



Req. #

ORDINANCE NO.

1 AN ORDINANCE relating to minimum employment standards, adding a new
2 chapter to Title 18 of the official code of the City of Tacoma to be titled
3 'Hotel Worker Protection', establishing recall rights for employees laid off
4 by hotels with 60 rooms or larger, declaring an emergency making
5 necessary the passage of this ordinance and its becoming effective
6 immediately; providing for the sunset of its provisions on January 1,
7 2022; and providing for severability.

8 WHEREAS COVID-19 (Novel Coronavirus) is a respiratory disease that can
9 result in serious illness or death and is caused by a virus easily spread from
10 person to person; and

11 WHEREAS, on February 29, 2020, the Governor issued Proclamation 20-
12 05, proclaiming a State of Emergency for all counties throughout the state of
13 Washington as a result of the coronavirus disease 2019 (COVID-19) outbreak in
14 the United ~~States~~; States; and

15 WHEREAS the World Health Organization announced the week of March 9,
16 2020, that the COVID-19 outbreak is considered a pandemic; and

17 WHEREAS the Washington State Department of Health has confirmed the
18 localized person-to-person spread of COVID-19 in Washington State, significantly
19 increasing the risk of exposure and infection to Washington State residents and
20 creating an extreme public health risk; and

21 WHEREAS on March 13, 2020, the City Manager and Mayor of Tacoma,
22 pursuant to Chapter 1.10 of the Tacoma Municipal Code and Chapter 38.52 of the
23 Revised Code of Washington proclaimed that an emergency exists caused by
24 COVID-19 in the City of Tacoma,
25
26



WHEREAS the Novel Coronavirus ("COVID-19") transmission is and continues to be widespread in our region, and as of September 9, 2020, there were 2,167 COVID-19 cases and 45 tragic deaths in the City of Tacoma, and

WHEREAS on August 31, 2020 it was reported by the American Hotel & Lodging Association that, four out of 10 hotel employees had not returned to work; at the peak of the pandemic, nearly nine in 10 hotels had to lay off or furlough workers; the accommodations sector is left with an unemployment rate of 38% compared to the national average of 10.2%; only 37% of hotels have been able to bring back at least half of their full-time employees, while 36% have been unable to bring back any furloughed or laid off staff; and, that almost two-thirds (65%) of hotels remain at or below 50% occupancy with little expectation that occupancies will increase until at least 2021; and

WHEREAS McKinsey & Company has analyzed different scenarios for recovery of the hotel industry one of which suggests that recovery of the hotel industry may not occur until 2023 or beyond; and

WHEREAS the pandemic has significantly impacted hotels across the country and in Tacoma leading to high rates of unemployment of hotel workers through no fault of their own; and

WHEREAS the U.S. Bureau of Labor Statistics indicates a loss of 701,000 jobs in large metropolitan areas of the United States between February and mid-March of 2020 with an unemployment rate increase from 3.5% to 4.4% predominantly in the West where early measures were taken to contain the spread of the virus; and



WHEREAS the City Council finds that, as a result of the extraordinary impacts of the pandemic upon the hotels workers who suffer, and will continue to suffer, from high rates of unemployment even after the public health impacts of pandemic emergency have subsided, it is reasonable and necessary to implement minimum labor standards in the form of recall rights to protect hotel employees whose separation from service arises from the pandemic; and

WHEREAS the City Council intends that the rights, duties and obligations set forth in this ordinance shall apply regardless of whether the separation from service of the laid off employee occurred before or after the effective date of this ordinance; and

WHEREAS the City Council finds that adoption of this ordinance in the best interest of the public health, safety and welfare; Now, Therefore,

BE IT ORDAINED BY THE CITY OF TACOMA:

Section 1. That Title 18 of the Tacoma Municipal Code ("TMC") is hereby amended by the addition of a new chapter, to be known and designated as Chapter 18.30, "Hotel Worker Protection" consisting of eight sections to read as set forth in the attached Exhibit "A."

Section 2. That, if any subsection, sentence, clause or phrase of this ordinance 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 ordinance 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.

Section 3. That, based upon the facts and conclusions as specified in the recitals herein, an emergency exists, making this ordinance effective upon passage by an affirmative vote of at least six members of the City Council.

Section 4. That this ordinance shall expire, and no longer be in force or effect, on March 1, 2022; provided that, the City Council shall, beginning no later than 60 days prior to the expiration of this ordinance, review the conditions that have given rise to the need for this ordinance to determine if such conditions warrant keeping in place the measures authorized herein.

Section 5. That on or before January 31, 2022, the City Manager shall report to the City Council on the effectiveness of this ordinance in promoting employment stability and shall advise the City Council on the need for further action.

Passed _____

Mayor

Attest:

City Clerk



Approved as to form:

Deputy City Attorney

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26



EXHIBIT "A"

NEW CHAPTER 18.30

HOTEL WORKER PROTECTION

18.30.010. Purpose.

The purpose of this chapter is to ensure minimum labor standards. This chapter does not preempt or prevent the establishment of employment standards (including higher wages) or the expansion of coverage by ordinance, resolution, contract, or any other action of the City. This chapter shall not be construed to limit a discharged employee's right to bring a common law cause of action for wrongful termination.

18.30.020. Title.

This chapter shall be known as the "Hotel Worker Protection".

18.30.030. Definitions.

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

A. "Covered Enterprise" means a Hotel.

B. "Customary seasonal work" means work performed by an employee during approximately the same part of each calendar year, such as summer or winter.

