



**CITY OF GLENDALE, CALIFORNIA
REPORT TO THE CITY COUNCIL**

AGENDA ITEM

Report: Hospitality Workplace Worker Protection Proposal – UNITE HERE Local 11 proposed emergency ordinance and policies

1. Motion to Note and File Information
2. Motion Providing Direction to Staff

COUNCIL ACTION

Item Type: Action Item

Approved for April 14, 2020 **calendar**

ADMINISTRATIVE ACTION

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RECOMMENDATION

Staff recommends the City Council receive, note and file the information concerning UNITE HERE Local 11's proposals regarding, certain hospitality workplace worker protections.

BACKGROUND/ANALYSIS

UNITE HERE is an international labor union that represents 270,000 working people across North America with members in U.S. and Canada who work in the hotel, gaming, food service, manufacturing, textile, distribution, laundry, transportation, and airport industries. Local 11 is an affiliate of UNITE HERE that represents over 30,000 workers employed in hotels, restaurants, airports, sports arenas, and convention centers throughout Southern California and Arizona. Their stated mission is to advocate for improved living standards and working conditions.

Recently UNITE HERE Local 11 sent hospitality workplace worker protection proposals to the Glendale City Council in the form of a proposed emergency Hospitality Worker Workplace Protection Ordinance (the "Ordinance"). The proposed Ordinance is targeted at providing, among other things, added worker protection during the coronavirus crisis (See Exhibit 1). In summary, the Ordinance includes the following provisions:

1. Provide for all hospitality workers at least an additional paid 30 minutes per 8-hour shift for hand washing.
2. Reduce workload for room attendants in hotels to provide extra time for sanitation.
3. Mandate regular public health training by a non-profit authority not controlled by employers for room attendants, dishwashers, and cooks.
4. Protect workers with fair layoff and recall procedures to guarantee that if they are displaced, they will get their jobs back when the crisis subsides, or at any time there is a workforce reduction or lay-offs.
5. Protect workers against opportunistic permanent terminations.
6. Expand worker retention legislation to the entire city in case of hotel closures and subcontracting.
7. Enforce the city's short term rental law, starting with illegal and unregulated multi-unit buildings and rent controlled apartments to stop the spread of the virus.

UNITE HERE Local 11's proposed Ordinance is not entirely new; most of the provisions source in whole or in part from either the Santa Monica Municipal Code ("SMMC"), the

Los Angeles Municipal Code (“LAMC”), or the City of Philadelphia Municipal Code. (See Exhibits 2-4). Specifically, the Ordinance mirrors these other city municipal code provisions as follows:

- Chapter 1.00 “Definitions”, with small exceptions, duplicates SMMC Chapter 4.67, entitled “Hotel Worker Protection” adopted September 10, 2019. The Ordinance expands the definition of “Hospitality facility” to include “event centers” or “private university cafeterias”. Also, the definition of “Short-term rental cleaning contractor” makes reference to the LAMC, which appears to be an inadvertent cross reference from another draft ordinance sent to Los Angeles.
- Chapter 1.01, subsection (a) “Fair Discharge and Recall of Workers” is based on section 9-4702 “Prohibition of Wrongful Discharge” and section 9-4704 “Determination of Bona Fide Economic Reasons” from the Philadelphia Municipal Code Chapter 9-4700 entitled “Wrongful Discharge from Parking Employment 1166” adopted on September 3, 2019. Philadelphia’s wrongful discharge provisions were adopted to protect parking employees employed on the premises of a public parking garage, lot or valet operation. UNITE HERE Local 11 has used certain provisions from Philadelphia’s code to extend similar protection to hospitality workers from discharge except for just cause or bona fide economic reasons. However, the proposed Ordinance does not include the definition of “just cause”. This definition should be included if the Council gives direction to move forward with drafting an ordinance with these provisions.
- Chapter 1.01, subsection (b) “Preference for Qualified Discharged Employees” duplicates SMMC Chapter 4.66 entitled “Recall of Workers”, adopted December 11, 2001. This provision is essentially a preferential rehire process for prior employees discharged for reasons other than just cause, and it would apply retroactively. A discharged employee is defined as “qualified”, and therefore eligible for rehire, if they held the same or similar position at the same employment site at the time of prior discharge, or could be qualified with the same training a new hire would receive. The rehire would be offered in order of preference based first on the similarity of the new position with the prior position, and also based on seniority. In addition, qualified workers offered a rehire would have 10 days to accept or reject the rehire offer.
- Chapter 1.02 “Hospitality Worker Retention”, with small exceptions pertaining to just cause termination, duplicates certain provisions of LAMC Article 3 entitled “Hotel Worker Retention Ordinance” (subsections 183.02 and 183.04) adopted December 30, 2006. This Chapter also includes provisions from SMMC Section 4.67.050.

