, Alameda County Interim Health Officer Erica Pan, MD, MPH, FAAP issued a Shelter-in-Place Order requiring all Alameda County Residents to stay in their homes and leave only for specified purposes; and

WHEREAS, on March 19, 2020, California Governor Gavin Newsom issued Executive Order N-33-20, ordering, with limited exceptions, all individuals living in the state of California to stay at home or at their place of residence, until further notice; and

WHEREAS, 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; and

WHEREAS, since the declaration of a national public health emergency on January 31, 2020, the COVID-19 pandemic has caused hospitality, restaurant, stadium, and travel-related employers in the City to discharge, layoff and furlough workers at a massive scale; and

WHEREAS, many thousands of hospitality, restaurant, stadium, and travel-related workers have been separated from their jobs already during the pandemic, and many thousands more are expected to face separation in the coming months; and

WHEREAS, while federal, state, and local programs, and efforts by some of the City's non-profits, have provided a modicum of support to Oakland's hospitality, restaurant, stadium and travel-related workers in the short-term, these workers need most is the promise of a return to their previous jobs as the pandemic recedes and business returns; and

WHEREAS, ensuring that Oakland's hospitality, restaurant, stadium, and travel-related employers honor their former employees' right to return will speed the transition back to a functioning labor market and will lessen the damage to the City's economy; and

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF OAKLAND DOES ORDAIN AS FOLLOWS:

SECTION 1. A new Chapter 5.95 is added to the City of Oakland Municipal Code as follows:

5.95.010. Title.

This Chapter shall be known as the "Hospitality and Travel Worker Right to Recall" Ordinance.

5.95.020. Definitions.

The definitions set forth in this Section shall govern the construction and meaning of the terms used in this chapter:

- A. "Airport" means the Oakland International Airport.
- B. "Airport Hospitality Operation" means a business that provides food and beverage, retail, or other consumer goods or services to the public at the Airport. The term Airport Hospitality Operation does not include an air carrier certificated by the Federal Aviation Administration.

- C. "Airport Service Provider" means a Person that performs, under contract with a passenger air carrier: (i) food and beverage catering functions; or (ii) functions on the property of the Airport that are directly related to the air transportation of persons, property, or mail, including but not limited to the loading and unloading of property on aircraft; assistance to passengers under the federal regulation at 14 C.F.R. Part 382; security; airport ticketing and check-in functions; ground-handling of aircraft; or aircraft cleaning and sanitization functions and waste removal. The term "Airport Service Provider" does not include an air carrier certificated by the Federal Aviation Administration.
- D. "Change in Control" means any sale, assignment, transfer, contribution, or other disposition of all or substantially all of the assets or a controlling interest (including by consolidation, merger, or reorganization) of the Incumbent Employer or any Person who controls such Incumbent Employer.
- E. "Covered Service Employer" means any Person who directly or indirectly or through an agent or any other Person owns or operates a Covered Service Enterprise and employs or exercises control over the wages, hours or working conditions of any Employee.
- F. "Covered Service Enterprise" means an Airport Hospitality Operation, an Airport Service Provider, an Event Center, a Hotel, or a Restaurant.
- G. "Covered Restaurant Employer" means any Person who (a) directly or indirectly or through an agent or any other Person owns or operates a Restaurant and employs or exercises control over the wages, hours or working conditions of any Employee; and (b) employs more than 500 Employees, regardless of where those Employees are employed, or is a Franchisee associated with a Franchisor or a network of Franchises with Franchisees that employ more than 500 Employees in the aggregate, regardless of where those Employees are employed.
- H. "Employee" has the same meaning as under Oakland Municipal Code Section 5.92.010
- I. "Employer" means a Covered Service Employer or a Covered Restaurant Employer. The term "Employer" does not include the City of Oakland or the Port Department of the City of Oakland.
- J. "Event Center" means a publicly or privately owned structure in the City of Oakland of more than fifty thousand (50,000) square feet or five thousand (5,000) seats that is used for the purposes of public performances, sporting events, business meetings, or similar events, and includes concert halls, stadiums, sports arenas, racetracks, coliseums, and convention centers. The term "Event Center" also includes any contracted, leased, or sublet premises connected to or operated in conjunction with the Event Center's purpose,

including food preparation facilities, concessions, retail stores, restaurants, bars, and structured parking facilities.

