




## Agenda Item 4.A

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DATE: **April 19, 2021**

TO: Honorable Mayor and Members of the City Council through City Manager 

FROM: Eric Danly, City Attorney

SUBJECT: Adoption of an Urgency Ordinance Protecting Hospitality Worker Job Security by Establishing a Right of Recall Applicable to Hotels with 50 or More Guest Rooms

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### **RECOMMENDATION**

It is recommended that the City Council adopt the attached urgency ordinance protecting hospitality worker job security by establishing a right of recall applicable to hotels with 50 or more guest rooms.

### **BACKGROUND**

Due to the COVID-19 pandemic, commercial industries have been damaged financially, including in particular the hospitality industry. In 2020, the hotel industry experienced historically low occupancies, massive job loss, and hotel closures across the country. As a result, in 2020 more than 670,000 direct hotel industry operations jobs and nearly 4 million jobs in the broader hospitality industry were lost.<sup>1</sup> While cases of COVID-19 are on the decline, many challenges remain for the hotel industry. Travel is not expected to return to pre-pandemic levels until 2024. Many hospitality workers have been laid off from their hotel jobs due to the COVID-19 pandemic.

To address these concerns, the North Bay Labor Council has proposed that Sonoma County jurisdictions adopt ordinances that provide a right of recall for laid-off hotel employees to be rehired by their former employers as positions become available, and a right of retention that would apply to hotels that change ownership to preserve employees' positions and terms of employment for a ninety-day period. Attached to this staff report is an ordinance that would establish a recall right for qualifying laid-off Petaluma hotel employees.

The attached ordinance is based on the sample that the North Bay Labor Council provided to staff. As presented, the ordinance would apply to hotels with 50 or more guest rooms. Similar recall ordinances have been adopted in Los Angeles, Long Beach, Oakland, San Diego, and San Francisco. The attached ordinance is being presented as an urgency ordinance. It is time sensitive because for Petaluma hotel workers' to have a right to return to their former jobs, the

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<sup>1</sup> "Economic Impact of the US Hotel Industry," Oxford Economics, 1/21

right must be established to coincide with hotels’ rehiring efforts as the local economy begins to recover from the pandemic. The North Bay Labor Council has also provided a sample retention ordinance for consideration and possible adoption by the City Council to provide retention rights for Petaluma hotel employees. We are not providing that ordinance now for Council adoption solely due to the time needed to prepare it for Council consideration. The retention ordinance would not be an urgency ordinance and is less time sensitive. We plan to have a retention ordinance ready for Council consideration and possible introduction at the May 3 City Council meeting.

**DISCUSSION**

In the California Supreme Court case of *California Grocers Association v. City of Los Angeles*, (2011) 52 C 4<sup>th</sup> 177, the Court upheld a City of Los Angeles ordinance that gave grocery store workers a right of retention. The Court ruled that state and local governments are not preempted from regulating substantive terms of employment that otherwise may be the subject of collective bargaining, and that such local regulatory authority includes matters of hiring and firing, which have been traditionally recognized as core incidents of state and local governments’ police power.

The proposed recall ordinance attached to this staff report would provide a right of recall for employees of hotels with 50 or more guest rooms who had been employed for more than six months and were laid off after January 31, 2020 due to a government order, lack of business, a reduction in force, or other economic, non-disciplinary reason. The table below lists 7 Petaluma hotels to which the proposed ordinance would apply. The proposed ordinances would also apply to the Courtyard hotel which is expected to receive its final permits soon.

Hotel Operator	Address	Rooms
Best Western	200 S McDowell Blvd	79
SF No /Petaluma KOA	20 Rainsville Rd	312
Metro Hotel	508 Petaluma Blvd South	14
Motel 6	1368 McDowell Blvd	121
Americas Best Value Inn & Suites	5135 Montero Way	62
Quality Inn	5100 Montero Way	110
Sheraton/So. Hotel Partners, LP	745 Baywood Dr	188
Hotel Petaluma	106 Washington St	
Hampton Inn	450 Jefferson St	

Adoption of the proposed ordinance will not only help alleviate hardships faced by hospitality employees and provide them greater job security, but also promote the recovery of the Petaluma hotel industry. Under the proposed ordinance, employers must first offer new positions to qualified former employees. As a result, hotels subject to the ordinance will be rehiring trained and experienced hospitality workers, benefiting Petaluma tourism. Local recovery in the tourism industry will also help the local food industry and other Petaluma businesses that are dependent upon or that benefit from local tourism.

