

Date: May 14, 2021

To: Thomas B. Modica, City Manager 

From: John Keisler, Director of Economic Development 

For: Mayor and Members of the City Council

Subject: **COVID-19: Worker Protection Ordinances 90-Day Update**

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On May 12, 2020, the City Council adopted two ordinances: the COVID-19 Citywide Worker Retention Ordinance (LBMC, Chapter 5.53) and the COVID-19 Citywide Worker Recall Ordinance (Long Beach Municipal Code (LBMC), Chapter 5.55) to provide protections to workers in high-contact, high-risk industries during the COVID-19 emergency. The second reading for both ordinances was May 19, 2020, and they became effective on June 22, 2020.

On May 19, 2020, the City Council adopted the COVID-19 Paid Supplemental Sick Leave Ordinance (LBMC, Chapter 8.110) on an emergency and regular basis to gap-fill the federal supplemental sick leave benefits provided in response to the COVID-19 pandemic. As an emergency ordinance, the COVID-19 Paid Supplemental Sick Leave Ordinance became effective immediately upon its adoption on May 19, 2020.

All three ordinances included a requirement to report back to the City Council every 90 days regarding the status of the ordinances thereafter, so the City Council may determine the sunset date of the ordinance based on relevant information contained in the 90-day reports. The City Council received the [first 90-day update](#) on September 29, 2020, the [second 90-day update](#) on December 8, 2020, and the [third 90-day update](#) on February 26, 2021.

The purpose of this memorandum is to provide the fourth 90-day report on the COVID-19 Citywide Worker Retention Ordinance, COVID-19 Citywide Worker Recall Ordinance, and the COVID-19 Supplemental Sick Leave Ordinance (Ordinances) for City Council's consideration and to recommend a continuation of the Ordinances until the State and local public health emergency declaration related to COVID-19 has expired and business activities in the affected sectors—particularly activities related to the resumption of events at the Long Beach Convention Center—have been allowed to reopen without restrictions.

## **BACKGROUND**

As a result of the COVID-19 pandemic and "Stay at Home" order issued by California Governor Gavin Newsom and the "Safer at Home" order (health orders) issued by the City of Long Beach (City) to protect the public health and welfare, many businesses were forced to close and furlough workers, exposing many workers in the City to significant job and economic insecurity. To address some of these uncertainties in the most impacted sectors, including hotel, food worker, and commercial property businesses, the City Council, on April 14, 2020, requested the City Attorney to prepare the following three emergency Ordinances:

- Adding Chapter 5.53, relating to COVID-19 worker retention;
- Adding Chapter 5.55, relating to COVID-19 worker recall; and,
- Adding Chapter 8.110, relating to COVID-19 paid supplemental sick leave.

Below please find an analysis of the purpose, definition, and effectiveness of the Ordinances in protecting worker stability of employment, and a recommendation of whether the provisions of each Ordinance are still necessary based on the City's recovery from the impacts of the COVID-19 pandemic.

***COVID-19 Citywide Worker Retention Ordinance (LBMC 5.53)***

The COVID-19 pandemic has caused hotel and janitorial service employers in Long Beach to discharge, layoff, and furlough thousands of workers due to a significant reduction in demand for hotel and non-residential commercial property rental. While federal, state, and local programs and efforts by certain nonprofits have provided some support to hotel and janitorial service workers in the short-term, the purpose of the Citywide Worker Retention Ordinance is to provide existing workers with the opportunity of retaining their jobs in the event of a business failure, sale, merger, or other transfer of ownership.

On May 12, 2020, the City Attorney presented a [recommendation](#) to declare an Ordinance amending the LBMC by adding [Chapter 5.53](#), to establish a Citywide Worker Retention Ordinance during COVID-19; declaring the urgency thereof to make the Ordinance effective immediately as an emergency measure; and read the first time and laid over to the next regular meeting of the City Council for final reading.

