

**ORDINANCE NO. 22-\_\_**

**An Ordinance Of The City Council Of The City Of Emeryville Adding Chapter 41 To Title 5 Of The Emeryville Municipal Code, “Right to Recall For Hotel And Card Room Employees” (CEQA Determination: Exempt Pursuant To CEQA Guideline 15061(b)(3) And 15378(a))**

**WHEREAS**, since the declaration of a national public health emergency on January 31, 2020, the COVID-19 pandemic has caused hospitality and card room employers to discharge, layoff, and furlough workers at an unprecedented scale; and

**WHEREAS**, many hospitality and card room workers in Emeryville were separated from their jobs during the pandemic; and

**WHEREAS**, while federal, state, and local programs provided a modicum of support to Emeryville’s hospitality and card room workers in the short-term, it is clear that the longer-term solution is the promise of a return to their previous jobs as the pandemic recedes and business returns; and

**WHEREAS**, in Fiscal Years 2019-2020 and 2020-2021, Transient Occupancy Tax (“TOT”) from hotels declined thirty-one percent and seventy-three percent, respectively, from Fiscal Year 2018-2019; and

**WHEREAS**, in Fiscal Years 2019-2020 and 2020-2021, Card Room Tax revenues declined thirty percent and eighty-three percent, respectively, from Fiscal year 2018-2019; and

**WHEREAS**, the declines in TOT and Card Room Tax revenues represented the COVID-19 pandemic’s largest impact to the City’s revenues; and

**WHEREAS**, as evidenced by the significant decline in revenues to the City from TOT and Card Room taxes, the pandemic has highlighted the vulnerability of the hospitality and card room industries to the impacts of the COVID-19 pandemic; and

**WHEREAS**, the hospitality and card room industries are important revenue generators for the City of Emeryville; and

**WHEREAS**, ensuring that Emeryville’s hospitality and card room employers provide their former employees with a right to return to their former jobs will speed the transition back to a functioning labor market in the hotel and card room industries and will lessen the damage to the City’s economy;

**NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF EMERYVILLE DOES HEREBY ORDAIN AS FOLLOWS:**

**SECTION ONE. PURPOSE AND INTENT**

The purpose and intent of this Ordinance is to adopt a new Chapter 41 of Title 5 of the Emeryville Municipal Code, “Right to Recall for Hotel and Card Room Employees,” to provide employment standards for employees of hotel and card room businesses above

and beyond the requirements of state law. It is the intent of the City Council of the City of Emeryville that this Ordinance provide for a right of hotel and card room workers laid off as a result of the COVID-19 Pandemic to return to their positions once hotel and card room businesses begin rehiring. The purpose of the Ordinance is to facilitate a transition back to a functioning labor market after the pandemic and increase employment stability for hotel and card room workers, which enhances the City's economy by mitigating the mass layoffs due to the pandemic.

**SECTION TWO. ADDING CHAPTER 41 TO TITLE 5 OF THE EMERYVILLE MUNICIPAL CODE**

Chapter 41 is hereby added to Title 5 of the Emeryville Municipal Code to read as follows:

**CHAPTER 41**

**RIGHT TO RECALL FOR HOTEL AND CARD ROOM EMPLOYEES**

**5-41.01. Definitions.**

As used in this Chapter, the following terms shall have the following meanings:

- (a) "Card Room" shall mean a Card Room as defined in Section 5-5.02(d) of the Emeryville Municipal Code, inclusive of any premises connected to or operated in conjunction with the Card Room, such as food preparation facilities, concessions, retail stores, restaurants, bars and parking facilities, including contracted, leased or sublet premises.
- (b) "Covered Employer" shall mean a Hotel or a Card Room.
- (c) "COVID-19 Declared Emergency" shall mean the emergency declared by the City Manager on March 17, 2020 due to actual or threatened conditions of disaster or extreme peril to the safety of persons and property within the City of Emeryville caused by the COVID-19 pandemic, which declaration was ratified by the City Council by Resolution No. 20-23 adopted on March 19, 2020.
- (d) "Employee" shall mean any person who:
  - (1) In a calendar week performs at least two (2) hours of work within the geographic boundaries of the City of Emeryville for an employer; and
  - (2) Qualifies as an employee entitled to payment of a minimum wage from any employer under the California minimum wage law, as provided under Section 1197 of the California Labor Code and wage orders published by the California Industrial Welfare Commission. Employees shall include learners, as defined by the California Industrial Welfare Commission.

