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CITY ATTORNEY

REPORT NO. R 20 - 0090
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REPORT RE:

**DRAFT ORDINANCES ADDING ARTICLES 4-72J-A AND 4-72J-B TO
CHAPTER XX OF THE LOS ANGELES MUNICIPAL CODE TO PROVIDE A
RIGHT OF RECALL AND JOB RETENTION PROTECTIONS TO WORKERS
LAID OFF DURING THE COVID-19 PANDEMIC**

The Honorable City Council
of the City of Los Angeles
Room 395, City Hall
200 North Spring Street
Los Angeles, California 90012

Council File Nos. 20-0147-S15, 20-0147-S35, and 20-0147-S42

Honorable Members:

Pursuant to your request, this Office has prepared and now transmits for your consideration the enclosed draft ordinances, approved as to form and legality. The first draft ordinance adds Article 4-72J-A to Chapter XX of the Los Angeles Municipal Code (LAMC) to provide a right of recall to workers laid off during the COVID-19 pandemic. The second draft ordinance adds Article 4-72J-B to Chapter XX of the LAMC to create a citywide worker retention requirement when a business reopens after a change or transfer of ownership, similar to the existing Grocery and Hotel Worker Retention ordinances.

Background

On March 4, 2020, Governor Gavin Newsom declared a State of Emergency in California and Mayor Eric Garcetti declared a State of Emergency in the City of Los Angeles as a result of the outbreak of the novel COVID-19. On March 11, 2020, the World Health Organization officially declared the health crisis a pandemic. On

March 19, 2020, Mayor Garcetti issued a “Safer at Home” emergency order, ordering all residents to stay inside their residences, and immediately limit all movement outside their homes beyond what is absolutely necessary to take care of essential needs. Thereafter, Governor Newsom also issued a statewide order for residents to stay home. As a result of the sheltering orders, businesses have permanently or temporarily closed causing extreme economic uncertainty for workers.

On March 17, 2020, the City Council adopted Motion 72J, a multi-pronged motion that requested, in part, an ordinance providing workers in the City who are laid off as a result of the COVID-19 pandemic a right of recall to their pre-pandemic worksite in order of seniority when the worksite reopens. Another prong of Motion 72J, requested an ordinance extending Citywide protections and preferences afforded to workers when a business changes control or ownership. In addition, on March 17, 2020, the City Council adopted Motion 72DD, requesting an expansion of the City’s Hotel Worker Retention Ordinance Citywide; and Motion 72KK, requesting a report back with a plan to protect hospitality jobs. The prong of Motion 72J that requested a Citywide worker retention ordinance, subsumed the intent of Motion 72DD and 72KK because it applies to all industries, even for businesses in the hospitality industry.

Discussion

The California Constitution provides that any city may make and enforce within its jurisdiction all local regulations not in conflict with general laws. Cal. Const. Art. XI. In the absence of preemption by state or federal law, a municipality may use its police powers to regulate for health, safety, and welfare.

The City has a long history of using its capacity as a market participant to promote protections for workers. The City also has used its police powers to protect workers. In 2006, the City enacted the Grocery Worker Retention Ordinance (GWRO). Later that year, the City enacted the Hotel Worker Retention Ordinance. These ordinances regulated specific industries through the City’s police power.

The GWRO was challenged by the California Grocers Association (CGA), claiming the ordinance was preempted by state and federal law. Specifically, CGA argued the Grocery Worker Retention Ordinance intruded upon either matters of health and safety already regulated by the state or matters of employee organization and collective bargaining fully occupied by federal law. The City ultimately prevailed in that lawsuit. The California Supreme Court held that the Ordinance lawfully regulated, for certain grocery stores during ownership transitions, how a new owner may select its workforce. *California Grocers Association v. City of Los Angeles* (2011) 52 Cal. 4th 177, 188-191.

During the current pandemic, the workforce in Los Angeles faces significant economic uncertainty, including many temporary lay-offs and company closures,

resulting in reduced or eliminated paychecks for working families. Both draft ordinances extend job protections to workers in Los Angeles at this critical time and in the pandemic's aftermath.

The Citywide Worker Retention Ordinance provides protections by seniority after a change of ownership, requiring business to rehire and retain workers employed by the incumbent business, after a successor business reopens following a change in ownership.

The Right to Recall Ordinance similarly ensures that workers laid off due to the pandemic receive priority re-hiring by seniority, addressing situations when a shuttered business reopens with no change of ownership.¹ The requirement that a business rehire its pre-pandemic workers laid-off due to COVID-related economics is a reasonable exercise of the City's police power during the unprecedented threats to workers and businesses caused by this pandemic.

If you have any questions regarding this matter, please contact Deputy City Attorney Dania Minassian at (213) 978-8130. She or another member of this Office will be available when you consider this matter to answer questions you may have.

Sincerely,

MICHAEL N. FEUER, City Attorney

By 

DAVID MICHAELSON
Chief Assistant City Attorney

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Transmittal

¹ State law on "at-will" employment precludes the City from directing employers to lay off employees based on seniority.