To ensure fair employment practices during the economic upheaval resulting from the pandemic and to reduce the demand on government-funded social services, the Citywide Worker Retention Ordinance provides support to a Worker: (a) who has a length of service with the Employer for 6 months or more; (b) whose primary place of employment is a business subject to a transfer of ownership or change in control; (c) who is employed or contracted to perform work functions directly by the Employer or by a person who has contracted with the Employer to provide services at the business subject to the change in control; and (d) who worked for the Employer on or after March 4, 2020, and prior to the execution of the business transfer agreement. It should be noted that these protections provided by the Citywide Worker Retention Ordinance do not cover a person employed as a manager, supervisor, or confidential employee.

During the COVID-19 emergency, the Citywide Worker Retention Ordinance requires the new Employer to: (a) maintain a preferential hiring list of Workers identified by the previous Employer as set forth by the Ordinance; and, (b) hire from that list for a period beginning upon the execution of the transfer agreement and continuing for 6 months after the business is open to the public under the operation of the new Employer.

***COVID-19 Citywide Worker Recall Ordinance (LBMC 5.55)***

In addition to the impacts described previously, the COVID-19 pandemic caused hospitality and janitorial service employers in Long Beach to discharge, lay off, and furlough workers at a massive scale. Many hotel and janitorial service workers at hotel and non-residential commercial property businesses have already been separated from their jobs during the pandemic and thousands more are expected to face separation in the coming months. While federal, state, and local programs, and efforts by certain nonprofits, have provided some support to hotel and janitorial service workers in the short-term, the purpose of the COVID-19 Citywide Worker Recall

Ordinance is to provide the promise of a return to their previously held jobs as the pandemic begins to recede and business activity resumes.

On May 12, 2020, the City Attorney presented a [recommendation](#) to declare an Ordinance amending the LBMC by adding [Chapter 5.55](#), to establish a Citywide Worker Recall Ordinance in response to the COVID-19 pandemic; declaring the urgency thereof to make the Ordinance effective immediately as an emergency measure; and read the first time and laid over to the next regular meeting of the City Council for final reading.

To ensure fair employment practices during the economic upheaval resulting from the pandemic and to reduce the demand on government-funded services, the City Council enacted legal protections for an individual employed by a hotel or commercial property business (Worker), who in a particular week: (a) performed at least 2 hours of work for a period of 6 months or more, within the geographical boundaries of Long Beach, for a hotel or commercial property employer (Employer) with 25 or more employees (Employees); and (b) whose most recent separation from active employment occurred on or after March 4, 2020 as a result of a lack of business, a reduction in workforce, bankruptcy, or other economic, non-disciplinary reason.

During the COVID-19 emergency, the Citywide Worker Recall Ordinance provides laid-off Employees priority in the re-hiring process and further defines the process by which an Employer must notify a laid-off Worker of all job positions that become available after the effective date of the Ordinance for which the laid-off Worker is qualified.

### ***COVID-19 Paid Supplemental Sick Leave Ordinance (Chapter 8.110)***

The COVID-19 pandemic presented both health and economic emergencies for the Long Beach community. To ensure that Long Beach workers do not need to choose between the health and wellness of their community and the economic welfare of their families, the provision of paid supplemental sick leave to be used for COVID-19 related purposes is a priority. While the federal COVID-19 Paid Supplemental Sick Leave provided under the Families First Coronavirus Response Act provides paid supplemental sick leave to some workers, other workers remained without this important benefit.

On May 12, 2020, the City Attorney presented a [recommendation](#) to declare an Ordinance amending the LBMC by adding [Chapter 8.110](#), relating to COVID-19 Paid Supplemental Sick Leave; declaring the urgency thereof to make the Ordinance effective immediately as an emergency measure; and read the first time and laid over to the next regular meeting of the City Council for final reading. However, after considering the Ordinance as written, the City Council requested that the Ordinance be amended to include an exemption for Employers that have a paid leave or paid time off policy that provides a minimum of 160 hours of paid leave annually. On May 19<sup>th</sup>, the City Attorney presented a revised [recommendation](#) and the Ordinance was adopted on an emergency basis, thereby making it effective immediately. The Ordinance was also adopted on a regular basis. The Ordinance includes the requirement in Section [8.110.130](#), that the City Manager report back to the City Council and Mayor on the effectiveness of the provisions and whether the provisions are still necessary based on the City's recovery from the health and economic impacts of the COVID-19 pandemic so that the City Council may determine the sunset date.

