

ORDINANCE NO. _____

An ordinance adding Section 200.40 to Article 4-72J-B of Chapter XX of the Los Angeles Municipal Code requiring certain businesses in Los Angeles to comply with citywide worker retention provisions applicable to an employer's change of ownership or control that occurs within two years following the declaration of emergency resulting from the COVID-19 pandemic.

**THE PEOPLE OF THE CITY OF LOS ANGELES
DO ORDAIN AS FOLLOWS:**

Section 1. A new Article 4-72J-B is added to Chapter XX of the Los Municipal Code to read as follows:

ARTICLE 4-72J-B

COVID-19 CITYWIDE WORKER RETENTION ORDINANCE

SEC. 200.40. PURPOSE.

As a result of the COVID-19 pandemic and "Safer at Home" declarations by California Governor Gavin Newsom and Los Angeles Mayor Eric Garcetti, issued to protect the public health and welfare, many workers in the City of Los Angeles are facing significant job and economic insecurity. To ensure fair employment practices during the economic upheaval resulting from the pandemic and to reduce the demand on government-funded social services, the City hereby enacts legal protections for workers when a business changes ownership.

SEC. 200.41. DEFINITIONS.

The following definitions shall apply to this article:

A. **"Business"** means a corporation, partnership, limited partnership, limited liability company, business trust, estate, trust, association, joint venture, agency, instrumentality, or any other legal or commercial entity, whether domestic or foreign, set up for profit in the City.

C. **"Change in Control"** means any sale, assignment, transfer, contribution, or other disposition of all or substantially all of the assets used in the operation of a Business, or a discrete portion of a Business that continues to operate as the same type of Business of the Incumbent Business Employer, or any Person who controls the Incumbent Business Employer.

B. **"City"** means the City of Los Angeles.

D. **“Employment Commencement Date”** means the date on which a Worker retained by the Successor Business Employer pursuant to this article commences work for the Successor Business Employer in exchange for compensation under the terms and conditions established by the Successor Business Employer or as required by law.

E. **“Incumbent Business Employer”** means the Person who owns, controls, and/or operates a Business prior to the Change in Control.

G. **“Length of Service”** means the total of all periods of time during which a Worker has been in active service, including periods of time when the worker was on leave or vacation.

G. **“Person”** means an individual, corporation, partnership, limited partnership, limited liability company, business trust, estate, trust, association, joint venture, agency, instrumentality, or any other legal or commercial entity, whether domestic or foreign.

H. **“Successor Business Employer”** means the Person who owns, controls, and/or operates a Business after the Change in Control.

I. **“Transfer Document”** means the purchase agreement or other documents creating a binding arrangement to effect the Change in Control.

J. **“Worker”** means an individual employed by the Incumbent Business Employer: (1) who has a Length of Service with the Incumbent Business Employer for six months or more; (2) whose primary place of employment is a Business subject to a Change in Control; (3) who is employed or contracted to perform work functions directly by the Incumbent Business Employer, or by a Person who has contracted with the Incumbent Business Employer to provide services at the Business subject to the Change in Control; and (4) who worked for the Incumbent Business Employer on March 1, 2020, prior to the execution of the Transfer Document. “Worker” does not include a managerial, supervisory, or confidential employee.

SEC. 200.42. BUSINESS WORKER RETENTION.

A. BUSINESS EMPLOYER’S RESPONSIBILITIES.

1. The Incumbent Business Employer shall, within 15 days after execution of a Transfer Document, provide to the Successor Business Employer the name, address, date of hire, and occupation classification of each Worker.

2. The Successor Business Employer shall maintain a preferential hiring list of Workers identified by the Incumbent Business Employer as set forth in Subsection A.1 of this section, and shall be required to hire from that list for a

period beginning upon the execution of the Transfer Document and continuing for six months after the Business is open to the public under the Successor Business Employer.

3. If the Successor Business Employer extends an offer of employment to a Worker, the Success Business Employer shall retain written verification of that offer for no fewer than three years from the date the offer was made. The verification shall include the name, address, date of hire, and occupation classification of each Worker.

B. TRANSITION EMPLOYMENT PERIOD.

1. A Successor Business Employer shall retain each Worker hired pursuant to this article for no fewer than 90 days following the Worker's Employment Commencement Date. During the 90-day transition employment period, a Worker shall be employed under reasonable terms and conditions of employment or as required by law. The Successor Business Employer shall provide a Worker with a written offer of employment. This offer shall remain open for at least ten business days from the date of the offer.

2. If, within the period established by Section 200.42.A.2, the Successor Business Employer determines that it requires fewer Workers than were required by the Incumbent Business Employer, the Successor Business Employer shall retain Workers by seniority within each job classification to the extent that comparable job classifications exist.

3. During the 90-day transition employment period, the Successor Business Employer shall not discharge without cause a Worker retained pursuant to this article.

4. At the end of the 90-day transition employment period, the Successor Business Employer shall perform a written performance evaluation for each Worker retained pursuant to this article. If the Worker's performance during the 90-day transition employment period is satisfactory, the Successor Business Employer shall consider offering the Worker continued employment under the terms and conditions established by the Successor Business Employer or as required by law. The Successor Business Employer shall retain a record of the written performance evaluation period of no fewer than three years.