- (e) “Employer” shall mean any person (including a natural person, corporation, nonprofit corporation, general 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) who directly or indirectly (including through the services of a temporary services or staffing agency or similar entity) employs or exercises control over the wages, hours or working conditions of any employee.
- (f) “Hotel” shall mean any hospitality facility with more than fifty (50) guest rooms. A “hotel” includes not only the facility’s guest rooms and common areas but also any subcontracted or sublet restaurants connected thereto or operated in conjunction therewith.
- (g) “Laid-Off Employee” shall mean any Employee who was employed by a Covered Employer for six months or more in the 12 months preceding the COVID-19 Declared Emergency, and whose most recent separation from active service occurred during the COVID-19 Declared Emergency and was due to a government order, lack of business, a reduction in force or other, economic, non-disciplinary reasons related to the COVID-19 Declared Emergency.
- (h) “Length of Service” shall mean the total of all periods of time during which an Employee has been employed by the same Covered Employer, including periods of time when the Employee was on leave or on vacation.

**5-41.02. Right to Recall.**

- (a) A Covered Employer shall offer its Laid-Off Employees in writing, by registered mail to their last known physical address, and by email and text message to the extent the Covered Employer possesses such information, all job positions which a) become available during the COVID-19 Declared Emergency and for a period of twelve (12) months after the end of the COVID-19 Declared Emergency and b) 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 similar position at the Covered Employer at the time of the Laid-Off Employee’s most recent separation from active service with the Covered 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.

The Covered Employer shall offer positions to Laid-Off employees in an order of preference corresponding to categories (1) and then (2) in the preceding sentence. Where more than one Laid-Off Employee is entitled to preference for a position, the Covered Employer shall offer the position to the Laid-Off Employee with the greatest Length of Service with the Covered Employer.

- (b) A Laid-Off Employee who is offered a position pursuant to this Chapter shall be given no less than ten (10) calendar days from the date of receipt of the mailed offer in which to accept or decline the offer. A Covered Employer may make simultaneous, conditional offers of employment to Laid-Off Employees, with final offer of employment conditioned on application of the priority system set forth in Section 5-41.02(a).
- (c) 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 thereof within thirty (30) days identifying all reasons for such decision.
- (d) The requirements of this Chapter ~~also apply to a Card Rooms Covered Employer~~ in the following circumstances:
  - (1) The ownership of a Covered Employer ~~Card Room~~ changes after the separation from employment of a Laid-Off Employee, but the Covered Employer ~~Card Room~~ is conducting the same or similar operations as prior to the ownership change;
  - (2) The form of organization of a Covered Employer ~~Card Room~~ changes after the separation from employment of a Laid-Off Employee;
  - (3) Substantially all of the assets of a Covered Employer ~~Card Room~~ are acquired by another entity which conducts the same or similar operations using substantially the same assets after the separation from employment of a Laid-Off Employee;
  - (4) Any combination of the circumstances described in paragraphs (1) through (3).
- (e) ~~In the event of a sale of a Hotel or other change resulting in a new entity taking over as an Employer at a Hotel (including, but not limited to subcontracting, subleasing, or replacement of subcontractor, lessee or sublessee)~~ Notwithstanding subsection (d), the requirements of this Chapter are superseded by Section 5-32.1.1(b)(2) of the Emeryville Municipal Code.

#### **5-41.03. Notice, Retention of Records.**

- (a) Written Notice of Layoff. The Covered Employer shall provide the affected Employee with written notice of a layoff, either in person or to the Employee's last-known address, and by text and email to the extent the Covered Employer possesses such information. Such notice shall be provided at the time of layoff or within twenty (20) days of the effective date of this ordinance if the layoff took place before such date. The Covered Employer shall provide notice to each affected

Employee in a language understood by the affected Employee. The written notice shall include the following:

- (1) A notice of the layoff and the layoff's effective date.
  - (2) A summary of the right to reemployment created by this ordinance, or clear instructions on how an Employee may access such information.
- (b) Retention of Records. A Covered Employer shall retain the following records for at least three years from the date of separation for each Laid-Off Employee: the Employee's full legal name; the Employee's job classification at the time of separation from employment; the Employee's date of hire; the Employee's last known address of residence; the Employee's last known email address; the Employee's last known telephone number; and a copy of the written notice regarding the layoff provided to the employee. Upon the occurrence of any of the circumstances described in Section 5-41.02(d) or (e), the Covered Employer shall provide these records to the new owner or operating entity.