This Chapter is aimed at protecting workers from discharge as a consequence of a change in hospitality employer control. In sum, “change in control” is defined in

the proposed Ordinance as the sale, assignment, transfer, contribution or other disposition of all or substantially all of the hospitality facility assets, or similar disposition of a controlling interest, or event with a similar effect. The proposed provisions require posting, in a readily visible and conspicuous place, a written notice within five (5) days of a “change of control” and to keep same posted at the facility for six (6) months after the successor facility begins operation. These notice provisions must include the name and contact information of the successor and incumbent hospitality employers. Subsection (b) of this Chapter sets forth the provisions for retaining employees following a defined “change in control”. It requires, within fifteen (15) days of a change of control, the incumbent hospitality employer to provide the successor employer with a list of eligible workers that includes their names, hire date, job class, and requires to successor employer to maintain and hire from that list for the “Hospitality work retention period”, which is defined as ninety (90) days from the first day the successor hospitality facility is open to the public after change of control. The successor employer must hire from that list except where the worker was discharged for just cause by the incumbent hospitality employer, or because there are fewer workers required. In that case worker retention would be based the relevant collective bargaining agreement, or by seniority, or experience for a comparable job classification. In addition, such retained employees would be employed under the terms and conditions of the new employer and not be discharged except for just cause. Further, employment offers must be written and contained specified job information. At the end of the ninety (90) day retention period, the new employer must provide a performance evaluation, and if that evaluation is satisfactory, then the new employer must consider offering continued employment. Lastly, the retention policies are retroactive.

- Chapter 1.03 “Public Hygiene Training Requirement” duplicates SMMC Subsection 4.67.060 entitled “Public housekeeping training” adopted September 10, 2019. These provisions ensure that consistent hygiene training is provided by a certified, qualified third-party provider based on criteria established by the city. These provisions require the city to establish the training and certification process subject to City Council ratification. The provisions specify that such Training Organization be experienced at providing training to hospitality workers, and immigrant low-wage workers using “interactive training strategies that engage across multiple literacy levels” and provided by trainers and educators that are “culturally competent and fluent” in the languages of the workers.

The training must be at least six (6) hours with live and interactive instruction on elements the city determines are not already sufficiently required by state or local

law, and the training must specifically cover “best practices” and techniques to prevent the spread of disease (including COVID-19); to detect/avoid insect or vermin infestations; to identify human trafficking, domestic violence, violent or threatening conduct; to identify criminal activity; and advise on worker rights and employer responsibilities.

In addition, this Chapter requires the Training Organization to coordinate with the hospitality employers to align content with the hospitality employer policies and procedures. This means that the training cannot be one size fits all. The Training Organization will need to coordinate with each hospitality employer to develop individualized training protocols, even though the Training Organization would retain discretion over developing its curriculum.

The Training Organization would also be required to administer basic proficiency tests and “promptly” issue a certificate to trainees who pass the test. Unsuccessful trainees have a right of review.

Hospitality employers are required to contract with the Training Organization to conduct, at a minimum, one annual Public Hygiene training, administer the examination and issue certificates to trainees who pass the test. The Ordinance requires the hospitality employer to document compliance with this provision by completing a certification form provided by the city, and providing a report to the City within five (5) days of completing a training.

Hospitality employers are prohibited from employing any worker for more than 120 days unless that employee presents a valid Public Hygiene training certificate.

This provision also prohibits “Hosts” as defined by the LAMC (not defined in this Ordinance) from contracting with short-term rental cleaning contractors unless those contractors present required certification.

The Ordinance gives only ninety (90) days to become effective, which may not be sufficient time to find a qualified training organization, and to develop and implement a Public Hygiene Training and Certification Program.