- K. "Franchise" means a written agreement by which:
1. A Person is granted the right to engage in the business of offering, selling, or distributing goods or services under a marketing plan prescribed or suggested in substantial part by the grantor or its affiliate; and
 2. The operation of the business is substantially associated with a trademark, service mark, trade name, advertising, or other commercial symbol; designating, owned by, or licensed by the grantor or its affiliate; and
 3. The Person pays, agrees to pay, or is required to pay, directly or indirectly, a Franchise fee;
- L. "Franchisee" means a Person to whom a Franchise is offered or granted.
- M. "Franchisor" means a Person who grants a Franchise to another Person.
- N. "Hotel" has the same meaning as under Oakland Municipal Code Section 5.93.010.
- O. "Incumbent Employer" means the Employer prior to a Change in Control.
- P. "Laid-off Employee" means any Employee who was employed by an Employer for at least six (6) months in the twelve (12) months preceding January 31, 2020, and whose most recent separation from employment occurred after January 31, 2020, and was due to an economic, non-disciplinary reason, including but not limited to a lack of business due to a government-issued stay-at-home order, bankruptcy, or reduction in force. "Laid-off Employee" also includes an Employee who was employed by an Incumbent Employer and a Successor Employer for a combined total of at least six (6) months in the twelve (12) months preceding January 31, 2020, and who meets the other conditions in the preceding sentence.
- Q. "Length of Service" means the total of all periods of time during which an Employee has worked as an Employee for the Employer, including but not limited to periods of time when the Employee was on leave including family leave, sick leave, or on vacation.
- R. "Person" means an individual, corporation, partnership, limited partnership, limited liability partnership, limited liability company, business trust, estate, trust, association, joint venture, agency, instrumentality, or any other legal or commercial entity, whether domestic or foreign. "Person" may include a temporary services or staffing agency.

- S. “Restaurant” means a business conducting full-service restaurant commercial activities within the meaning of Oakland Municipal Code Section 17.10.272, limited-service restaurant and café commercial activities within the meaning of Oakland Municipal Code Section 17.10.274, fast-food restaurant commercial activities within the meaning of Oakland Municipal Code Section 17.10.280, or alcoholic beverage sales commercial activities with on-premises consumption within the meaning of Oakland Municipal Code Section 17.10.300, from a structure within the City.
- T. “Successor Employer” means the Employer after a Change in Control.
- U. “Transfer Document” means the purchase agreement or other document(s) effecting a Change in Control.

5.95.030. Right to Recall.

- A. An Employer shall offer its Laid-Off Employees in writing, by registered mail to their last known physical address, and by email and text message to the extent the Employer possesses such information, all job positions which become available after this Chapter’s effective date for which the Laid-Off Employees are qualified. A Laid-Off Employee is qualified for a position if the Laid-Off Employee:
 - 1. held the same or substantially similar position at the Covered Enterprise at the time of the Laid-Off Employee’s most recent separation from active service with the Employer; or
 - 2. is or can be qualified for the position with the same training that would be provided to a new employee hired into that position.
- B. The Employer shall offer positions to Laid-Off Employees in an order of preference corresponding to the categories in subsections (A)(1) and (2). Where more than one Employee is entitled to preference for a position, the Employer shall offer the position to the Laid-Off Employee with the greatest Length of Service for the Covered Enterprise.
- C. A Laid-Off Employee who is offered a position pursuant to this Chapter shall be given no less than ten (10) days from the postmark date of the mailed letter and dates of email and text notification to accept or decline the offer. If the dates referenced in the preceding sentence are not the same, the ten (10) days begins to run from the latest of the dates.
- D. An Employer that declines to recall a Laid-Off Employee on the grounds of lack of qualifications and instead hires someone other than a Laid-Off Employee shall provide the Laid-Off Employee a written notice advising of the non-selection within thirty (30) days of the date of hire. The Employer shall within thirty (30) days of the date of hire document the reason(s) for such decision and maintain that written record for no less than three (3) years. The Employer shall make such record available to the City upon request.