The purpose of the COVID-19 Paid Supplemental Sick Leave Ordinance is to ensure public health and safety and fair employment practices during the economic upheaval resulting from the COVID-19 pandemic; and, sets forth paid sick leave requirements for Employers with 500 or more Workers nationally that are not required, in whole or in part, to provide paid sick leave benefits under the federal Emergency Paid Sick Leave Act. By extending supplemental paid sick leave to Long Beach Workers not protected by the federal Emergency Paid Sick Leave Act, it is more likely that Workers will care for themselves, care for their dependents, stay home if necessary, and minimize the spread of COVID-19 in the community. Covered Workers under the COVID-19 Paid Supplemental Sick Leave Ordinance include Workers who perform any work within the geographic boundaries of Long Beach. A full description of the supplemental sick leave [requirements](#), [number of hours](#), and [scope of benefits](#) can be found online. Additionally, there are both [exceptions](#) and [exemptions for collective bargaining](#), as well as a description of the [enforcement](#) process via private action in the Superior Court of California for Employees claiming a violation of the COVID-19 Paid Supplemental Sick Leave Ordinance.

## **EFFECTIVENESS OF THE ORDINANCES**

As part of the Ordinances, every 90 days, the City Manager is required to provide a report to the Mayor and City Council on the effectiveness of the provisions and whether the provisions are still necessary based on the City's recovery from the health and economic impacts of the COVID-19 pandemic. The first 90-day update was provided to the City Council via written memo on September 29, 2020, the second 90-day update was provided on December 8, 2020, and the third 90-day update was provided on February 26, 2021. To date, City staff have not received any feedback from impacted Employers or Workers regarding the effectiveness of the Ordinances. Additionally, staff are unable to report on any violations of the Ordinances given that the enforcement process requires private action in the Superior Court of California and these formal complaints are not reported to the City.

## **STATUS OF COVID-19**

As of May 13, 2021, there have been 53,154 COVID-19 cases in Long Beach, and 933 people have died from the virus. More than 300,000 vaccines have been administered. Additional vaccination statistics are available on the [COVID-19 Digital Dashboard](#).

Although recent decreases in COVID-19 infection rates and hospitalizations are encouraging, the COVID-19 pandemic continues to be an evolving situation and both the City of Long Beach (City) and the County of Los Angeles (County) must move through a series of measures, based on indicators that capture disease burden, testing, and health equity before they may move to a less restrictive tier. On May 5, 2021, the City moved into the State's Yellow Tier for economic reopening and a revised Health Order was issued. The County, which includes Long Beach, was previously in the Orange Tier. To advance to the Yellow Tier, the County must have maintained Yellow Tier numbers for two consecutive weeks. That includes a case rate of less than one new case (per 100,000) daily, positivity rate of less than 2 percent, and a health equity metric of less than 2.2 percent. Furthermore, it has been announced that California will move beyond the Blueprint and fully reopen its economy across the state on June 15, 2021, if (a) there is enough vaccine supply for Californians 16 years and older to be vaccinated, and (b) hospitalization rates remain stable and low, especially among fully vaccinated Californians.

The State has indicated that at that time, common sense health measures, including wearing masks will continue, and testing and vaccination requirements will remain for some businesses and industries. Face mask requirements for fully vaccinated people have been revised in alignment with CDC and State guidance. Except in crowded settings and venues, fully vaccinated people may gather or conduct activities outdoors without wearing a mask when alone; when with members of their household; when with a small group of fully vaccinated people; and, when with a small group of people who are not fully vaccinated and are not at high risk for severe illness or death from COVID-19. Fully vaccinated people must wear a mask at crowded outdoor events; in crowded spaces where physical distancing cannot be maintained and it is not known if everyone in the space is fully vaccinated or at high risk for severe illness or death from COVID-19; in indoor public settings, unless expressly permitted by the Health Order; at worksites and businesses; and in any setting where masking is required by the facility operator or by the Health Order.