C. "Director" means the Finance Director, or designee.

D. "Employee" means any individual who performs work within the geographic boundaries of the City for an employer but shall not include independent contractors or any individual employed in a bona fide executive, administrative, or professional capacity.

E. "Employer" means any person, including a corporate officer or executive, who directly or indirectly or through an agent or any other person, including through the services of a temporary service or staffing agency or similar entity, owns or operates a covered enterprise within the City and employs or exercises control over the wages, hours or working conditions of any Employee. Employer shall mean and include a successor owner in which, only the form of organization of the Employer changed after January 31, 2020.



1 F. "Hotel." A building or group of buildings in which lodging or lodging and
2 meals are provided for transient or semi-permanent guests, or both, for
3 compensation, and in which there are 60 or more guest rooms.

4 G. "Laid-off Employee" means any Employee who was employed by the
5 employer for nine months or more in the 12 months preceding January 31, 2020,
6 and whose most recent separation from active service occurred after January 31,
7 2020, and was due to a government order, lack of business, a reduction in force
8 or other, economic, non-disciplinary reasons.

9 H. "Length of Service" means the total of all periods of time during which an
10 Employee has been in active service, including periods of time when the
11 Employee was on leave or on vacation, whether paid or unpaid.

12 I. "Person" means an individual, corporation, partnership, limited
13 partnership, limited liability partnership, Limited Liability Company, business
14 trust, estate, trust, association, joint venture, agency, instrumentality, or any other
15 legal or commercial entity, whether domestic or foreign.

16 **18.30.040. Right to Recall.**

17 **A. Employer Obligations.**

18 1. An Employer shall offer its laid-off employees in writing, by registered mail to
19 their last known physical address, and by email and text message to the extent
20 the Employer possesses such information, all job positions which become
21 available after this chapter's effective date for which the laid-off employees are
22 qualified. A laid-off employee is qualified for a position if the laid-off employee
23 held the same or similar position at the covered enterprise at the time of the laid-
24 off employee's most recent separation from active service with the employer.

25 2. Where more than one employee is entitled to notice for a position, the
26 Employer shall offer the position to the laid-off employee with the greatest length
of service for the covered enterprise.

3. An employer is not required to provide notice to a laid-off employee pursuant
to Subsection A.1 of this section, if the laid-off employee previously affirmatively
declined an offer of a position made pursuant to this chapter, and such position
was the same or similar to the position previously held by the employee for the
covered enterprise and was offered with a comparable number of weekly hours.

4. An employer is not required to provide notice to a laid-off employee pursuant
to Subsection A.1 of this section, if the employer can establish that the employer
previously provided notice to the laid-off employee pursuant to this chapter,
notice was sent as required pursuant to Subsection A.1 of this section and was
received or returned undeliverable, that the position offered in the notice was the



1 same or similar to the position previously held by the employee for the covered
2 enterprise and was offered with a comparable number of weekly hours, and no
response accepting or declining the offered position was received from the
Employee within the time period set forth at Subsection B of this Section.

3 B. A laid-off employee who is offered a position pursuant to this chapter shall
4 be given no less than three (3) days from the date of receipt of the mailed offer
5 in which to accept or decline the offer. An employer may make simultaneous,
6 conditional offers of employment to laid-off employees, with final offer of
employment conditioned on application of the priority system set forth in
subsection (A).

7 C. An employer that declines to recall a laid-off employee on the grounds of
8 lack of qualifications and instead hires someone other than a laid-off employee
9 shall provide the laid-off employee a written notice thereof within thirty (30) days
identifying all reasons for such decision.

10 D. Any direct or indirect change, acquisition or transfer of actual working
11 control over the Employer to another person shall not affect the obligations of the
Employer pursuant to this Chapter.

12 **18.30.050. Retaliatory Action Prohibited.**

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

18 **18.30.060. Enforcement.**

19 A. This chapter may be enforced in a civil action in a court of competent
20 jurisdiction brought by the City Attorney or by one or more employees for and in
21 behalf of oneself or themselves and other employees similarly situated, or the
22 employee or employees may designate an agent or representative to maintain
action for and in behalf of all employees similarly situated.

23 B. If it is established that a laid-off employee exercised rights under this
24 chapter or alleged in good faith that the employer was not complying with this
25 chapter, and the employer thereafter refused to employ, terminated, demoted or
26 otherwise took adverse action against the employee, and that action took place
within sixty (60) days after such exercise, then a rebuttable presumption shall
arise that the employer's action was taken in violation of Section 18.30.040. The
employer must prove that the true and entire reason for the action was a



legitimate business reason. The plaintiff may rebut the employer's asserted legitimate business reason by showing that it was, in fact, a pretext.

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26



1 **18.30.070. Regulations.**

2 The Director may promulgate and enforce rules and regulations, and issue
3 determinations and interpretations, consistent with and necessary for the
4 implementation of this chapter. Such rules and regulations, determinations, and
5 interpretations shall have the force of law and may be relied upon by employers,
6 employees, and other persons to determine their rights and responsibilities under
7 this chapter.

8 **18.30.080. Relationship to employment contracts and agreements.**

9 This chapter applies to all employees as defined herein regardless whether they
10 are represented for purposes of collective bargaining or are covered by a
11 collective bargaining agreement. All of the provisions of this chapter, or any part
12 hereof may be waived in a bona fide collective bargaining agreement, but only if
13 the waiver is explicitly set forth in such agreement in clear and unambiguous
14 terms. Unilateral implementation of terms and conditions of employment by either
15 party to a collective bargaining relationship shall not constitute, or be permitted,
16 as a waiver of all or any part of the provisions of this chapter.