- E. Within fifteen (15) days after the execution of a Transfer Document, an Incumbent Employer shall provide to the Successor Employer a recall list containing the name, address, email address, telephone number, date of hire and employment classification of each Laid-Off Employee.
- F. A Successor Employer shall comply with the requirements of this Chapter as to the Incumbent Employer's Laid-off Employees for one hundred twenty (120) days after execution of a Transfer Document, subject to the following limitations:
 - 1. The Successor Employer shall retain each recalled worker for no fewer than forty-five (45) days unless during the forty-five (45) day period the Successor Employer has cause to discharge the worker. During the forty-five (45) day period, the Successor Employer shall be employed under terms and conditions established by the Successor Employer, as required by law.
 - 2. At the end of the forty-five (45) day period, the Successor Employer shall provide a written performance evaluation to each worker recalled pursuant to this subsection. If a worker's performance is satisfactory, the Successor Employer shall consider offering the worker continued employment under terms and conditions established by the Successor Employer or as required by law. The Successor Employer shall retain a record of the written performance evaluation for a period of no fewer than three (3) years and shall make such evaluation available to the City upon request.

5.95.040. Retaliatory Action Prohibited.

No Employer shall refuse to employ, terminate, reduce in compensation, or otherwise take any adverse action against any person for seeking to enforce his or her rights under this Chapter by any lawful means, for participating in proceedings related to this Chapter, for opposing any practice proscribed by this Chapter, or for otherwise asserting rights under this chapter. This Section shall also apply to any Employee who mistakenly, but in good faith, alleges noncompliance with this Chapter.

5.95.050. Enforcement.

This Chapter may be enforced in accordance with the procedures set forth in Oakland Municipal Code Section 5.92.050(F) and (G) after August 15, 2020 by the Department of Workplace and Employment Standards, and the remedies set forth in that Section shall apply to violations of this Chapter, except that for a willful violation of Section 5.94.040, the amount of damages attributable to lost income due to the violation shall be trebled.

5.95.060. Regulations.

After August 15, 2020, the Department of Workplace and Employment Standards, may promulgate and enforce rules and regulations, and issue determinations and interpretations, consistent with and necessary for the implementation of this Chapter. Such rules and regulations, determinations, and interpretations shall have the force of law and may be relied upon by employers, employees, and other persons to determine their rights and responsibilities under this Chapter.

5.95.070. Exemption for Collective Bargaining Agreement.

All of the provisions of this Chapter, or any part of the Chapter, may be waived in a bona fide collective bargaining agreement, but only if the waiver is explicitly set forth in that agreement in clear and unambiguous terms. Unilateral implementation of terms and conditions of employment by either party to a collective bargaining relationship shall not constitute or be permitted as a waiver of all or any part of the provisions of this article.

5.95.080. No Preemption of Higher Standards.

The purpose of this Chapter is to ensure minimum labor standards. This Chapter does not preempt or prevent the establishment of superior employment standards (including higher wages) or the expansion of coverage by ordinance, resolution, contract, or any other action of the City or Port of Oakland. Consistent with Article VII of the Charter, in the event of a conflict between this Chapter and an action by the Board of the Port Commissioners regarding the same subject matter discussed in this Chapter (including the Board of Port Commissioners Resolution Approving Airport Labor Pool Program (Resolution No. 15-056, passed June 11, 2015, as it may be amended or superseded), such Board of Port Commissioners action shall prevail. This Chapter shall not be construed to limit a discharged Employee's right to bring a common law cause of action for wrongful termination.

5.95.090. Severability.

If any subsection, sentence, clause or phrase of this Chapter is for any reason held to be invalid or unconstitutional by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Chapter, which shall remain in full force and effect. The City Council hereby declares that it would have adopted this Chapter and each and every subsection, sentence, clause and phrase thereof not declared invalid or unconstitutional, without regard to whether any portion of the article would be subsequently declared invalid or unconstitutional. The courts are hereby authorized to reform the provisions of this Chapter in order to preserve the maximum permissible effect of each subsection herein.

5.95.100. Reporting.

On or before January 31, 2022, the Chief Officer of the Department of Workplace and Employment standards shall report to the City Council on the effectiveness of this Chapter in promoting employment stability, including a socioeconomic and demographic breakdown of individuals who filed complaints and the outcomes of those complaints.