Section 76A of the Petaluma City Charter authorizes the adoption of ordinances for the immediate preservation of the public peace, health or safety, that contain a declaration of and the facts constituting the urgency, so long as such ordinances are passed by a unanimous vote of the Council members present at the time of adoption. As the COVID-19 pandemic recedes and business returns to Petaluma, there is an urgent need to require as soon as possible that Petaluma’s hospitality employers permit their former employees to return to work to speed the City’s transition back to a healthy labor market and lessen the damage to Petaluma’s economy and the local community from the COVID-19 pandemic, and to avoid the worker displacement that otherwise may occur as the hospitality industry begins rehiring.

## **PUBLIC OUTREACH**

This item was included in the tentative agenda approved by the City Council at the April 5, 2021 City Council Meeting.

## **CLIMATE ACTION**

This action advances values and considerations included in the Climate Emergency Framework adopted January 11, 2021 pursuant to Resolution No. 2021-008 N.C.S. by promoting social, racial, environmental, economic, disability and public health justice in communities disparately impacted by climate change. Frontline and underserved communities are expected to receive disproportionately higher impacts from climate change and to have fewer resources available for addressing climate change. Many hospitality industry employees are front line and underserved community members disproportionately impacted by climate change, and providing them job security and avoiding hospitality worker displacement aligns with the values that informed the Climate Emergency Framework. This action also has multiple benefits by supporting the local economy and public health, community cohesion and well-being through the hospitality worker job security it will provide.

## **COUNCIL GOAL ALIGNMENT**

This action aligns with the following City Council goals, objectives, and workplan items:

### **A Safe Community that Thrives**

Objective 1: Maintain and enhance public safety and prepare for emergencies and disasters.

- Workplan Item #81. *“Promote emergency preparedness and resiliency strategies to our residents and businesses.”* The proposed ordinance will support the resiliency and recovery of Petaluma hotels and employees laid-off in response to the current pandemic.

### **An Economy that Prospers**

Objective 1: Attract and retain businesses that generate revenues and provide jobs that pay living wages.

- Workplan Item #110 *“Retain businesses that support local agriculture.”* Enactment of the proposed ordinance will help with the recovery of the hotel industry and local tourism, and the local food industry and other sectors that benefit from local tourism.

Objective 2: Promote Petaluma as a destination for both locals and visitors.

- Workplan Item #115 “*Support and leverage promotional efforts of the Petaluma Tourism Improvement District.*” The proposed ordinance will help ensure that impacted hotels will retain experienced and trained staff, which will support tourism in the Tourism Improvement District.

### **ENVIRONMENTAL REVIEW**

The proposed ordinance is exempt from the requirements of the California Environmental Quality Act (“CEQA”) pursuant to Section 15324 of the CEQA Guidelines as an action taken by the City as a regulatory agency as authorized by statute to regulate employee working conditions where there will be no demonstrable physical changes outside the place of work. The proposed ordinance is also exempt from CEQA under the “common sense” exception in CEQA Guidelines Section 15061(b)(3), which establishes the general rule for projects concerning which can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, because the ordinance regulates employee working conditions which will not result in any demonstrable changes outside of employees’ place of work.

### **FINANCIAL IMPACTS**

There are no direct financial impacts from enactment of the proposed ordinance. Indirect financial benefits may result from the proposed ordinance in the form of improvements in the local labor market and economy.

### **ATTACHMENTS**

1. Proposed Urgency Ordinance

**ORDINANCE NO. \_\_\_\_\_ N.C.S.****AN URGENCY ORDINANCE OF THE CITY COUNCIL OF THE CITY OF PETALUMA ENACTING A NEW CHAPTER 8.40 OF THE PETALUMA MUNICIPAL CODE TO PROTECT HOSPITALITY WORKER JOB SECURITY BY ESTABLISHING A RIGHT TO RECALL FOR EMPLOYEES OF HOTELS WITH 50 OR MORE GUEST ROOMS**

**WHEREAS**, COVID-19 (also known as the “Coronavirus Disease”) is a respiratory disease which was first detected in China and has now spread across the globe, with multiple confirmed cases in California, including the City of Petaluma; and

**WHEREAS**, 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; and

**WHEREAS**, on March 4, 2020, Governor Gavin Newsom (Governor) proclaimed a State of Emergency to exist in California as a result of the threat of COVID-19; and