### *Updated Stay at Home Order*

On May 5, 2021, pursuant to guidance issued by the State, the City of Long Beach Health and Human Services Department issued an updated [Health Order](#). Below is a summary of the business activities related to the sectors that impact leisure, hospitality, entertainment, and food services specifically related addressed by the Ordinances:

- Social and Informal Gatherings (these gatherings do not require an assigned guest list):
  - Outdoor social gatherings may operate at a maximum capacity of 100 people.
  - Indoor gatherings are strongly discouraged but are allowed. Capacity is limited to a maximum of 50 percent capacity in settings (where capacity limits exist) or 50 people, whichever is fewer.
- Bars, where no meal service is provided, may [operate](#) indoors and outdoors without serving meals, with modifications. All patrons must remain seated.
  - May operate indoors with modifications, at maximum 25 percent capacity or 100 people, whichever is fewer.
  - Indoor capacity may increase up to a maximum of 75 percent of total venue capacity where all attendees are either fully vaccinated attendees or attendees that show proof of a negative COVID-19 test result conducted 72 hours prior to attendance in accordance with the [Blueprint for a Safer Economy Chart](#).
  - Guests at a single table indoors are limited to no more than six people in the same party. Guests at a single table outdoors are limited to no more than eight people in the same party.
- Restaurants that serve bona fide meals may operate indoors and outdoors.
  - Indoor capacity is limited to 50 percent of maximum occupancy.
  - Brewpubs, breweries, bars, pubs, craft distilleries and wineries without a City restaurant permit may operate indoors at the increased restaurant capacity if the bar sells alcohol in the same transaction as a bona fide meal provided by a City-approved meal provider.
  - Indoor capacity may increase up to a maximum of 75 percent of total venue capacity where all attendees are either fully vaccinated attendees or attendees that show proof of a negative COVID-19 test result conducted prior to attendance 72 hours prior to attendance, in accordance with the [Blueprint for a Safer Economy Chart](#).

- Guests at a single table indoors are limited to no more than six people in the same party. Guests at a single table outdoors are limited to no more than eight people in the same party.
- Gyms and Fitness Centers may operate indoors and outdoors.
  - Indoor capacity is limited to 50 percent of maximum occupancy.
  - Indoor capacity may increase to a maximum of 75 percent of total venue capacity where all attendees are either fully vaccinated attendees or attendees show proof of a negative COVID-19 test result conducted 72 hours prior to attendance, in accordance with the [Blueprint for a Safer Economy Chart](#).
  - Indoor spas, saunas and steam rooms may operate.
- In-Person Religious Services and Cultural Ceremonies:
  - Indoor capacity limited to 50 percent occupancy is strongly encouraged.
  - Indoor capacity may increase to a maximum of 75 percent of total venue capacity where all attendees are either fully vaccinated or show proof of a negative COVID-19 test result conducted 72 hours prior to attendance, in accordance with the [Blueprint for a Safer Economy Chart](#).
- Movie Theaters may operate indoors and outdoors.
  - Capacity is limited to 50 percent of maximum occupancy.
  - Indoor capacity may increase to a maximum of 75 percent of total venue capacity where all attendees are either fully vaccinated attendees or attendees show proof of a negative COVID-19 test result conducted 72 hours prior to attendance, in accordance with the [Blueprint for a Safer Economy Chart](#).
- Pools, including spas, hot tubs, saunas, steam rooms and splash pads may operate indoors and outdoors.
  - Indoor capacity is limited to 50 percent of the maximum occupancy.
  - Indoor capacity may increase up to a maximum of 75 percent of total venue capacity where all attendees are either fully vaccinated attendees or attendees that show proof of a negative COVID-19 test result conducted 72 hours prior to attendance, in accordance with the [Blueprint for a Safer Economy Chart](#).
- Organized community endurance and running/walking events, such as runs, walks, marathons, triathlons and endurance events, may occur.
  - Capacity is limited to 500 participants per hour, and no more than 1,500 total participants.
  - Capacity may be increased to a maximum of 3,000 where all participants show proof of full COVID-19 vaccination or a negative COVID-19 test result conducted within 72 hours prior to visiting this type of event.
- Indoor seated live events and performances may operate under the following restrictions and other [State requirements](#).
  - Venues with a capacity of 0 to 1,500 people:
    - Indoor capacity must be limited to no more than 25 percent of the maximum occupancy load of the venue or 300 people, whichever is fewer.
    - Capacity may increase to no more than 50 percent of the maximum occupancy load of the venue where all guests show proof of a negative COVID-19 test result within 72 hours prior to attendance or show proof of full COVID-19 vaccination.