SECTION 2. Oakland Municipal Code Chapter 2.44 is hereby amended to modify sections as set forth below; additions are indicated by underscoring and deletions are indicated by strike through type; portions of the Chapter not cited or not shown in underscoring or strike-through type are not changed:

2.44.010. Department of Workplace and Employment Standards

There is hereby created under the jurisdiction of the City Administrator a Department of Workplace and Employment Standards. Effective July 1, 2020, the Department of Workplace and Employment Standards shall enforce Chapter 2.28 (“Living Wage Ordinance”); Chapter 2.36 (“Worker Retention at Large-Scale Hospitality Business Ordinance”); Chapter 5.92 (“City Minimum Wage, Sick Leave, and Other Employment Standards”); Chapter 5.93 (“Hotel Minimum Wage and Working Conditions”); Prevailing Wage Resolution (Resolution No. 57103 C.M.S.), Local Employment Program (Part IV of the Local and Small Local Business Enterprise Program, Resolution No. 69687 C.M.S., as amended and codified by Ordinance No. 12389 C.M.S., and as subsequently amended), Fifteen (15) Percent Apprenticeship Program (Resolution No. 74762 C.M.S.), Chapter 5.94 (“Protecting Workers and Communities During the Pandemic – COVID-19 Emergency Paid Sick Leave Ordinance”), and Chapter 5.95 (“Hospitality and Travel Worker Right to Recall”), and shall carry out such additional duties and functions as assigned by the City Administrator, or by Charter, ordinance, or City Council resolution. The Department of Workplace and Employment Standards may impose penalties and take any and all appropriate action to enforce the requirements of such provisions. The Department of Workplace and Employment Standards shall have authority to adopt rules and regulations consistent with and necessary for the implementation of the foregoing laws. Such rules and regulations shall have the force and effect of law, and may be relied upon by employers, employees and other persons to determine their rights and responsibilities. The Department of Workplace and Employment Standards may enforce the provisions of the California Labor Code to the extent permitted by State law.

JUL 2 1 2020

IN COUNCIL, OAKLAND, CALIFORNIA,

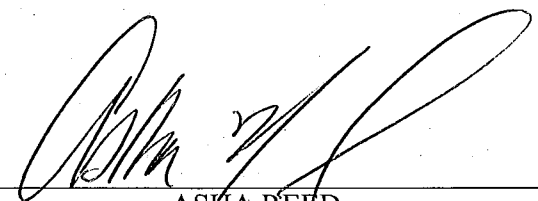
PASSED BY THE FOLLOWING VOTE:

AYES -FORTUNATO BAS, GALLO, GIBSON MCELHANEY, KALB, REID, TAYLOR, THAO AND PRESIDENT KAPLAN

NOES –

ABSENT –

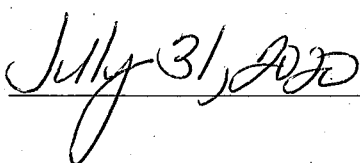
ABSTENTION –

ATTEST: 

ASHA REED
Acting City Clerk and Clerk of the
Council of the City of Oakland, California

Introduction Date

JUL 1 4 2020

Date of Attestation: 

NOTICE AND DIGEST

ORDINANCE (1) ESTABLISHING A TRAVEL AND HOSPITALITY WORKER RIGHT TO RECALL; (2) AMENDING CHAPTER 2.44 OF THE OAKLAND MUNICIPAL CODE TO INCLUDE ENFORCEMENT OF RIGHT TO RECALL AS PART OF THE DUTIES OF THE DEPARTMENT OF WORKPLACE AND EMPLOYMENT STANDARDS

This ordinance adds Chapter 5.95 to the Oakland Municipal Code to establish a right to recall for certain travel and hospitality workers laid off for economic, non-disciplinary reasons. This ordinance also amends Chapter 2.44 of the Oakland Municipal Code to include enforcement of the travel and hospitality worker right to recall ordinance as part of the duties of the Department of Workplace and Employment Standards.

Upon final adoption on second reading this ordinance will become effective immediately if it receives six or more affirmative votes; otherwise it shall become effective upon the seventh day after final adoption.