

ORDINANCE NO. _____

An ordinance adding Section 200.40 to Article 4-72J-B of Chapter XX of the Los Angeles Municipal Code subjecting specified businesses in Los Angeles to worker retention provisions for certain workers when a change of ownership or control 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 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. Workers at the Airport, in the Hospitality Industry, and those who provide services to Commercial Property are especially impacted by worker layoffs as a result of the pandemic because travel has been severely halted and businesses in the industry cannot easily adjust to the lack of patronage during the crisis. The Stay-At-Home Orders have severely impacted Commercial Property services as many offices and stores are closed. 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. **“Airport”** means the City of Los Angeles Department of Airports and each airport which it operates in the City.

B. **“Airport Business”** means a business that provides any service at the Airport or provides any service to any business servicing the Airport, and is required to comply with the Los Angeles Living Wage Ordinance, Los Angeles Administrative Code Sections 10.37 *et seq.* An “Airport Business” does not include:

1. An airline; or

2. A Business that is a party to an agreement with the Airport that contains a worker retention requirement.

C. **“Business”** means an Airport Business, Commercial Property Business, an Event Center Business, or a Hotel Business.

D. **“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.

E. **“City”** means the City of Los Angeles.

F. **“Commercial Property Business”** means an owner, operator, manager, or lessee, including a contractor, subcontractor, or sublessee, of a non-residential property in the City that employs 25 or more janitorial, maintenance, or security service workers. Only the janitorial, maintenance, and security service workers who perform work for a Commercial Property Business are covered by this article.

G. **“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.

H. **“Event Center Business”** means an owner, operator, or manager of a publicly or privately owned structure in the City of more than 50,000 square feet or with a seating capacity of 1,000 seats or more that is used for public performances, sporting events, business meetings, or similar events. An “Event Center Business” includes, but is not limited to, concert halls, stadiums, sports arenas, racetracks, coliseums, and convention centers.

I. **“Hotel Business”** means an owner, operator or manager of a residential building in the City designated or used for public lodging or other related service for the public and either contains 50 or more guestrooms or has earned gross receipts in 2019 exceeding \$5 million. A “Hotel Business” includes the owner, operator, manager, or lessee of any restaurant physically located on hotel premises.

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

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

L. **“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.

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

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

O. **“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 or after March 4, 2020, and 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 Successor 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 for the transition period. 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 offer the position to the Worker in the same occupational classification with the greatest Length of Service with the Incumbent Business Employer.

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 visible to 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. A civil action by a Worker alleging a violation of any provision of this article shall commence only after the following requirements have been met:

1. The Worker provides written notice to the Incumbent Business Employer and/or the Successor Business Employer of the provisions of this article alleged to have been violated and the facts supporting the alleged violation; and
2. The Incumbent Business Employer and/or the Successor Business Employer is provided 15 days from receipt of the written notice to cure any alleged violation.

C. The court shall award reasonable attorneys' fees and costs to a Worker who prevails in any such enforcement action and to a Business employer who prevails and obtains a court determination that the Worker's lawsuit was frivolous.

D. 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.

A collective bargaining agreement in place on the effective date of this article that contains a worker retention provision shall supersede the provision this article. When the collective bargaining agreement expires or is otherwise open for renegotiation, the provisions of this article may only be waived if the waiver is explicitly set forth in the agreement in clear and unambiguous terms. If a collective bargaining agreement is in place on the effective date of this article but the agreement does not include a worker retention provision, this article applies. A collective bargaining agreement may be amended at any time to explicitly waive with clear and unambiguous terms 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 a Business 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. 200.49. RULES AND REGULATIONS.

The Office of Wage Standards of the Bureau of Contract Administration shall promulgate Rules and Regulations that will be updated when necessary consistent with this article for further clarification of the provisions of this article. The Rules and Regulations shall be posted on the WagesLA.lacity.org website.

Sec. 2. 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 4/27/20

File No. CF 20-0147-S15; 20-0147-S35; 20-147-S42

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COVID-19 CITYWIDE WORKER RETENTION ORDINANCE 4.27.20.docx

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.

CITY CLERK

MAYOR

Ordinance Passed _____

Approved _____