**WHEREAS**, on March 9, 2020, the City Manager of the City of Petaluma (City Manager) proclaimed the existence of a local emergency related to the COVID-19 threat; and

**WHEREAS**, the World Health Organization announced on March 11, 2020, that it has characterized COVID-19 as a pandemic; and

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

**WHEREAS**, many thousands of hospitality workers have been separated from their jobs already during the pandemic, and many thousands more may face separation in the coming months, and National Public Radio, in an article dated September 29, 2020, entitled “Pandemic Threatens Long-Term Job Security After Hospitality Industry Layoffs” has reported that the Covid-19 pandemic has impacted the hospitality industry especially hard, eliminating around 4 out of 10 hospitality jobs nationally according to the U.S. Bureau of Labor Statistics, with some experts estimating that the industry may not fully recover until as late as 2023; and

**WHEREAS**, while federal, state, and local programs, and efforts by some of Petaluma’s non-profits have provided support for Petaluma’s hospitality workers in the short-term, Petaluma hospitality workers would benefit from a right to return to their previous jobs as the COVID-19 pandemic recedes and business returns to the City; and

**WHEREAS**, requiring Petaluma’s hospitality employers to permit their former employees’ to return to work can speed the transition back to a healthy labor market and lessen the damage to Petaluma’s economy and the local community from the COVID-19 pandemic; and

**WHEREAS**, the California Supreme Court, in the case of *California Grocers Association v. City of Los Angeles*, (2011) 52 C. 4<sup>th</sup> 177, in upholding a Los Angeles ordinance giving grocery workers a right of retention after a change in grocery ownership, has ruled that state and local governments are not preempted from regulating substantive terms of employment that otherwise may be the subject of collective bargaining, and that such local regulatory authority includes matters of hiring and firing, which have been traditionally recognized as core incidents of state and local governments' police power; and

**WHEREAS**, Section 76A of the Petaluma City Charter authorizes the adoption of ordinances for the immediate preservation of the public peace, health or safety, which contain a declaration of and the facts constituting its urgency, so long as such ordinances are passed by a unanimous vote of the Council members present at the time of adoption; and

**WHEREAS**, as the COVID-19 pandemic recedes and business returns to Petaluma, there is an urgent need to require as soon as possible that Petaluma's hospitality employers permit their former employees' to return to work to speed the City's transition back to a healthy labor market and lessen the damage to Petaluma's economy and the local community from the COVID-19 pandemic and to avoid the worker displacement that otherwise may occur as the hospitality industry begins rehiring; and

**WHEREAS**, providing a worker right of recall so as to avoid the community disruption that arises from job loss and worker displacement can have a larger positive impact on the Petaluma labor market and economy through application to Petaluma's larger hotels with larger numbers of guest rooms and correspondingly larger workforces; and

**WHEREAS**, in enacting this ordinance, the City Council is relying on the City's police power and home rule authority pursuant to Article XI, Sections 5 and 7 of the California Constitution to regulate substantive terms of employment that otherwise may be the subject of collective bargaining, including matters of hiring and firing, which have been traditionally recognized as core incidents of state and local governments' police power; and

**WHEREAS**, this ordinance is exempt from the requirements of the California Environmental Quality Act ("CEQA") pursuant to Section 15324 of the CEQA Guidelines as an action taken by the City as a regulatory agency as authorized by statute to regulate employee working conditions where there will be no demonstrable physical changes outside the place of work, and is also exempt from CEQA under the "common sense" exception in CEQA Guidelines Section 15061(b)(3), which establishes the general rule for projects concerning which can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, because the ordinance regulates employee working conditions which will not result in any demonstrable changes outside of employees' place of work; and

**NOW, THEREFORE, BE IT ORDAINED** by the Council of the City of Petaluma as follows:

**SECTION 1. Findings.** The above recitals are hereby declared to be true and correct and are incorporated into this ordinance as findings of the City Council.

**SECTION 2. Exemptions from CEQA.** This ordinance is exempt from the requirements of the California Environmental Quality Act (“CEQA”) pursuant to Section 15324 of the CEQA Guidelines as an action taken by the City as a regulatory agency as authorized by statute to regulate employee working conditions where there will be no demonstrable physical changes outside the place of work. This ordinance is also exempt from CEQA under the “common sense” exception in CEQA Guidelines Section 15061(b)(3), which establishes the general rule for projects concerning which can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, because the ordinance regulates employee working conditions which will not result in any demonstrable changes outside of employees’ place of work.

