

ORDINANCE NO. _____

**AN URGENCY ORDINANCE OF THE COUNTY OF MONTEREY, STATE OF CALIFORNIA,
ESTABLISHING A HOSPITALITY WORKER RIGHT TO RECALL**

County Counsel Summary

This ordinance is an urgency ordinance for the immediate preservation of the public peace, health and safety of the County of Monterey due to the impact the COVID-19 pandemic has had upon the lives of hospitality workers in the unincorporated area of the County. That impact includes the impact on the County's economy and the government services provided to laid-off hospitality workers. This ordinance establishes a process certain hospitality-based employers must follow in recalling workers laid-off due to the impact on an employer's business of the COVID-19 pandemic. The process includes offering to recall defined laid-off workers jobs for which they are either qualified, or can be qualified with training, in order of seniority. The ordinance does not preempt the provisions of any bona fide labor agreement between an employer and a union/bargaining unit. The ordinance further provides for a private right of action in Superior Court for an alleged violation.

The Board of Supervisors of the County of Monterey ordains as follows:

SECTION 1. FINDINGS AND DECLARATIONS

A. Pursuant to Article XI, section 7 of the California Constitution, the County of Monterey ("County") may adopt and enforce ordinances and regulations not in conflict with general laws to protect and promote the public health, safety, and welfare of its residents.

B. Pursuant to Government Code section 25123, to protect against an immediate threat to the public safety, health, and welfare, the County may adopt an urgency ordinance that takes effect immediately.

C. COVID-19 (also known as the "Coronavirus Disease") is a respiratory disease which was first detected in abroad and has now spread across the globe, with tens of thousands of confirmed cases in California, including the Monterey County area.

D. 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.

E. 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).

F. The World Health Organization announced on March 11, 2020, that it characterized COVID-19 as a "pandemic."

G. On March 17, 2020, Monterey County Health Officer Edward Moreno, MD, issued a Shelter-in-Place Order requiring all Monterey County residents to stay in their homes and leave only for specified purposes.

H. 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.

I. 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.

J. Since the declaration of a national public health emergency on January 31, 2020, the COVID-19 pandemic has negatively affected the hospitality related economic sector in Monterey County disproportionately to other sectors due to restrictions on travel and occupancy, and caused hospitality employers (which include both hotel and restaurant employers) in Monterey County to discharge, layoff and furlough workers with widespread impacts on such workers.

K. Many thousands of hospitality workers have been separated from their employment during the pandemic.

L. While federal State, and local programs, and efforts by some of Monterey County's non-profits, have provided assistance and support for Monterey County's hospitality workers in the short-term, these workers need the assurance of a return to their previous jobs as the pandemic recedes and business returns.

M. Ensuring that Monterey County's hospitality employers respect their former employees' rights and appreciate that the smooth transition back to a fully functioning hospitality business will lessen the damage to the County's economy and the incomes of employers and employees alike.

N. With Monterey County and the State now moving more rapidly through the State's "tiers" described in its Blueprint for a Safer Economy, hospitality establishments will be allowed to operate at greater and greater capacity.

O. The Governor has indicated that all businesses in the state should be allowed to fully reopen by June 15, 2021, under specific conditions.

P. The rapid re-opening of the County's economy, in particular the hotel and restaurant sectors of the economy, present an immediate need to protect the public health, safety and welfare through the adoption of this ordinance for the reasons stated above.

Q. The adoption of this ordinance is not a "project" under CEQA.

SECTION 2. TITLE AND APPLICABILITY.

This Ordinance shall be known as the “Hospitality Worker Right to Recall” Ordinance, and applies in the unincorporated area of the County of Monterey.

SECTION 3. DEFINITIONS.