- Venues with a capacity of 1,501 people and above:
  - Indoor capacity must be limited to no more than 10 percent of the maximum occupancy load of the venue or 2,000 people, whichever is fewer.
  - Capacity may increase to no more than 50 percent of the maximum occupancy load of the venue where all guests show proof of a negative COVID-19 test result within 72 hours prior to attendance or show proof of full COVID-19 vaccination.
- Outdoor live events (sports and live performances) may operate under [State requirements](#).
  - Capacity is limited to 67 percent of maximum occupancy.
  - Suites limited to 25 percent maximum occupancy per suite and no more than three different households, physically distanced, or six people from the same household.
- Private venues and events (e.g. meetings, receptions and conferences) are distinguished from private gatherings in that private venues and events must have defined guest lists and the ability to assign seating for guests.
  - Outdoors
    - Maximum of 200 people permitted at outdoor private events.
    - Capacity of an outdoor private event may increase to a maximum of 400 people where all guests show proof of a negative COVID-19 test result within 72 hours prior to visiting a private event or show proof of full COVID-19 vaccination.
  - Indoors
    - Allowed only if all guests show proof of a negative COVID-19 test result within 72 hours prior to visiting a private event or show proof of full COVID-19 vaccination.
    - Capacity at indoor private events is limited to a maximum of 200 people.
- Family Entertainment Centers may operate indoors and outdoors.
  - Indoor capacity must be limited to 50 percent of maximum occupancy.
  - Capacity of indoor operations may increase to a maximum of 75 percent of total venue capacity where all attendees show proof of a negative COVID-19 test result conducted within 72 hours prior to attendance or show proof of full COVID-19 vaccination, in accordance with the [Blueprint for a Safer Economy Chart](#).
- Institutes of higher education:
  - In-person instruction is limited to 50 percent of maximum occupancy.
  - Indoor capacity may increase to a maximum of 75 percent of total venue capacity where all attendees are either fully vaccinated or show proof of a negative COVID-19 test result conducted 72 hours prior to attendance, in accordance with the [Blueprint for a Safer Economy Chart](#).
- Museums, Galleries, Aquariums and Botanical Gardens may operate indoors and outdoors. Capacity is limited by the number of people that can physically distance 6 ft. or greater in the space.
- Youth and adult recreational sports, including sports identified in Yellow, Orange, Red and Purple Tiers are permitted to resume, in accordance with the [Blueprint for a Safer Economy Chart](#).

