



MEMORANDUM

DATE: March 15, 2022
TO: Christine Daniel, City Manager
FROM: Charles S. Bryant, Community Development Director
SUBJECT: **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)**

RECOMMENDATION

Staff recommends that the City Council adopt the first reading of the above-referenced ordinance, adding Chapter 41 to Title 5 of the Emeryville Municipal Code, “Right to Recall for Hotel and Card Room Employees”.

BACKGROUND

On February 16, 2021, the City Council unanimously expressed interest in considering a Right to Recall ordinance. The City Council’s referral was based on a draft ordinance prepared by Unite Here and a similar ordinance approved by the City of Oakland, which were intended to mitigate the impacts of layoffs due to COVID-19 for employees in the hospitality, travel and/or gaming industries, as applicable. The Right to Recall ordinance is intended to ensure security of employees’ positions and roles after layoff by requiring covered employers to rehire laid off employees in order of seniority.

On April 20, 2021, the City Council held a study session regarding a potential Right to Recall ordinance. The study session was informed by staff’s outreach to hotel and card club businesses regarding their current hiring practices and the potential impacts of a Right to Recall ordinance on their operations. The City Council gave direction to staff to prepare a Right to Recall ordinance with certain elements, discussed in more detail below.

DISCUSSION

Since the April 20, 2021, study session, staff has continued to monitor the status of Right to Recall ordinances in other jurisdictions. The following is provided as an update and overview of selected Right to Recall ordinances in other California cities.

The City of Oakland adopted a Right to Recall ordinance applicable to hotels, restaurants with more than 500 employees, event centers, and airport hospitality and service providers on July 21, 2020, and issued guidance in the form of Frequently Asked Questions on May 26, 2021. While the Oakland ordinance does not include a sunset date, the ordinance defines laid-off employees as employees that worked for a covered

employer for at least six months in the twelve months prior to January 31, 2020, with most recent separation from the covered employer after January 31, 2020, due to economic, non-disciplinary reasons.

The City of Los Angeles adopted a Right to Recall ordinance applicable to hotels, event centers, airport employers, and commercial property operators that employ 25 or more janitorial, maintenance, or security workers on April 29, 2020. Similar to the Oakland ordinance, the Los Angeles ordinance defines laid-off workers as individuals who worked for a covered employer for six months or more and whose most recent separation occurred on or after March 4, 2020, as a result of lack of business, reduction in work force, or other economic non-disciplinary reason. Staff from the City of Los Angeles have been directed to report back to the Los Angeles City Council in March 2022 regarding whether there is a continuing need for the ordinance.

The City of Long Beach adopted a Right to Recall ordinance applicable to hotels and commercial property owners with two or more janitorial, maintenance or security workers on May 19, 2020. The Long Beach ordinance mirrors the Los Angeles ordinance regarding its definition of laid-off workers. The Long Beach ordinance includes a provision that requires the City Manager report to the City Council every 90 days on the effectiveness of, and continuing need for, the ordinance. In the City Manager's report dated November 1, 2021, the City Manager recommended sunsetting the ordinance effective December 31, 2021, citing the reduced restrictions of State and local health orders and resumption of business operations. On December 7, 2021 the Long Beach City Council directed that the Right to Recall Ordinance sunset no earlier than February 28, 2022; however on February 15, 2022, the Long Beach City Council voted to direct the Long Beach City Attorney to revise the Right to Recall ordinance to make it permanent, citing the ongoing economic recovery from the COVID-19 pandemic.

The City of San Diego adopted a Right to Recall ordinance applicable to hotels, event centers, and commercial property owners with 25 or more janitorial, maintenance or security employees on September 8, 2020. The ordinance originally included a sunset date contingent upon the passage of Assembly Bill ("AB") 3216, which effectively was a State version of Right to Recall for hotel, event center, and airport service employees. AB 3216 was vetoed by the Governor on September 30, 2020, and the San Diego ordinance was revised to sunset on March 8, 2021. On March 2, 2021, the San Diego ordinance was amended through an emergency ordinance to sunset on March 8, 2022.

Draft Right to Recall Ordinance

During the April 20, 2021 study session, staff received the City Council's input on the several policy questions. This input was incorporated into a Draft Right to Recall Ordinance ("Draft Ordinance", Attachment 1), as follows:

Applicability

Staff asked the City Council what business types should be covered by the Right to Recall ordinance. The Council confirmed that covered businesses should include hotels and

cardrooms, including ancillary businesses operating in conjunction with hotels and cardrooms (e.g., attached restaurants). The Draft Ordinance includes a definition of “Covered Employer” as a Hotel or Card Room. To ensure consistency with pre-existing labor standards applicable to hotels, the Draft Ordinance further defines “Hotel” to mirror the definition of “Large Hotels” in the Workplace Justice Standards at Large Hotels Ordinance (“Measure C”), codified as Emeryville Municipal Code (“EMC”) Section 5-32.1.3(a), which covers all existing hotels in Emeryville. The Draft Ordinance also includes a definition of “Card Room” that incorporates the definition of Card Room in the City’s existing Card Room Ordinance at EMC Section 5-5.02(d) but expands on this definition to include “...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.”