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

- A. “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.
- B. “Covered Enterprise” means the business owned or operated by an Employer.
- C. “Covered Hotel Employer” means any Person who, directly or indirectly or through an agent or any other Person, owns or operates a commercial building that is designated for intermittent lodging for one or more days/nights, and related services, for the public, including but not limited to food and beverage preparation and service, and containing fifty (50) or more guest lodging rooms, and who employs or exercises control over the wages, hours or working conditions of any Employee.
- D. “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 fifty (50) 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 five-hundred (500) Employees in the aggregate, regardless of where those Employees are employed.
- E. “Employee” has the same meaning as described in Section 2750 of the California Labor Code.
- F. “Employer” means a Covered Hotel Employer or Covered Restaurant Employer.
- G. "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;
- H. "Franchisee" means a Person to whom a Franchise is offered or granted.
- I. "Franchisor" means a Person who grants a Franchise to another Person.
- J. "Incumbent Employer" means the Employer prior to a Change in Control.
- K. "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.
- L. "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.
- M. "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.
- N. "Restaurant" means a "public eating establishment" as defined in Monterey County Code of Ordinances 10.43.030 including those conducting full-service restaurant commercial activities, limited-service restaurant and cafe commercial activities, or fast-food restaurant activities.
- O. "Successor Employer" means the Employer after a Change in Control.
- P. "Transfer Document" means the purchase agreement or other document(s) effecting a Change in Control.

SECTION 4. RIGHT TO RECALL.

- A. An Employer shall provide notice and offer its Laid-Off Employees in writing, by U.S. 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 Ordinance'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. An Employer may make simultaneous, conditional offers of employment to Laid-Off Employees, with a final offer of employment conditioned on application of the preference system set forth in this paragraph.
- C. A Laid-Off employee who is offered a position pursuant to this Ordinance shall be given no less than five (5) business 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 5 business 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 calendar days of the date of hire. The Employer shall within 30 calendar 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 County 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 Ordinance as to the Incumbent Employer's Laid-off Employees for forty-five (45) calendar 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) calendar 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 County upon request.

SECTION 5. 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 Ordinance by any lawful means, for participating in proceedings related to this Ordinance, for opposing any practice proscribed by this Ordinance, or for otherwise asserting rights under this Ordinance. This Section shall also apply to any Employee who mistakenly, but in good faith, alleges noncompliance with this Ordinance.

SECTION 6. ENFORCEMENT.

- A. A Laid-Off Employee may bring an action in the Superior Court of the State of California against an Employer for violations of this Ordinance and may be awarded:
1. Hiring and reinstatement rights pursuant to this Ordinance;
 2. Actual damages (including, but not limited to, lost pay and benefits) suffered by the Laid-Off Employee, and statutory damages in the amount of \$1,000, whichever is greater;
 3. Punitive damages, pursuant to California Civil Code section 3294; and Attorney fees and costs to a Laid-Off Employee who prevails in any such enforcement action; however, punitive damages may be awarded to an Employer who prevails and obtains a court determination that the Laid-off Employee's lawsuit was frivolous.
- B. A civil action pursuant to this Ordinance by a Laid-Off Employee alleging a violation of any provision of the article shall commence only after the following requirements have been met:
1. The Laid-Off Employee had provided written notice to the Employer of the provisions of the Ordinance alleged to have been violated and the facts supporting to alleged violation; and
 2. The Employer is provided fifteen (15) days from receipt of the Laid-Off Employee's written notice to the Employer to cure any alleged violation.

SECTION 7. EXEMPTION FOR COLLECTIVE BARGAINING AGREEMENT.

All of the provisions of this Ordinance, or any part of this Ordinance, may be waived under 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 agreement shall not constitute, or be permitted to constitute, a waiver of any or all of the provisions of this Ordinance.

SECTION 8. SEVERABILITY.

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 Ordinance, which shall remain in full force and effect. The Board of Supervisors 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. The courts are hereby authorized to reform the provisions of this Chapter in order to preserve the maximum permissible effect of each subsection herein.

SECTION 9. EFFECTIVE DATE AND TERMINATION.

In light of the recitals in this ordinance, the Board declares that this ordinance is adopted in compliance with Government Code Section 25123 and is necessary as an urgency measure for the immediate preservation of the public health, safety, and welfare. This ordinance shall take effect immediately upon adoption for the reasons set forth herein, and shall expire ___ days after its effective date, unless reenacted.

PASSED AND ADOPTED this 20th day of April 2021, by the following vote:

AYES:

NOES:

ABSENT:

Wendy Root Askew
Chair, Monterey County Board of Supervisors

A T T E S T:

VALERIE RALPH
Clerk of the Board of Supervisors

By: _____
Deputy

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| <p>APPROVED AS TO FORM</p> <p>Leslie J. Girard County Counsel</p> |
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