- Chapter 1.04 “Measures to Facilitate Handwashing” is an entirely new provision not included in current Santa Monica or Los Angeles Municipal Codes. Its focus is to ensure workers are allowed additional time for proper sanitation procedures in addition to rest periods, and that the workers are compensated for this time,

that workers are not penalized for failing to meet room quotas and that they receive proper room credits.

- Chapter 1.05 “Notice” duplicates SMMC Section 4.67.080. This provision requires that hospitality workers receive written notice in multiple languages as specified, of the rights in this Ordinance at the time of hire or Ordinance effective date.
- Chapter 1.06 “Supersession by Bone Fide Collective Bargaining Agreements” duplicates SMMC Section 4.67.110. This provision permits waiver of the Fair Discharge and Recall of Workers provisions in Chapters 1.01 and 1.02 of the proposed Ordinance pursuant to a bone fide collective bargaining agreement so long as such waiver is not unilaterally imposed.
- Chapter 1.07 “Retaliatory Action Prohibited” duplicates SMMC Section 4.67.090. This provision prohibits any retaliatory employment action against a hospitality worker for exercising rights protected by the proposed Ordinance, and establishes a rebuttable presumption that such employment action is adverse if taken within ninety (90) days of the worker exercise of rights under the proposed Ordinance.
- Chapter 1.08 “Administrative Regulations” duplicates SMMC Section 4.67.100. This provision requires the City Manager, or designee to adopted administrative regulations to implement the proposed Ordinance, the violation of which would be subject to the remedies set forth in Chapter 1.09, “Civil Remedies” below.
- Chapter 1.09 “Civil Remedies” practically duplicates SMMC Section 4.67.120, with the exception of subsection (d) pertaining to the award of attorneys’ fees and costs, including expert witness fees, which is broader than the Santa Monica provision which includes an exception for awards where the court finds the action was frivolous, unreasonable or groundless and that it was continued to be litigated after the frivolous nature of the case became clear. This provision establishes civil remedies (injunctive relief, damages) to enforce the proposed Ordinance.

On March 16, 2020, UNITE HERE Local 11 asked the City of Los Angeles to enact similar emergency legislation and for the suspension of rent increases and evictions for tourism workers, along with a set of initiatives to protect the most impacted and vulnerable workers. To date, Los Angeles City Council has not taken action on the new

proposal and neither has the Santa Monica City Council (as it pertains to the new prevention provisions relating to handwashing and sick days).

Because so much of the proposed Ordinance is sourced from the SMMC, it is worth noting the extensive stakeholder engagement and outreach process Santa Monica undertook to reach a decision to adopt its hospitality worker regulations. In October 2018, Santa Monica City Council gave direction to their staff to prepare a draft ordinance. This direction was based on advocacy efforts surrounding workplace harassment and assault that began in 2017 which led Santa Monica's Commission on the Status of Women to spearhead efforts to bring a hotel housekeeper's safety policy to Santa Monica that was line with that in Long Beach, Oakland, Seattle and Chicago. In June 2018, UNITE HERE Local 11 presented Santa Monica's Commission on the Status of Women with policies and recommendations for possible action on policies and services related to hospitality work protection. The Commission submitted a letter to the Santa Monica City Council recommending policy change and based thereon gave direction to staff to draft an ordinance.

During the 10 months that followed, Santa Monica staff engaged with industry stakeholders, including Local 11, lodging businesses, local chambers of commerce and the Hotel Association of Los Angeles. Santa Monica also consulted with other cities including Long Beach, Seattle, Emeryville and Oakland to learn about their experiences with implementation and enforcement. At the time Santa Monica adopted its hotel housekeeper safety protections in September 2019 (See Exhibit 5), Santa Monica had 41 hotels and motels and about 2,100 housekeepers. Shortly thereafter a hotel owner and management group filed a complaint against the provisions of the law, arguing the ordinance was unconstitutional and invalid. Last December the district court denied the request for preliminary injunction and found the plaintiffs had not shown a likelihood of success on any of their claims made under the National Labor Relations Act, the dormant commerce clause, and the California Occupational Safety & Health Act. Santa Monica's ordinance takes effect on a rolling basis. The worker retention provision became effective when the ordinance went into effect in October, however the safety protections and workload/overtime provisions take effect on January 1, 2020, and training will be required by January 1, 2021.