- Outdoor equipment rental may operate.
  - Capacity is limited to 50 percent of maximum occupancy for electric boats.
  - Electric boats may increase their indoor capacity to maximum of 75 percent of total venue capacity where all attendees are either fully vaccinated attendees or attendees that show proof of a negative COVID-19 test result conducted 72 hours prior to attendance, in accordance with the [Blueprint for a Safer Economy Chart](#).
- Personal care establishments:
  - Piercing and tattooing services for the mouth/nose area may resume.
  - Face shields are provided and shall be worn by employees when servicing customers not wearing a face covering while receiving services, such as piercing and tattooing services for the mouth/nose area. The face shield shall be worn in addition to the face covering. Face coverings protect others from the wearer's droplets; face shields help protect the wearer from other's droplets.
- Professional sports may operate indoors with audiences.
- Small charter services may increase their indoor capacity up to a maximum of 75 percent of total venue capacity where all attendees are either fully vaccinated attendees or attendees that show proof of a negative COVID-19 test result conducted 72 hours prior to attendance, in accordance with the [Blueprint for a Safer Economy Chart](#).
- Smoke Lounges may operate indoors at 50 percent of maximum indoor occupancy.
  - Indoor capacity may increase up to a maximum of 75 percent of total venue capacity where all attendees are either fully vaccinated attendees or attendees that show proof of a negative COVID-19 test result conducted 72 hours prior to attendance, in accordance with the [Blueprint for a Safer Economy Chart](#).
- Wineries, breweries and craft distilleries, where no meal service is provided, may operate indoors and outdoors without serving meals.
  - Indoor capacity is limited to 50 percent of the maximum occupancy or 200 people, whichever is fewer.
  - Indoor capacity may increase up to a maximum of 75 percent of total venue capacity where all attendees are either fully vaccinated attendees or attendees that show proof of a negative COVID-19 test result conducted 72 hours prior to attendance, in accordance with the [Blueprint for a Safer Economy Chart](#).
  - Guests at a single table indoors are limited to no more than six people in the same party. Guests at a single table outdoors are limited to no more than eight people in the same party.
- Amusement and theme parks may continue indoor and outdoor operations, with modifications. Occupancy is limited to 35 percent of total park occupancy for operations of the park, in accordance with [State requirements](#).
  - Capacity of indoor facilities with the park must be limited to 25 percent of maximum occupancy.
  - Indoor capacity may increase up to a maximum of 75 percent of total venue capacity where all attendees are either fully vaccinated attendees or attendees that show proof of a negative COVID-19 test result conducted 72 hours prior to attendance in accordance with the [Blueprint for a Safer Economy Chart](#).

Although COVID-19 infection rates have fallen, and vaccination rates have risen locally, there are still restrictions on large gatherings and conventions that bring visitors to Long Beach for business and leisure travel, hospitality, and entertainment. Per the State, these restrictions are expected to be lifted June 15, 2021, which will allow conventions and large entertainment events resume. It is unlikely, however, that these businesses—including hotels, restaurants, and other visitor services related to the Long Beach Convention Center—will begin to recall employees for training, preparation, and reopening. Currently, the Long Beach Convention Center is projecting to resume hosting events in mid-August 2021 and federal unemployment insurance benefits are expected to expire September 6, 2021, which will also impact decisions to return to work for some employees in these sectors.

## **RECOMMENDATION**

Given the current market conditions and restrictions on conventions and other special events that draw visitors to Long Beach, the intended protections and benefits provided by the Ordinances are still required as much today as they were on the day each Ordinance was adopted. Given that both State and local health orders related to COVID-19 remain in place, many high-contact industries including hospitality, hotels, janitorial, and food services are still restricted from resuming full operations until June 15, 2021, and the Long Beach Convention Center projects to host its first major events in mid-August, it is recommended that the City Council continue the Ordinances for another 90-day period or until the public health emergency declaration has expired and businesses in these impacted industries are allowed to fully reopen.

The next 90-day report to the City Council regarding the need and effectiveness of the Ordinances will be provided at the end of August in advance of the September 4, 2021 deadline.

## **CONCLUSION**

The full impact of the health and economic emergencies on the Long Beach economy and community as a result of the COVID-19 pandemic may not be known for months or years to come. Our residents and businesses are fortunate to have City leaders that recognize the significance of the economic and health emergencies presented by this novel public health crisis and will benefit from the collective action and collaboration of government, nonprofit, and private sectors working together.

For any questions regarding these matters, please contact me at [john.keisler@longbeach.gov](mailto:john.keisler@longbeach.gov) or (562) 570-5282.

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DEPARTMENT DIRECTORS