**SECTION 3. New Chapter 8.40 enacted.** A new Chapter 8.40 is hereby added to the Petaluma Municipal Code to read as follows:

**8.40.010. Title.**

This chapter shall be known as the “City of Petaluma Hospitality Worker Right to Recall.”

**8.40.020. Definitions.**

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

- A. “Covered Enterprise” means a hotel.
- B. “Employee” means any person who performs work within the geographic boundaries of the city for an employer.
- C. “Employer” means any person, including a corporate officer or executive, who directly or indirectly or through an agent or any other person, including through the services of a temporary service or staffing agency or similar entity, owns or operates a covered enterprise within the city and employs or exercises control over the wages, hours or working conditions of any employee.
- D. “Hotel” means a residential building that is designated or used for lodging and other related services for the public, including but not limited to food and beverage preparation and service and meetings, tradeshow and conventions, and that contains 50 or more guest rooms, or suites of rooms. Adjoining rooms do not constitute a suite of rooms. “Hotel” also includes any contracted, leased or sublet premises connected to or operated in conjunction with a hotel.
- E. “Laid-off Employee” means any employee who was employed by the employer for six months or more in the 12 months preceding January 31, 2020, and whose most recent separation from active service occurred after January 31, 2020, and was due to a government order, lack of business, a reduction in force or other, economic, non-disciplinary reasons.

F. "Length of Service" means the total of all periods of time during which an employee has been in active service for an employer, including periods of time when the employee was on leave or on vacation.

G. "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.

#### **8.40.030. Right to Recall.**

A. Employers shall offer their laid-off employees in writing, by registered mail to the laid-off employee's 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 chapter'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 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.

Employers shall offer positions to laid-off employees first to laid-off employees that qualify under paragraph (1) of this section, and second to laid-off employees that qualify under paragraph (2) of this section. Where more than one laid-off employee is entitled to preference for a position, employers shall offer the position to the laid-off employee with the greatest length of service for the covered enterprise.

B. A laid-off employee who is offered a position pursuant to this chapter shall have no less than ten (10) days from the date of receipt of the mailed offer to accept or decline the offer. Employers may make simultaneous, conditional offers of employment to laid-off employees, with the final offer of employment conditioned on application of the priority order set forth in paragraph A of this section.

C. An employer that declines to recall a laid-off employee because the employee is not qualified for the position and instead hires someone other than a laid-off employee shall provide the laid-off employee a written notice within thirty (30) days specifying the basis for determining the laid-off employee is not qualified for the position.

D. The requirements of this chapter shall apply to covered enterprises notwithstanding the occurrence of any of the following:

1. The ownership of the employer changed after a laid-off employee's separation from employment, but the covered enterprise is conducting the same or similar operations as before January 31, 2020;



2. The form of organization of the employer changed after January 31, 2020;
3. Substantially all of the assets of the employer were acquired by another entity which conducts the same or similar operations using substantially the same assets;
4. The employer relocated the covered enterprise at which a laid-off employee was employed before January 31, 2020 to a different location within the city; or
5. Any combination of the circumstances described in paragraphs (1) through (4).

**8.40.040. Notice.**

A. **Written Notice of Layoff.** Employers shall provide laid-off employees written notice of layoff, either in person or to the laid-off employee's last-known address, and by text and email to the extent the employer possesses such information. Such notice shall be provided at the time of layoff or within 20 days of the effective date of this chapter if the layoff took place before such date. Employers shall provide notice to each laid-off employee in a language understood by the laid-off employee. Written notices of layoff required pursuant to this section shall include the following:

1. a notice of the layoff and the layoff's effective date; and
3. a summary of the right to reemployment created by this chapter, or clear instructions on how an employee may access such information.

B. **Retention of Records.** Employers shall retain the following records for at least two years 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 of layoff provided to the employee. For the purposes of this paragraph, the two-year retention period shall be measured from the date of the written notice of layoff required pursuant to this section.

**8.40.050. Retaliatory Action Prohibited.**

No employer may refuse to employ, terminate, reduce the compensation of, or otherwise take any adverse action against any person for seeking to enforce his or her rights under this chapter by any lawful means, or for participating in proceedings related to this chapter, or for opposing any practice proscribed by this chapter, or for otherwise asserting rights under this chapter. This section shall apply to protect any employee who mistakenly, but in good faith, alleges an employer's noncompliance with this chapter.