C. NOTICE OF CHANGE IN CONTROL.

1. The Incumbent Business Employer shall post written notice of the Change in Control at the location of the affected Business within five business days following the execution of the Transfer Document. Notice shall remain posted during any closure of the Business and for six months after the Business is open to the public under the Successor Business Employer.

2. Notice shall include, but not be limited to, the name of the Incumbent Business Employer and its contact information, the name of the Successor Business Employer and its contact information, and the effective date of the Change in Control.

3. Notice shall be posted in a conspicuous place at the Business so as to be readily viewed by Workers, other employees, and applicants for employment.

SEC. 200.43. RETALIATORY ACTION PROHIBITED.

No Incumbent or Successor Business Employer employing a Worker shall discharge, reduce in compensation, or otherwise discriminate against any Worker for opposing any practice proscribed by this article, for participating in proceedings related to this article, for seeking to exercise his or her rights under this article by any lawful means, or for otherwise asserting rights under this article.

SEC. 200.44. ENFORCEMENT.

A. A Worker may bring an action in the Superior Court of the State of California against an Incumbent Business Employer or the Successor Business Employer for violations of this article and may be awarded:

1. Hiring and reinstatement rights pursuant to this article. For a Worker, the 90-day transition employment period begins on the Worker's Employment Commencement Date with the Successor Business Employer.

2. Front or back pay for each day the violation continues, which shall be calculated at a rate of compensation not less than the higher of:

a. The average regular rate of pay received by the Worker during the last three years of their employment in the same occupation classification; or

b. The most recent regular rate received by the Worker while employed by either the Business, Incumbent Business Employer, or the Successor Business Employer.

3. Value of the benefits the Worker would have received under the Successor Business Employer's benefits plan.

B. If the Worker is the prevailing party in any legal action taken pursuant to this section, the court may award reasonable attorney's fees and costs.

C. Notwithstanding any provision of this Code, or any other ordinance to the contrary, no criminal penalties shall attach for violation of this article.

SEC. 200.45. EXEMPTION FOR COLLECTIVE BARGAINING AGREEMENT.

All of the provisions of this article, or any part of, may be expressly waived in a collective bargaining agreement, but only if the waiver is explicitly set forth in the 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 to constitute, a waiver of all or any of the provisions of this article.

SEC. 200.46. NO WAIVER OF RIGHTS.

Except for a collective bargaining agreement provision made pursuant to Section 200.45, any waiver by a Worker of any or all provisions of this article shall be deemed contrary to public policy and shall be void and unenforceable. Other than in connection with the bona fide negotiation of a collective bargaining agreement, any request by an Employer to a Worker to waive rights given by this article shall be a violation of this article.

SEC. 200.47. SEVERABILITY.

If any subsection, sentence, clause or phrase of this article 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 article. The City Council hereby declares that it would have adopted this article 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.

SEC. 200.48. REPORT.

Before March 1, 2022, the Chief Legislative Analyst shall report to the City Council and Mayor on the effectiveness of the provisions of this article in protecting workers when a business changes ownership, recommendations for additional protections that further the intent of this article, and whether the provisions of the article are still necessary based on the City's recovery from the impacts of the COVID-19 pandemic.

Sec. 2. Urgency Clause. The City Council finds and declares that this ordinance is required for the immediate protection of the public peace, health, and safety for the following reason: The State of California and the City of Los Angeles have declared a state of emergency due to the COVID-19 pandemic. Residents are subject to "stay at home" orders and certain businesses must reduce services or close. Workers in the City of Los Angeles are losing employment as a result of layoffs or closures, affecting their ability to feed and shelter their families. The pandemic also increases the threat to the safety of these workers and their families if workers' incomes are reduced or eliminated now or for the foreseeable future, along with health benefits

and the means to seek medical assistance. Because of the immediate threat of economic hardship for workers in the City, this ordinance must become effective as soon as possible. For all these reasons, the ordinance shall become effective upon publication pursuant to Los Angeles Charter Section 253.

Sec. 3. The City Clerk shall certify to the passage of this ordinance and have it published in accordance with Council policy, either in a daily newspaper circulated in the City of Los Angeles or by posting for ten days in three public places in the City of Los Angeles: one copy on the bulletin board located at the Main Street entrance to the Los Angeles City Hall; one copy on the bulletin board located at the Main Street entrance to the Los Angeles City Hall East; and one copy on the bulletin board located at the Temple Street entrance to the Los Angeles County Hall of Records.

Approved as to Form and Legality

MICHAEL N. FEUER, City Attorney

By



DAVID MICHAELSON
Chief Assistant City Attorney

Date

3/24/20

File No. _____

M:\GENERAL COUNSEL DIVISION\ORDINANCES AND REPORTS\ORDINANCES - DRAFT\LAMC 200.40 - COVID-19
CITYWIDE WORKER RETENTION ORDINANCE.3.23.20.vfdocx

The Clerk of the City of Los Angeles hereby certifies that the foregoing ordinance was passed by the Council of the City of Los Angeles, **by a vote of not less than three-fourths** of all its members.

CITY CLERK

MAYOR

Ordinance Passed _____

Approved _____