#### **5-41.04. Retaliation Barred.**

No Covered 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 Chapter by any lawful means, for participating in proceedings related to this Chapter, for opposing any practice proscribed by this Chapter, or for otherwise asserting rights under this Chapter. This Section shall also apply to any Employee who mistakenly, but in good faith, alleges noncompliance with this Chapter.

#### **5-41.05. Enforcement.**

An Employee claiming harm from a violation of this Chapter may bring an action against the Covered Employer in court to enforce the provisions of this Chapter and shall be entitled to all remedies available to remedy any violation of this Chapter, including but not limited to back pay, reinstatement, injunctive relief, and/or civil penalties as provided herein. The prevailing party in an action to enforce this Chapter is entitled to an award of reasonable attorney's fees, witness fees and costs.

#### **5-41.06. Regulations.**

The City shall be authorized to coordinate implementation of this Chapter and may promulgate appropriate guidelines or rules for such purposes. Any guidelines or rules promulgated by the City shall have the force and effect of law and may be relied on by Covered Employers, Employees and other parties to determine their rights and responsibilities under this Chapter. Any guidelines or rules may establish procedures for ensuring fair, efficient and cost-effective implementation of this Chapter, including

supplementary procedures for helping to inform Employees of their rights under this Chapter, and for monitoring Covered Employer compliance with this Chapter.

#### **5.41.07. Relationship to Employment Contracts and Agreements.**

This Chapter applies to all Employees as defined herein regardless whether they are represented for purposes of collective bargaining or are covered by a collective bargaining agreement. Any waiver by an individual of any provisions of this Chapter shall be deemed contrary to public policy and shall be void and unenforceable, except that Employees are not barred from entering into a written valid collective bargaining agreement waiving provisions of this Chapter if such waiver is set forth in clear and unambiguous terms. Nothing in this Chapter shall be construed to invalidate or limit the rights, remedies and procedures of any contract or agreement that provides greater or equal protection for employees than are afforded by this Chapter.

#### **5-41.08. No Preemption of Higher Standards.**

The purpose of this Chapter is to ensure minimum labor standards. This Chapter does not preempt or prevent the establishment of superior 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.

#### **5-41.09. Severability.**

If any provision or application of this Chapter is declared illegal, invalid or inoperative, in whole or in part, by any court of competent jurisdiction, the remaining provisions and portions thereof and applications not declared illegal, invalid or inoperative shall remain in full force or effect. Nothing herein may be construed to impair any contractual obligations of the City. This Chapter shall not be applied to the extent it will cause the loss of any Federal or State funding of City activities.

### **SECTION THREE. CEQA DETERMINATION**

The City Council finds, pursuant to Title 14 of the California Administrative Code, Section 15061(b)(3) and Section 15378(a), that this Ordinance is exempt from the requirements of the California Environmental Quality Act (CEQA) in that it is not a Project that has the potential for causing a significant effect on the environment. This action is further exempt from the definition of a Project in Section 15378(b)(3) in that it concerns general policy and procedure making.

### **SECTION FOUR. SEVERABILITY**

Every section, paragraph, clause, and phrase of this Ordinance is hereby declared severable. If, for any reason, any section, paragraph, clause, or phrase is held to be invalid or unconstitutional, such invalidity or unconstitutionality shall not affect the validity or constitutionality of the remaining section, paragraphs, clauses, or phrases.

**SECTION SIX. EFFECTIVE DATE**

This Ordinance shall take effect thirty (30) days following its final passage. The City Clerk is directed to cause copies of this Ordinance to be posted or published as required by Government Code Section 33693.

**SECTION SEVEN. CODIFICATION**

Section Two of this Ordinance shall be codified in the Emeryville Municipal Code. Sections One, Three, Four, Five, Six and Seven shall NOT be so codified.

This Ordinance was introduced and first read by the City Council of the City of Emeryville at a regular meeting held on Tuesday, March 15, 2022 and **PASSED AND ADOPTED** by the City Council at a regular meeting held on Tuesday, April 5, 2022 by the following vote:

AYES:  \_\_\_\_\_  
NOES:  \_\_\_\_\_  
ABSTAIN:  \_\_\_\_\_  
ABSENT:  \_\_\_\_\_

\_\_\_\_\_  
MAYOR

ATTEST:  
  
\_\_\_\_\_  
CITY CLERK

APPROVED AS TO FORM:  
  
\_\_\_\_\_  
CITY ATTORNEY