For point of reference, at this time Glendale has 26 hotels and motels (not including the Glenmark currently schedule to open sometime this year) (See Glendale's Hotel/Motel list at Exhibit 6).

After community feedback, business outreach, and lodging data, Santa Monica developed an ordinance that principally addressed four areas:

1. Housekeeper safety protections;
2. Workload and overtime compensation;
3. Training on personal rights and safety; and
4. Education and training to identify and prevent human trafficking, domestic violence, sexual violence and public health and safety.

Santa Monica extensively researched each of these four topics to determine, among other things, the extent to which state laws already mandated protections, areas of overlaps with state mandates for workplace safety training and education, impacts on city resources and its capacity to administer and enforce the provisions.

Although most provisions of the proposed Ordinance mirror other cities' ordinances, proposed Ordinance Section 1.04 pertaining to hand washing is entirely new; it is designed to protect workers from being docked pay and from being penalized from meeting room quota requirements because of the additional time required for sanitizing procedures during the pandemic. As proposed, this provision would work in conjunction with proposed Ordinance Section 1.03 pertaining to public hygiene training requirements.

A provision of note pertains to private union contracts, and that is the "Supercession by Bone Fine Collective Bargaining Agreement" in proposed Ordinance Section 1.06, would waive enforcement of Sections 1.01 (Fair Discharge and Recall of Workers) and 1.02 (Hospitality Worker Retention) where those conditions are part of negotiation between the union and hotel management. In Santa Monica, the lodging associations' position on supercession was that it does not pertain to hotel worker safety and should not be considered as part of a hotel workers' safety ordinance. Santa Monica ultimately included the supercession provision in their ordinance and a hotel worker retention policy (SMMC Section 4.67.050).

If the City Council is inclined to authorize preparation of a Hospitality Workplace Worker Protection ordinance, it is recommended that Council direct staff to conduct additional research and stakeholder outreach which would include:

1. Reaching out the Santa Monica and other cities to determine the efficacy of their ordinances and to determine what, if anything, these cities would have handled differently in the development, implementation and enforcement of the regulations, and why cities decided to adopt some but not all of the provisions included in other city ordinances.
2. Researching Glendale's hotel/motel market and undertaking stakeholder outreach as it pertains to each area of proposed new regulations.

3. Determining the legal, fiscal and policy impacts of the Hospitality Worker Retention Provisions, as well as the Fair Discharge and Recall of Workers provisions modeled after Philadelphia’s municipal code.
4. Determining whether other cities have considered or need to adopt separate measures to facilitate handwashing since this is currently a universal preventative directive.

In summary, there is indeed urgency as it pertains to protecting the public’s and workers’ health and safety, but whether the proposed Ordinance is the most appropriate means to that end is not entirely clear given the unique, fast-paced environment that is our collective response to COVID-19. Staff therefore recommends that the City Council note and file this information, but also as appropriate provide direction to staff to continue researching the legal and policies issues and to prepare an ordinance if so directed.

FISCAL IMPACT

The fiscal impact, if any, is unknown at this time.

ALTERNATIVES

1. Note and file the report.
2. Direct staff to prepare an urgency ordinance for hospitality workplace worker protection with some of, or different provisions than those proposed by UNITE HERE Local 11.
3. Direct staff to prepare a non-urgency ordinance for hospitality workplace worker protection as proposed by UNITE HERE Local 11.
4. Direct staff to prepare a non-urgency ordinance for hospitality workplace work protections with some of, or different provisions than those proposed by UNITE HERE Local 11.

CAMPAIGN DISCLOSURE

None.

EXHIBITS

1. UNITE HERE Local 11’s Proposed Hospitality Workplace Protection Ordinance and City of Glendale Emergency Action Proposals From Hospitality Workers Responding to the Coronavirus Outbreak

2. City of Santa Monica Municipal Code, various provisions
3. City of Los Angeles Municipal Code, Article 3, "Hotel Worker Retention Ordinance"
4. City of Philadelphia Municipal Code, Chapter 9-4700, "Wrongful Discharge From Parking Employment 1166"
5. August 8, 2019 City of Santa Monica Information Item re: Analysis of hotel housekeeper safety protections, overtime compensation and required training for human trafficking, sexual and domestic violence and public health and safety
6. List of Glendale Hotels/Motels.