The Draft Ordinance’s coverage of hotel and card room businesses is due to the inordinate impact of the COVID-19 pandemic on these specific Emeryville businesses, which is evidenced by the extraordinary impact on the City’s revenue. The City receives revenues from Transient Occupancy Tax (“TOT”) from hotels, and Card Room Tax from card rooms. Both of these revenue sources are directly related to the level of business activity of these establishments and therefore can be used as a metric of business health.

In Fiscal Years 2019-2020 and 2020-2021, TOT revenue was 31% and 73% lower, respectively, from pre-pandemic levels in Fiscal Year 2018-2019. For Card Room Tax Fiscal Years 2019-2020 and 2020-2021 revenues were 30% and 83% lower, respectively, from pre-pandemic levels. The declines in TOT and Card Room Tax represent the largest fiscal impact to the City resulting from the COVID-19 pandemic, which highlights the stress these businesses were under as well as the City’s reliance on the health of these industries.

Length of Recall Benefit

The City Council was asked about the length of time after layoff that employers should be required to offer open positions to laid off employees. The Council expressed an interest in this period being one year from layoff but extended in the event of a declared emergency for a time period equal to the term of the emergency (i.e., “tolled”), citing the duration of the COVID-19 pandemic as a reason for a recall benefit to extend beyond one year. The Draft Ordinance requires Covered Employers to offer its laid-off employees all jobs which become available during, and for twelve months after, the end of the City’s emergency declaration for the COVID-19 pandemic.

Length of Notice Period

The City Council discussed the length of time given to laid off employees to respond to a Covered Employer’s written offer of rehire, and supported a notice period of ten calendar days. The Draft Ordinance includes this notice period provision, and provides that Covered Employers may make simultaneous conditional offers of employment to multiple laid off employees with the offer of employment subject to prioritization as follows: 1) the laid off employee held the same or similar position at the Covered Employer prior to being

laid off; 2) the laid off employee is or can be qualified for the position, with the same training that would be provided to a new employee for that position; and 3) if multiple laid off employees meet the aforementioned preferences, the laid-off employee with the longest length of service with the Covered Employer prior to layoff is offered the position.

Intersection with Measure C

Staff noted, and the City Council acknowledged, that a Right to Recall ordinance would need to maintain consistency with Measure C. The Draft Ordinance incorporates definitional references to Measure C, as noted above, and includes a provision relating to change of ownership of a Covered Employer that defaults to the provisions of Measure C, for the avoidance of conflict between the ordinances.

Enforcement Mechanism

The City Council directed staff to use a private right of action, in lieu of City enforcement, as the enforcement mechanism for a Right to Recall Ordinance. The Draft Ordinance reflects this direction.

Sunset Date

Staff asked the City Council whether a Right to Recall Ordinance should include a sunset date, after which its provisions would not apply. The City Council directed staff to not include a sunset date, and no sunset provision is included in the Draft Ordinance. The Draft Ordinance requires the offer of employment to laid-off employees for 12 months beyond the end of the COVID-19 Declared Emergency, which point in time is currently unknown.

FISCAL IMPACT

Implementation of the Draft Ordinance will require staff resources to develop regulations, conduct outreach, and respond to employer inquiries. Because the Draft Ordinance addresses hotels and card room businesses, the scope of this work is limited to six businesses and the amount of staff effort to conduct outreach and respond to inquiries is expected to be a marginal increase to the staff time already required to administer the City's existing labor standards. Additionally, the Draft Ordinance utilizes a right to private action as the enforcement mechanism, which limits the need for City resources for enforcement.

Any change to the Draft Ordinance that expands the number of Covered Employers, extends the term of applicability of the ordinance beyond the COVID-19 emergency, or implements a City-administered enforcement mechanism would require further analysis to determine fiscal impacts.

STAFF COMMUNICATION WITH THE PUBLIC

Staff has corresponded with hotel and card room businesses regarding a Right to Recall ordinance.

CONFLICT OF INTEREST

None.

CONCLUSION

Staff recommends that the City Council adopt the first reading of the attached Right to Recall Ordinance.

PREPARED BY: Chadrick Smalley, Economic Development and Housing Manager

APPROVED AND FORWARDED TO THE CITY COUNCIL OF THE CITY OF EMERYVILLE:



Christine Daniel, City Manager

ATTACHMENTS

- Attachment 1 – Draft Ordinance