#### **8.40.060. Enforcement.**

A. This chapter may be enforced in a civil action in Superior Court brought by the city or by one or more employees for and on behalf of themselves, or by an agent or representative designated by one or more employees to bring an action for and on behalf of the employee(s).

B. If the court finds that an employer has violated this chapter, the court may enjoin the employer from engaging in such violation, and order such affirmative action as may be appropriate, which may include, but is not limited to, reinstatement or hiring of employees, with or without back pay, including fringe benefits, or any other equitable relief as the court deems appropriate. Interim earnings or amounts earnable with reasonable diligence by an aggrieved employee shall operate to reduce the back pay or lost wages that otherwise may be ordered by the court pursuant to this paragraph. Before interim earnings are deducted from back pay or lost wages, there shall be deducted from the interim earnings any reasonable amounts expended by the employee in searching for, obtaining, or relocating to new employment. The court may also order compensatory and punitive damages if the court finds that an employer violated this chapter with malice or with reckless indifference to the requirements of this chapter, and may award treble damages on behalf of an employee terminated in violation of section 8.40.050.

C. If it is established that a laid-off employee exercised the employee's rights under this chapter or alleged in good faith that an employer was not complying with this chapter, and the employer thereafter refused to employ, terminated, demoted or otherwise took adverse action against the employee, and that action took place within sixty (60) days after exercise of the employee's rights under this chapter, then a rebuttable presumption shall arise that the employer's action was taken in violation of section 8.40.050. To rebut the presumption, an employer must prove that the employer took the action for a legitimate business reason. Laid-off employees may establish that an employer's action was taken in violation of Section 8.40.050 by proving that an employer's asserted legitimate business reason is pretextual.

D. The court shall award plaintiffs that prevail in any legal action taken pursuant to this chapter reasonable attorney's fees, expert witness fees and costs as part of the costs recoverable.

#### **8.40.070. Regulations.**

The city manager may in his or her sole discretion promulgate and enforce rules and regulations, and issue determinations and interpretations, consistent with and necessary for the implementation of this chapter. Such rules and regulations, determinations, and interpretations shall have the force of law and may be relied upon by employers, employees, and other persons to determine their rights and responsibilities under this chapter.

#### **8.40.080. Relationship to employment contracts and agreements.**

This chapter applies to all employees as defined herein regardless of whether they are represented for purposes of collective bargaining or are covered by a collective bargaining agreement. Nothing in this chapter shall be construed to invalidate or limit the rights, remedies and procedures of any contract or agreement that provides equal, additional, greater protections for employees compared with the protections afforded by this chapter.

#### **8.40.090. No Preemption of Higher Standards.**

The purpose of this chapter is to establish minimum labor standards. This chapter does not preempt or prevent the establishment of superior employment standards (including higher wages) or expansion of the applicability of or the rights established by this chapter 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 cause of action for wrongful termination.

**SECTION 4. Severability.** If any section, subsection, sentence, clause, phrase or word of this ordinance is for any reason held to be unconstitutional, unlawful or otherwise invalid by a court of competent jurisdiction or preempted by state legislation, such decision or legislation shall not affect the validity of the remaining portions of this ordinance. The City Council hereby declares that it would have passed and adopted this ordinance and each and all provisions thereof irrespective of the fact that any one or more of said provisions be declared unconstitutional, unlawful or otherwise invalid.

**SECTION 5. Effective Date.** Adoption of this ordinance as an urgency ordinance with immediate effect is necessary for the preservation of the public health, safety and welfare in accordance with Section 76A of the Petaluma City Charter because as the COVID-19 pandemic recedes and business returns to Petaluma, there is an urgent need to require as soon as possible that Petaluma's hospitality employers permit their former employees' to return to work to speed the City's transition back to a healthy labor market and lessen the damage to the Petaluma's economy and the local community from the COVID-19 pandemic, and to avoid the worker displacement that otherwise may occur as the hospitality industry begins rehiring. Accordingly, in accordance with Section 76A of the Petaluma City Charter, this ordinance will become effective immediately upon its adoption, if passed by a unanimous vote of the Petaluma City Council members present.

**SECTION 6. Repeal.** The City Council may repeal this ordinance by duly adopted resolution upon finding that the conditions warranting the enactment of this ordinance no longer apply in the city.

**SECTION 7. Posting/Publishing of Notice.** The City Clerk is hereby directed to publish or post this ordinance or a synopsis for the period and in the manner provided by the City Charter and other applicable law.